

# TERMS & CONDITIONS

## OF SHIPMENT AS PER STANDARD BILL OF LADING



### 1. DEFINITIONS

- **Carrier** means Steamships Limited trading as Consort Express Lines unless contrary indication is contained on the Bill of Lading.
- **Merchant** includes the Shipper, Holder, Consignee, Receiver of the Goods or of this Bill of Lading, owning or entitled to the possession of the goods and anyone acting on behalf of any such person.
- **Holder** means any person for the time being in possession of the Bill of Lading to whom the property in the Goods has passed on or by reason of the consignment of the Goods or the endorsement of this Bill of Lading or other wise.
- **Person** includes an individual, group, company or other entity.
- **Sub-Contractor** includes owners and operators of vessels (other than the Carriers) stevedores, terminal and groupage operators, road and rail transport operators and any independent contractor employed by the carrier in performance of the carriage and any subcontractors thereof.
- **Indemnity** includes, defend, indemnify and hold harmless.
- **Goods** means the whole or any part of the cargo received from the shipper and includes an equipment or container not supplied by or on behalf of the Carrier.
- **Container** includes any container, trailer, transport tank, flat rack or pallet, or any similar article used to consolidate goods and any equipment thereof or connected thereto.
- **Carriage** means the whole or any part of the operations and service undertaken by the Carrier in respect of the goods.
- **Combined Transport** arises if the Place of Receipt and/ or the Place of Delivery are indicated on the face hereof in the relevant spaces.
- **Port to Port Shipment** arises if the Carriage called for by this Bill of Lading is not Combined Transport.
- **Freight** includes all charges payable to the Carrier in accordance with the applicable Tariff and this Bill of Lading.
- **Hague Rules** means the province of the International Convention for the Unification of Certain Rules relating to Bill of Lading signed at Brussels on 25th August, 1924 and includes the amendments by the Protocol signed at Brussels on 23rd February, 1968 but only if such amendments are compulsorily applicable to this Bill of Lading. (It is expressly provided that nothing in this Bill of Lading shall be construed as contractually applying said Rules as amended by said Protocol.)

### 2. CARRIER'S TARIFF

The terms and conditions of Carrier's applicable Tariff are incorporated on the Bill of Lading. Particular attention is drawn to the terms and conditions therein relating to container and vehicle demurrage. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier or his agents upon request. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

### 3. WARRANTY

The Merchant warrants that in agreeing to the terms on the Bill of Lading, he is, or has the authority of, the Person owing or entitled to the possession of the Goods and this Bill of Lading.

### 4. SUB-CONTRACTING & INDEMNITY

The Carrier shall be entitled to sub-contract the Carriage on any terms whatsoever

1. The merchant undertakes that no claim or allegation shall be made against any Person whomsoever by whom the Carriage is performed or undertaken (including all Sub – Contractors of the Carrier), other than the carrier, which imposes or attempts to impose upon any such person, or any vessel owned by any such Person, any liability whatsoever in connection with the Goods or the Carriage of the Goods whether or not arising out of negligence on the part of such Person and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing every such person shall have the benefit of every right, defense, limitation and liberty of whatsoever nature herein contained or otherwise available to the Carrier as if such provisions were expressly for his benefit but also as the Carrier to the extent of these provisions, does so not only on his behalf but also as the Agent and Trustee for such persons.
2. The provisions of Clause 4(2) including but not limited to the undertakings of the Merchant contained therein, shall extend to claims or allegations of whatsoever nature against other Persons chartering space on the carrying vessel.
3. The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person other than in accordance with the terms and conditions of this Bill of Lading which imposes upon the Carrier any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of the Carrier and if, any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

### 5. CARRIER'S RESPONSIBILITY – PORT TO PORT SHIPMENT

If the Carriage called for by this Bill of Lading is a Port-to-Port Shipment, the liability (if any) of the Carrier for loss of and damage to the Goods occurring from and during loading onto any seagoing vessel up to and during discharge from that vessel or from another seagoing vessel into which the Goods have been transhipped shall be determined in accordance with any national law making the Hague Rules, or Hague-Visby Rules or any amendment thereof, compulsorily applicable to this Bill of Lading, or in any other case in accordance with the Hague Rules Articles 1 – 8 inclusive.

