

## TERMS AND CONDITIONS OF CARRIAGE

### **Art 1. DEFINITION**

“Bill of lading” means the present contract whether called bill of lading or waybill

“Carrier” means the party named on the face of this document and on whose behalf this Bill of Lading has been signed.

“Merchant” includes the Shipper, Receiver Consignor, Consignee of the Goods, any person owning or entitled to the possession of the Goods of this Bill of Lading, the holder of any document (including this document) evidences the contract of carriage and any person acting on behalf of any of the aforementioned.

“Holder” means any person for the time being in possession of this 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 otherwise.

“Goods” means the cargo received from the Shipper and includes any Container not supplied by or on behalf of the Carrier, as well as the contents of such container.

“Container” includes any container, trailer, transportable tank, flat or pallet or any similar article of transport used to consolidate goods.

“Carriage” means the whole of the operations and services undertaken by the Carrier in the respect of the Goods.

“Combined” Transport” arises when the place of receipt and/or the Place of Delivery are indicated in the face thereof.

“Port to Port Shipment” arises when the carriage called for by the Bill of Lading is not a combined transport.

“Freight” includes all charges payable to the Carrier in accordance with the applicable Tariff.

“Vessel” the vessel named herein or any substituted vessel including any barge, boat, vessel or other vehicle employed in the performance of this contract.

“Package or Unit” per individual Package if the goods are packed, per Block unit if the goods are not packed.

“Hague Rules” means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August, 1924 and includes the amendments by the Protocols signed at Brussels on 23rd February, 1968 and 21st December, 1979, but only if such amendments are compulsorily applicable to this Bill of Lading.

“US COGSA” means the United States Carriage of Goods by Sea Act, 46 U.S.C. App. § 1300 et seq. as enacted 1936 and any subsequent re-codification thereto

### **Art. 2 WARRANTY**

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

### **Art 3. SUBCONTRACTING AND INDEMNITY**

(1) The Carrier shall be entitled to sub-contract the carriage on any terms whatsoever. It is hereby expressly agreed that no servant or agent of the Carrier (including every independent contractor from time to time employed by the Carrier) shall in any circumstances whatsoever be under any liability whatsoever to Merchant for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment.

(2) Without prejudice to the generality of the foregoing provisions of this clause, every exemption, limitation, condition and liberty herein contained and every right, exception from liability, defense and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Carrier acting as aforesaid and for the purpose of all the foregoing provisions of this clause the

Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract in or evidenced by this Bill of Lading.

## **Art. 4 CARRIER'S RESPONSIBILITY AND CLAUSE PARAMOUNT**

### (1) Port-to-Port Shipment

When loss or damage has occurred between the time of loading of the Goods by the Carrier, or any Underlying Carrier, at the Port of Loading and the time of discharge by the Carrier, or any Underlying Carrier, at the Port of Discharge, the responsibility of the Carrier shall be determined in accordance with the French code of transport and by all the relevant edicts of French law of 18/06/1966 or the Hague Rules or any national law incorporating or making the Hague Rules, or any amendments thereto, compulsorily applicable to this Bill of Lading. 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 on to or subsequent to the discharge from the Vessel carrying the Goods. Loading shall be deemed to have commenced when the goods are connected with the tackle alongside the vessel, and discharge shall be deemed to have been completed when the goods are disconnected from the tackle and on terminal. Notwithstanding the foregoing, where any applicable compulsory law provides to the contrary, the Carrier shall have the benefit of every right, defense, 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.

Notwithstanding anything else in this Bill of Lading to the contrary, on shipments to or from the United States, the rights and liabilities of the parties shall be subject exclusively to US COGSA which shall also govern before the Goods are loaded on and after they are discharged from the Vessel provided, however, that the Goods at said times are in the custody of the Carrier or any Sub-Contractor.