The Carrier shall be under no liability whatsoever for loss of or damage to the Goods, howsoever occurring, if such loss or damage arises prior to loading onto or subsequent to discharge from the vessel. Notwithstanding the above, in case and to the extent that any applicable compulsory law provides to the contrary, the Carrier shall have the benefit of every right, defence, limitation and liberty in the Hague Rules as applied by this clause during such additional compulsory period of responsibility, notwithstanding that the loss or damage did not occur at sea.

### 6. CARRIER'S RESPONSIBILITY – COMBINED TRANSPORT

If the Carriage called for by this Bill of Lading is Combined Transport, the Carrier undertakes to perform and/or in his own name to procure performance of the Carriage from the Place of Receipt or the Port of Loading, whichever is applicable, and, save as is otherwise provided by this Bill of Lading, the Carrier shall be liable for loss or damage occurring during Carriage only to the extent set out below;

1. If the state of the Carriage during which loss or damage occurred is not known
  - a) **Exclusions**

If the stages of the Carriage during which the loss or damage occurred is not known, the Carrier shall be relieved of liability for any loss or damage if such loss was caused by:

    - i An act or omission of the Merchant
    - ii Insufficiency of or defective condition of packing or marking
    - iii Handling, loading, stowage or unloading of the Goods by or on behalf of the Merchant
    - vi Inherent vice of the Goods
    - v Strike, lock-out, stoppage or restraint of labour, from whatever cause, whether partial or general
    - vi A nuclear accident
    - vii Any cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence
    - viii Compliance with instructions of any Person entitled to give them.
  - b) **Burden of Proof**

The Burden of Proof that the loss or damage was due to one or more of the causes or events specified in this Clause 6(1) shall rest upon the Carrier. Save that if the Carrier establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the causes or events specified in Clause 6(1) (a) (ii) (iii) and (iv), it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by one or more of these causes or events.

c) **Limitation of Liability**

Except as provided in Clauses 7(2), 7(3) and 27, if Clause 6(1) operates total compensation shall in no circumstances whatsoever and howsoever arising exceed 2 SDR's per kilo of the gross weight of the Goods lost or damaged. (SDR means Special Drawing Hights as defined by the International Monetary Fund)

2. **If the stage of the Carriage during which the loss or damage occurred is known.**

Notwithstanding anything provided for in Clause 6 (1) and subject to Clause 15 and 16, if it is known during which stage of the Carriage the loss or damage occurred, the liability of the Carrier in respect of such loss or damage shall be determined:

- a) by the provisions contained in any International Convention or National Law which provisions;
- i cannot be departed from by private contract to the detriment of the Merchant; and
- ii would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular Stage of Carriage during which the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable; or
- b) if no international convention or national law would apply by virtue of Clause 6(2) (a), by the Hague Rules Article I – VIII inclusive, if the loss or damage is known to have occurred during waterborne Carriage; or
- c) By the provisions of Clause 6 (1) if the provisions of Clause 6 (2) (a) and (b) above do not apply, for the purpose of Clause 6 (2), references in the Hague Rules to carriage by sea shall be deemed to include references to all waterborne Carriage and the Hague Rules shall be construed accordingly.

3. **If the Place of Receipt or the Place of Delivery is not named on the Bill of Lading;**

Subject to Clause 5, if the Place of receipt is not named on the face hereof, the Carrier shall be under no liability whatsoever for loss of or damage to the Goods, howsoever occurring, if such loss or damage arises prior to loading onto the vessel. If the Place of Delivery is not named on the face hereof, the Carrier shall be under no liability whatsoever for loss of or damage to the Goods, howsoever occurring, if such loss or damage arises subsequent to discharge from the vessel.

4. **Notice of Loss or Damage**

Unless Clause 6(2) applies and invokes an international convention or national law which makes alternative provisions relating to notice of loss or damage (in which case such alternative provisions shall apply), the Carrier shall be deemed prima facie to have delivered the Goods as described on this Bill of Lading unless notice of such loss or damage to the goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier or to his representative at the place of Delivery or at the Port of Discharge if no Place of Delivery is named on the face of the Bill of Lading before or at the time of removal of the Goods into the custody of the person entitled to delivery thereof under this Bill of Lading, or, if the loss or damage is not apparent, within three working days thereafter.

5. **Time Bar**

Unless Clause 27 applies, the Carrier shall be discharged of all liability whatsoever in respect of the Goods, unless suit is brought and noticed thereof given to the Carrier within nine months after delivery of the goods or, if the goods are totally lost, eleven months after the date when the goods were received for Carriage.

7. **SUNDRY LIABILITY PROVISIONS**

1. **Basis of Compensation**

Compensation shall be calculated by reference to the value of the goods at the time they are delivered to the Merchant, or at the place and time they should have been delivered. For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the sound value of the goods is agreed to be the invoice value plus freight and insurance if paid.

2. **Hague Rules Limitation**

If the Hague Rules are applicable otherwise than by national law, in determining the flexibility of the Carrier the liability shall in no event exceed 100 Pounds Sterling or the equivalent thereof per package or unit. If the Hague Rules are applicable by national law, the liability of the Carrier shall in no event exceed the limit provided in the applicable national law.

3. **Ad Valorem**

The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods, and that higher compensation than that provided herein may not be claimed unless, with the consent of the Carrier, the value of the Goods declared by the Shipper prior to the commencement of the Carriage is stated on this Bill of Lading and extra freight paid, if required. In that case, the amount of the declared value shall be adjusted pro rata on the basis of such declared value.

4. **Delay**

The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or the Place of Delivery at any particular time or to meet any particular market or use, and the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct, indirect or consequential loss or damage caused by delay.

5. **Scope of Application**

- a) The terms and conditions of this Bill of Lading shall at all times govern all responsibilities of the Carrier in connection with or arising out of the supply of a container to the Merchant, not only during the Carriage, but also during the periods prior to and/or subsequent to the Carriage.
- b) The rights, defenses, limitations and liberties of whatsoever nature provided for in this Bill of Lading shall apply in any action against the Carrier for loss or damage or delay, howsoever occurring and whether the action be founded in contract or in tort and even if the loss, damage or delay arose as a result of unseaworthiness, negligence or fundamental breach of contract.
- c) Save as is otherwise provided on this Bill of Lading, the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct or indirect or consequential loss or damage.

6. **Inspection by Authorities**

If by order of the authorities at any place, a container has to be opened for the Goods to be inspected, the Carrier shall not be liable for any loss or damage incurred to the cargo or otherwise as a result of any opening, unpacking, inspection or repacking. The Carrier shall be entitled to recover the cost of such opening, unpacking, inspection and repacking from the Merchant.

8. **SHIPPER PACKED CONTAINERS**

If a container has not been packed by or on behalf of the Carrier.

- 1. The Carrier shall not be liable for loss or damage to the Goods caused by;
  - a) the manner in which the container has been packed, or
  - b) the unsuitability of the Goods for Carriage in the container supplied, or

- c) the unsuitability or defective condition of the Container, provided that, if the container has been supplied by or on behalf of the Carrier, this unsuitability or defective condition could have been apparent upon inspection by the Merchant at or prior to the time when the container was packed.
- 2. If a Shipper – packed container is delivered by the Carrier with its original seal as affixed by the Shipper intact, such delivery shall constitute full and complete performance of the Carrier's obligations hereunder and the Carrier shall not be liable for any shortage of goods ascertained at delivery.
- 3. The Merchant shall indemnify the Carrier against any loss, damage, liability or expense whatsoever and howsoever arising, caused by one or more of the matters referred to in Clause 8(1) and 8(2), save that, if the loss, damage, liability or expense was caused by a matter referred to in Clause 8 (1) (c), the Merchant shall not be liable to indemnify the Carrier in respect thereof unless the proviso referred to in this Clause applies.

9. **INSPECTION OF GOODS**

The Carrier or any Person to whom the Carrier has sub-contracted the Carriage or any person authorized by the Carrier shall be entitled but under no obligation, to open any container or package at any time and to inspect the Goods.