### (2) Combined Transport

Period of liability: Where through transit of goods is provided for hereunder and includes at least two means of conveyance, notwithstanding the provision provided for under article 4 (1), the carrier's liability is strictly limited to the carriage by sea only and the carrier does not incur any liability whatsoever in respect of carriage by other carrier. Notwithstanding the foregoing, in case the Carrier is held responsible for the carriage by other carrier it is hereby expressly agreed that the carrier's liability shall be determined in accordance with clause 4 (2) (a) to 4 (2) (f) infra.

(a) With respect to rail or road Carriage within a State other than the United States, then liability shall be determined in accordance with the internal law of such State and/or any International Convention which is compulsorily applicable by the laws of such State. In the absence of such laws or convention then the provisions of Clause 4 (2) (f) will apply.

(b) With respect to road Carriage between countries in Europe liability shall be determined in accordance with the Convention on the Contract for the International Carriage of Goods by Road (CMR), dated May 19th, 1956; and during rail Carriage between countries in Europe according to the International Agreement on Railway Transports (CIM), dated February 25th, 1961 (or any amendments to this Convention or Agreement).

(c) With respect to Combined Transportation from, to or within the United States when the Goods are in the custody of the Carrier, or any Underlying Carrier, such Combined Transport will be governed by the provisions of Clause 4 (1).

(d) In the event Clause 4 (1) is held inapplicable to such Combined Transportation from, to or within the United States, then Carrier's liability will be governed by, and be subject to, the Terms and Conditions of the Underlying Carriers Bill of Lading and/or, where applicable, the ICC Uniform Bill of Lading together with the Underlying Carrier's Tariff which shall be incorporated herein.

Notwithstanding the foregoing, in the event there is a private contract of Carriage between the Carrier and any Underlying Carrier, such Combined Transportation will be governed by the Terms and Conditions of said contract which shall be incorporated herein as if set forth at length and copies of

said contract(s) shall be available to the Merchant at any office of the Carrier upon request.

(e) Except as provided in Clause 4 (2) (a) to 4 (2) (d) supra, the French code of transport and all the relevant edicts of French law of 18/06/1966 or the Hague Rules as per Clause 4 (1) shall apply to Combined Transport outside the United States where US COGSA is not compulsory applicable.

(f) The Carrier shall nevertheless be relieved of liability for loss or damage occurring during the Carriage if such loss or damage was caused by any cause or event which Carrier could not have avoided and the consequences of which he could not have reasonably prevented. Carrier's maximum liability under this Sub-Section 4 (2) (f) shall be One Euro per kilo of the Goods lost or damaged.

### (3) Agency

Whenever the Carrier undertakes to accomplish any act, operation or service not initially agreed or mentioned on this Bill of Lading, he shall act as Merchant's agent and shall be under no liability whatsoever for any loss or damage to the Goods or any direct, indirect or consequential loss arising out or resulting from such act, operation, or service. If, for any reason whatsoever, the Carrier is denied the right to act as agent as mentioned above, its liability for loss, damage or delays shall be determined in accordance with this Bill of Lading.

### (4) Subrogation

When any claims are paid by the Carrier to the Merchant, the Carrier shall be automatically subrogated to all rights of the Merchant against all other third party, including Underlying Carriers and Sub-Contractors, on account of such loss or damage.

## **Art 5. NOTICE OF CLAIM AND TIME FOR SUIT**

Unless notice of loss or damage to the Goods specifying or describing the exact nature of such loss or damage is given in writing to the Carrier or its agents at the Port of Discharge or Place of Delivery before or at the time of delivery of the Goods or, if the loss or damage is not apparent, within three (3) consecutive days after delivery, the Goods shall be deemed to have been delivered as described in this Bill of Lading. In any event the Carrier and its Sub-Contractors shall be discharged from all liability in respect of non-delivery, mis-delivery, delay, loss or damage unless suit is brought within one (1) year after delivery of the Goods or the date when the Goods should have been delivered.