10. **CARRIAGE AFFECTED BY CONDITION OF GOODS**

If it appears at any time that the Goods cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measurement(s) in relation to the Container or the Goods the Carrier may without notice to the Merchant (but as his agent only) take any measure(s) and/or incur any additional expense to carry or to continue the Carriage thereof, and/or sell or dispose of the goods and/or abandon the Carriage and/ or store them ashore or float, under cover or in the open, at any place, whichever the Carrier in his absolute discretion considers most appropriate, which abandonment, storage, sale or disposal shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any additional expense so incurred.

11. **DESCRIPTION OF GOODS**

- 1. This Bill of Lading shall be prima facie evidence of receipt by the Carrier from the Shipper in apparent good order and condition, except as otherwise noted, of the total number of Containers, packages or other units specified in the box on the face hereof entitled "Total number of Containers/Packages received by the Carrier".
- 2. Except as provided in Clause 11(1), no representations made by the Carrier to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the goods, and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.
- 3. If any particulars of any Letter of Credit and/ or Import License and/or Sale Contract and/or Invoice or Order number and/or details of any contract to which the Carrier is not a party are shown on the face of this Bill of Lading, such particulars are included solely at the request of the Merchant for his convenience. The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way affects the Carrier's liability under this Bill of Lading. The Merchant further agrees to indemnify the Carrier against all consequences of including such particulars in this Bill of Lading. The Merchant acknowledges that, except when the provisions of Clause 7(3) apply, the value of the goods is unknown to the Carrier.

12. **SHIPPER'S/ MERCHANT'S RESPONSIBILITY**

All of the Persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the due fulfillment of all obligations undertaken by the Merchant in this Bill of Lading.

The Shipper warrants to the Carrier that the particulars relating to the goods as set overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars, and any other particulars furnished by or on behalf of the Shipper, are adequate and correct. The Shipper also warrants that the goods are lawful goods and contain no contraband.

The Merchant shall indemnify the Carrier against all loss, damage, fines and expenses arising or resulting from breaches of the warranties in Clause 12(2) hereof or from any other cause in connection with the goods for which the Carrier is not responsible.

The Merchant shall comply with all regulations or requirements of Customs, Port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing, Freight for any additional carriage undertaken) incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect or insufficient marking, number or address of the Goods, and shall indemnify the Carrier in respect thereof.

If Containers supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty containers, with interiors brushed and clean, to the point or place designated by the Carrier, his servants or agents, within the time prescribed. Should a container not be returned within the time prescribed in the Tariff or otherwise, the Merchant shall be liable for any demurrage, loss or expenses, which may arise, from such non – return.

13. **FREIGHT**

Freight shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.

The Merchant's attention is drawn to the stipulations concerning currency in which the Freight is to be paid, rate of exchange, devaluation and other contingencies relative to the freight in the applicable Tariff.

Freight, has been calculated on the basis of particulars furnished by or on behalf of the Shipper. If the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that a sum equal to either double the difference between the correct Freight and the Freight charged, or to double the correct Freight less the Freight charged, whichever sum is smaller, shall be payable as liquidated damages to the Carrier.

All Freight charges shall be paid in full, without any set-off, counterclaim, deduction, or stay of execution, in accordance with the invoice due date. In the event of overdue invoices, the Carrier reserves the right to impose a penalty fee of 6.5% per annum on the outstanding balance, calculated from the due date until the date of full payment.

The Person falling within the definition of Merchant in Clause 1 shall be jointly and severally liable for the payment of Freight and liquidated damages as provided in this Clause.

Any Person engaged by the Merchant to perform forwarding services in respect of the Goods shall be considered to be an exclusive agent of the Merchant for all purposes and any payment of Freight to such Person shall not be considered payment to the Carrier in any event. Failure of such Person to pay any part of the Freight to the Carrier shall be considered a default by the Merchant in the payment of Freight.

14. **LIEN**

The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract by any of the Persons defined as Merchant in Clause 1 and for general

average contributions, to whomsoever due. The Carrier shall also have a Lien against the current Holder on the Goods and any documents relating thereto for all sums due from him to the Carrier under any other contract. In any event any Lien shall extent to cover the cost of recovering the sums due, and for that purpose the Carrier shall have the right to sell the goods by public auction or private treaty without notice to the Merchant.

15. **OPTIONAL STOWAGE AND DECK CARGO**

The Goods may be packed by the Carrier in Containers and consolidated with other Goods in Containers.

Goods, whether packed or not packed in Containers, may be carried on deck or under deck without notice to the Merchant. All such Goods, whether carried on deck or not on deck, shall participate in General Average and shall be deemed to be within the definition of Goods for the purposes of the Hague Rules and shall be carried subject to these Rules.

Notwithstanding Clause 15(2), in the case of Carriage of Goods which are stated on the face hereof as being carried on deck and which are so carried, the Hague Rules shall not apply and the Carrier shall be under no liability whatsoever for loss, damage or delay, howsoever arising, whether or not arising out of negligence on the part of the Carrier.

16. **LIVE ANIMALS**

The Hague Rules shall not apply to the Carriage of live animals, which are carried at the sole risk of the Merchant. The Carrier shall be under no liability whatsoever for any injury, illness, death, delay or destructions howsoever arising. Should the Master in his sole discretion consider that any live animal is likely to cause injuries to any other live animal or any person or property on board, or to cause the vessel to be delayed or impeded in the prosecution of the Carriage, such live animal may be destroyed and thrown overboard without any liability attaching to the Carrier. The Merchant shall indemnify the Carrier against all or any extra costs incurred for any reason whatsoever in connection with the Carriage of any live animals.

17. **SPECIALIZED CARRIAGE**

The Merchant undertakes not to tender for Carriage any Goods which require temperature control, ventilation or any other special attention without previously giving written notice of their nature and particular temperature range to be maintained and/or special attention required. In the case of a refrigerated, ventilated or any other specialized Container packed by or on behalf of the Merchant, the merchant further undertakes that the Goods have been properly stowed in the Container and that he has checked that its thermostatic, ventilating or any other special controls have been properly set (or if they have not that he had adjusted them as necessary), before receipt of the Goods by the Carrier. If the above requirements are not complied with, the Carrier shall not be liable for any loss of or damage to the Goods, howsoever arising.

The Carrier shall not be liable for any loss or damage to the Goods arising from any defect of any specialized Container, provided that the Carrier shall, before and at the beginning of the Carriage, exercise due to maintain the Container in an efficient state.

For breakbulk cargo, all dimensions and volumes stated in quotations, booking notes, booking confirmations, shipper's declarations, or manufacturer specifications are, for the purposes of final invoicing, indicative only and non-binding. Ocean Freight and related charges shall be calculated and invoiced based on the actual dimensions of the cargo as presented and measured by the Carrier, its stevedores, or load port agents at the port of loading, and such measurements shall be final for invoicing purposes.

The Carrier shall not, for the purpose of final loading and final invoicing, be bound by declared or estimated dimensions and reserves the right to adjust charges, delay, or refuse loading where actual measurements differ from those declared.

18. **METHODS AND ROUTE OF CARRIAGE**

- 1. The Carrier may at any time and without notice to the Merchant:
  - a) use any means of transport whatsoever
  - b) transfer the Goods from one conveyance to another, including but not limited to transshipping or carrying them on another vessel than that named on the face hereof.
  - c) unpack and remove the Goods which have been packed into a Container and forward them in a container or otherwise
  - d) proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or port whatsoever, once or more often and in any order.
  - e) load or unload the Goods at any place or port (whether or not such port is named overleaf as the Port of Loading or the Port of Discharge) and store the Goods at any such place or port.
  - f) comply with any orders or recommendations given by any government or authority, or any Person acting or purporting to act as or on behalf of such government or authority, or have under the terms of any insurance or any conveyance employed by the Carrier the right to give orders or directions.
  - g) permit the vessel to proceed with or without pilots, to tow or be towed, or to be dry-docked.
- 2. The liberties set out in Clause 18(1) may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of Goods, including Loading and Unloading other Goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing any persons, including but not limited to Persons involved with the operation or maintenance of the vessel and assisting vessels in all situations. Anything done in accordance with Clause 18(1) or any delay arising therefrom shall be deemed to be within the Contractual Carriage and shall not be a deviation.
- 3. By tendering the Goods for carriage without any written request for Carriage in a specialized Container, or within a specific temperature range, or subject to any special care, or for Carriage otherwise than in a container, the Merchant accepts that the Carriage may properly be undertaken in a general container.