## **Art. 6 - LIABILITY PROVISIONS**

### (1) Basis of Compensation

Without prejudice to any applicable limitation of liability in accordance with the provision set forth in sub-Clause 4 hereof, the basis of compensation shall be limited to the intrinsic value of the Goods so damaged or lost (excluding insurance, custom fees, taxes, Freight and retail value). The value of the Goods shall be determined by reference to the commercial invoice or the custom declaration. In no circumstance whatsoever, the Carrier shall be responsible for indirect damage, loss of profit or consequential damage.

### (2) Ad Valorem Liability

The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods, and that compensation higher than that provided for in this Bill of Lading may not be claimed unless, with the consent of the Carrier, the value of such Goods is declared by the Shipper prior to the commencement of the Carriage and is stated in writing on this Bill of Lading and extra Freight is paid. In such a case, the amount of the declared value shall be substituted for the limits laid down in this Bill of Lading. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value. In any event, the compensation shall not exceed the actual commercial value of the Goods as defined in Clause 6 (1).

### (3) Delay

The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or to meet any particular market or use and the Carrier shall in no circumstances whatsoever, and however arising be liable for direct, indirect or consequential loss or damage caused by delay. If notwithstanding the foregoing the Carrier is held responsible of any delay under a mandatory law, it is hereby expressly agreed that the Carrier's liability shall be limited to the

ocean Freight paid under this Bill of Lading for the delayed Goods, exclusive of local charges and/or demurrage. In case of delay from vessel, the carrier shall not be liable for loss or damage sustained by perishable cargoes carried in containers at the sole risks of the Merchant.

(4) US COGSA limitation to US carriage

When the Carriage is to or from the United States of America as stipulated in Clause 4 (1), and unless the nature and value of the Goods is declared on the back of the Bill of Lading in the condition set out in Clause 6 (2), the Carrier's limitation of liability in respect of the Goods, shall not exceed US\$ 500.00 per Container, package, bundle, pallet, or other unit, or when the Goods are not shipped per container, package, bundle, pallet or other unit, US\$ 500.00 per customary Freight units.

## **Art 7. STEVEDORING**

Authorization is given to the captain and carrier to choose the stevedore. For the operation of handling, stowage, loading or unloading or any other operations/activities customarily carried out before loading or after discharge from the vessel, the stevedore or/and ship agent are deemed to act on behalf of the merchant even if they were chosen by the carrier. When these operations are performed by a public or semi-public or monopolistic organism, the carrier's responsibility begins at loading when goods are connected with the tackle and given by stevedore and at discharge when the goods are connected to the tackle when given to stevedore.

## **Art 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 of or damage to the Goods caused by :

(a) The manner in which the Goods has been packed, stowed, stuffed or secured, or

(b) The unsuitability of the Goods for Carriage in the Container supplied, or

(c) The unsuitability, the defective condition of the Container or the incorrect setting - ventilation of any other refrigeration controls thereof - provided that, if the Container has been supplied by or on behalf of the Carrier, this unsuitability or defective condition would have been apparent upon inspection by the Merchant at or prior to the time when the Container was packed.

(d) packing refrigerated Goods that are not at the correct temperature for Carriage.

(2) The Shipper is responsible for the packing and sealing of all Shipper-packed Containers and, if a Shipper-packed Container is delivered by the Carrier with its original seal as affixed by the Shipper intact, 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), 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 provision referred to in that Clause applies.

(4) The merchant admits that the Carrier is authorized to pack the goods in containers and to gather them with other goods.

## **Art. 9 DESCRIPTION OF GOODS**

(1) The Carrier, its Agents and servants shall not in any circumstances whatsoever be under any liability for insufficient packing or inaccuracies, obliteration or absence of marks, numbers, addresses or description, nor for misdelivery due to marks or countermarks or numbers, nor for failure to notify the Consignee of the arrival of the Goods, any custom of the port to the contrary notwithstanding.

(2) No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, numbers or values of Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

(3) Any statement herein that iron or steel goods of any description have been shipped in apparent good condition does not involve any admission from the Carrier as to the absence of rust, for which the Carrier accepts no responsibility.