19. **MATTERS AFFECTING PERFORMANCE**

If at any time the Carriage is or is likely to be any hindrance, risk, delay, difficulty or disadvantage of any kind (other than inability of the Goods safely or properly to be carried or carried further), and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time this contract was entered into or the Goods were received for Carriage), the Carrier (whether or not the Carriage is commenced) may, without prior notice to the Merchant and at the sole discretion of the Carrier, either,

- a) Carry the Goods to the Contracted Port of Discharge or Place of Delivery, whichever is applicable, by an alternative route to that indicated in this Bill of Lading or that which is usual for Goods consigned to that Port of Discharge or Place of delivery. If the Carrier elects to invoke the terms of this Clause 19 (a), then, notwithstanding the provisions of Clause 18 hereof, he shall be entitled to charge such additional Freight as the Carrier may determine; or
- b) Suspend the Carriage of the Goods and store them ashore or afloat upon the terms of this Bill of Lading and endeavor to forward them as soon as possible, but the Carrier makes no representations as to the maximum period of suspension. If the Carrier elects to invoke the terms of the Clause 19 (b) then the Carrier shall be entitled to payment of such additional Freight as the Carrier may determine; or



- c) Abandon the Carriage of the Goods and place the Goods at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Freight on the Goods received for Carriage and the Merchant shall pay any additional costs of the Carriage to, and delivery and storage at such place or port.

If the Carrier elects to use an alternative route under Clause 19 (a) or to suspend the Carriage under Clause 19(b) this shall not prejudice his right subsequently to abandon the Carriage.

## 20. DANGEROUS GOODS

No Goods, which are or may become dangerous, inflammable or damaging (including radioactive materials), or which are or may become liable to damage any property whatsoever, shall be tendered to the Carrier for Carriage without his express consent in writing, and without the container or other covering in which the Goods are to be carried as well as the Goods themselves being distinctly marked on the outside so as to indicate the nature and character of any such Goods and so as to comply with any applicable laws, regulations, or requirements. If any such Goods are delivered to the Carrier without such written consent and/or marking, or if in the opinion of the Carrier the Goods are or are liable to become of a dangerous, inflammable or damaging nature, they may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Freight.

The Merchant undertakes that such Goods are packed in a manner adequate to withstand the risks of Carriage having regard to their nature and in compliance with all laws or regulations which may be applicable during the Carriage

Whether or not the Merchant was aware of the nature of the Goods, the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of the Carriage of such Goods.

Nothing contained in this clause shall deprive the Carrier of any of his rights provided for elsewhere.

## 21. NOTIFICATION AND DELIVERY

Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.

The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff (see Clause 2). If the Merchant fails to do so, the Carrier shall be entitled, without notice, to unpack the Goods if packed in containers and/or to store the Goods ashore, afloat, in the open or under cover, at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods stored as aforesaid shall wholly cease, and the costs of such storage (if paid or payable by the Carrier or any agent or Sub – Contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.

If the Merchant fails to take delivery of the Goods within thirty days of delivery becoming due under clause 21(2), or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, without prejudice to any other rights which he may have against the Merchant, without notice and without any responsibilities whatsoever attached to him, sell, destroy or dispose of the Goods and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect to this Bill of Lading.

Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this Clause and/or to mitigate any loss or damage thereto shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.

In the event of the Carrier agreeing to a request of the Merchant to amend the Place of Delivery stated herein, the terms and conditions to this Bill of Lading shall continue to apply, only to the extent provided by the applicable Tariff, until the Goods are delivered by the Carrier to the Merchant at the amended Place of Delivery. Once the applicable Tariff ceases to provide for the continued application of the Terms and Conditions of the Bill of Lading, then the Carrier shall act as agent only of the Merchant in arranging for delivery of the Goods to the amended Place of Delivery but shall then be under no liability whatsoever for loss, damage or delay to the Goods howsoever arising.