(4) The Shipper warrants to the Carrier that the particulars relating to the Goods as set out 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.

## **Art. 10 INSPECTION OF GOODS**

(1) 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 to inspect the Goods. Should the Goods be mis-declared, the Carrier reserves its right to stop the transport at any time according to Clause 19 of the Bill of Lading.

(2) If by order of any authority at any place, the goods have to be unpacked from the containers to be inspected, the Carrier will not be liable for any loss or damage incurred during such unpacking, inspection or repacking. The Carrier shall be entitled to recover the costs of unpacking, inspection and repacking from the Merchant. If it appears that the goods have lost their value, then the Carrier shall be entitled, with the agreement of the Merchant to destroy such goods, and all expenses and costs incurred there from shall be paid by the Merchant.

(3) In no circumstance whatsoever, the Carrier shall be liable for any loss, damage or delay howsoever arising from any action taken under this Clause.

## **Art. 11 CARRIAGE AFFECTED BY CONDITION OF GOODS**

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

## **Art. 12 MERCHANT'S RESPONSIBILITY**

(1) 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 fulfilment of all obligations undertaken by the Merchant in this Bill of Lading, and remain so liable throughout Carriage notwithstanding their having transferred this Bill of Lading and/or title to the Goods to any third party. Such liability shall include but not be limited to court costs, expenses and attorney's fees incurred in collecting charges and sums due to the Carrier.

(2) The shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and those particulars and any other particulars furnished by or on behalf of the Shipper are adequate and correct.

(3) The Merchant shall indemnify the Carrier against all loss, damage, fines and expenses arising or resulting from inaccuracies in or inadequacy of such particulars or from any other cause in connection with the Goods for which the Carrier is not responsible.

(4) The Merchant shall comply with all regulations or requirements of customs, port or any other authorities, with the provisions of applicable anti-corruption laws, including but not limited to the United Nations Convention against Corruption (2005), the U.S Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, with the applicable economic sanctions regulations, including but not limited to the ones published by the United States, European Union and United Nations. The Merchant further represents and warrants that it is not listed or detained/controlled by an entity listed by the United States, European Union, or United Nations as a "Blocked Person", "Denied Person", "Specially Designated National". The Merchant shall bear and pay all duties, taxes, fines, imposts, expenses or charges or losses (including, without prejudice to the generality of the

foregoing, Freight for any additional Carriage undertaken) incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of goods and indemnify the Carrier in respect thereof.

(5) If the Merchant uses its own containers, such containers shall comply with ISO/CSC regulations and be correctly cared for and respect any applicable legislation in all ports of call

(6) Where Containers owned or leased by the Carrier are unpacked by the Merchant, he is responsible for returning the empty Containers with interiors swept and clean, free of any dangerous goods placards, labels or markings and with all its accessories, if any, to the port or place of discharge or to the port or place designated by the Carrier, his servants or agents within the prescribed time (14 days). The Merchant shall be liable for any demurrage loss or expense that may arise from such non-return and will indemnify the carrier for any/all loss and damage to the container arising while under his control or for which he could be held liable. Unless the Merchant contests the estimate presented by the Carrier within 5 days of its receipts it will be deemed accepted by him. The Carrier is entitled to collect a deposit from the Merchant at the time of release of the Container which shall be remitted as security for payment of any sums due to the Carrier, in particular for payment of all Freight detention and demurrage and/or Container indemnity as referred above and may be kept by the Carrier fully or partially. In no case shall this deposit accrue any interest.

(7) Containers released into the care of the Merchant for packing, unpacking or any other purpose whatsoever are at the sole risk of the Merchant until redelivered to the Carrier. The Merchant shall indemnify the Carrier of all loss, damage, injury, fines or expenses caused or incurred by to such Containers whilst in Merchant control and/or until redelivery to the Carrier. Merchants are deemed to be aware of the dimensions of any Containers released to them.