## 22. FCL MULTIPLE BILLS OF LADING

Goods will only be delivered in a container to the Merchant if all Bills of Lading in respect of the contents of the container have been surrendered authorizing delivery to a single Merchant at a single Place of Delivery. In the event that this requirement is not fulfilled the Carrier may unpack the container and, in respect of Goods for which the Bills of Lading have been surrendered, deliver these to the Merchant on an LCL basis. Such delivery shall constitute due delivery hereunder, but will only be effected against payment by the Merchant of LCL Service Charges and any charges appropriate to LCL Goods (as laid down in the Tariff) together with the actual costs incurred for any additional services rendered.

If this is an FCL multiple Bill of Lading (as evidenced by the qualifications of the tally acknowledged overleaf to the effect that it is, "One of ...part cargoes in the Container"), then the Goods detailed overleaf are said to comprise part of the contents of the Container, indicated. If the Carrier is required to deliver the Goods to more than one Merchant and if all or part of the total Goods within the Container consists of bulk Goods or unappropriated Goods, or is or becomes mixed or unmarked or unidentifiable, the Holders of the Bills of Lading relating to Goods within the Container shall take delivery thereof (including any damage relating to the Goods within the Container shall take delivery thereof (including any damaged portion) and bear any shortage in such proportions as the Carrier shall in his absolute discretion determine, and any such delivery shall constitute due Delivery hereunder.

## 23. OPTIONAL PORTS

If Goods are accepted for optional ports, said option must be declared to the Carrier's agent at the first of the optional ports of discharge mentioned in this Bill of Lading, not later than two working days before arrival of the vessel at that port. Failing such declaration, the Carrier shall be at liberty to discharge the Goods at any optional ports and such carriage shall be considered full satisfaction of this contract of carriage. Options may only be declared for the total quantity of Goods represented by the optional Bill of Lading.

## 24. GENERAL AVERAGE AND SALVAGE

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible, by statute, contract or otherwise, the Merchant shall contribute with the Carrier in the general average to the payment of any sacrifices, losses or expenses, or a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the Goods. All expenses in connection with a general average or salvage act to avoid damage to the environment shall always be considered general average expenses.

Any general average on a vessel operated by the Carrier shall be adjusted according to the York/Antwerp Rules of 1974 or any subsequent amendments thereto at any port or place and on any currency at the option of the Carrier. Any general average on a vessel not operated by the Carrier (whether a seagoing or inland waterways vessel) shall be adjusted according to the requirements of the operator of the vessel. In either case, the Merchant shall give such cash deposit or other security as the Carrier may deem sufficient to cover the estimated general average contribution of the Goods before delivery if the Carrier requires, or, if the Carrier does not so require, within three months of the delivery of the Goods, whether or not at the time of delivery the Merchant had notice of the Carrier's lien. The Carrier shall be under no obligation to exercise any lien to general average contribution due to the Merchant.

Conversion into the currency of the adjustment shall be calculated at the rate prevailing on the date of payment for disbursements and on the date of completion of discharge of the vessel for allowances, contributory value etc.

If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the salving vessel or vessels belong to strangers.

## 25. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have the power to waive or vary any of the terms of this Bill of Lading, unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

## 26. LAW AND JURISDICTION

The contract evidenced by this Bill of Lading shall be governed by Papua New Guinea Law. Any claim against the Carrier arising under this Bill of Lading shall be decided in the National Court of Justice of Papua New Guinea, to whose exclusive jurisdiction the Carrier and the Merchant hereby irrevocably submit.

## 27. VALIDITY

In the event anything herein contained is inconsistent with any applicable international convention or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of such inconsistency but no further be null and void.

## 28. BOTH – TO – BLAME COLLISION

If the vessel comes into collision with another ship as a result of the negligence of the other ship, and any act, neglect or default of the Master, mariner, pilot, or the servants of the Owner of the vessel in the navigation or in the management of the vessel, the Merchant shall indemnify the Carrier against all loss or liability which might be incurred directly to the other or non-carrying ship or her Owners in so far as such loss or liability represents loss of or damage to his Goods or any claim whatsoever of the Merchant paid or payable by the other or non-carrying ship or her Owners to the Merchant and set-off, recouped and recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying vessel or the Owners thereof.

The foregoing provision shall also apply where the Owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ship or objects are at fault in respect of a collision or contact.

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