## **Art. 13 FREIGHT AND CHARGES**

(1) Freight shall be charged by weight, volume ad valorem, or numbers at the Owner's option and, in all cases, payable in the currency stipulated in the Bill of Lading. The Freight has been calculated on the basis of detailed information furnished by or on behalf of the shipper. The Carrier may at any time open any Container or any other package or unit in order to reweigh, re-measure or revalue the contents, and if the detailed information provided by or on behalf the Shipper are incorrect, it is agreed that a sum equal to double the correct Freight less the freight charges shall be payable as liquidated damage to the Carrier.

(2) Freight and charges shall be deemed fully earned upon booking of the Goods for the Carriage and shall be paid and non-returnable in any event. Should the Merchant cancel the booking of the Goods for the Carriage, at any time and for any reason whatsoever, he shall be liable for the payment to the Carrier, its agents, successors, or assignee, of a penalty equal to the value of the Freight, including all charges, costs and expenses deriving from the cancellation of the booking.

(3) The Carrier shall have the right to demand payment of freight and charges whether payable at the time of receipt of the goods or before delivery of the goods either in the tariff currency or, at his option, in any other transferable currency.

(4) Attention is drawn to the Carrier's applicable conditions for container and vehicle demurrage which may be obtained from the Carrier or his Agents.

(5) All unpaid freight and charges shall be paid without any set-off, counter-claim or stay of stay of execution before delivery of the goods.

(6) Any person falling within the definition of Merchant (in clause 1) whether or not such person is the Shipper, shall be liable to the Carrier, its agent, representatives, successors or assignees, for the payment of all freight charges and demurrages and for the performance of the obligation of the contract evidenced by this Bill of Lading. Notwithstanding any provisions to the contrary, any unpaid freight and other transport costs remain due even after expiry of ONE YEAR after completion of the voyage.

(7) The Merchant shall severally indemnify the Carrier for any consequential damages arising out of the enforcement of administration or customs regulations which may be incurred by the Master, Carrier or his Agents for any reason whatsoever.

(8) Any Person engaged by the Merchant to perform forwarding services in respect of the Goods shall be considered to be the 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

(9) For the general average contribution, the freight shall be added to the goods value.

## **Art. 14 CARRIER'S LIEN**

(1) The Master, the Carrier, its servants or agents shall have a lien on the Goods and any documents relating thereto for all sums, freight, primage, deadfreight, pre-Carriage and/or inland Carriage whatsoever, demurrage, Container demurrage and storage charges, detention charges, salvage, general average contributions and all other charges and expenses whatsoever which are for the account of the Goods or of the Merchant payable to the Carrier under this contract and for general average contributions to whomsoever due and for the cost of recovering the same and for the purpose shall have the right to sell the Goods by public auction or private treaty without notice to the Merchant. If on sale of the Goods the proceeds fail to cover the amount due, the cost incurred as well as demurrages of Containers, the Carrier shall be entitled to recover the deficit from the Merchant.

(2) The Master and Carrier, its servants or agents shall also have a lien on all the Goods carried under this Bill of Lading and any document relating thereto for all sums including Freights and charges as above mentioned due and outstanding on any other Contracts for the Carriage of Goods concluded between the Carrier, its servants or agents and the Merchant, at any time where such sums or Freights remains due and unpaid.

(3) If the goods are unclaimed during a reasonable time, or whenever in the Carrier's opinion, the Goods are likely to become deteriorated, decayed or worthless, the Carrier may, at its discretion without responsibility whatsoever, auction, sell, abandon or otherwise dispose of such Goods solely at the risk and expense of the Merchant. Nothing in this Clause shall prevent the Carrier from recovering from the Merchant the difference between the amount due to him by the Merchant and the amount realised by the exercise of the rights given to the Carrier under this Clause.

## **Art. 15. OPTIONAL STOWAGE, DECK CARGO AND LIVESTOCK**

(1) Goods, whether packed in Containers or not, may be carried on deck or under deck without notice to the Merchant unless it is specifically stipulated on the front hereof that the Containers or Goods will be carried under deck. If carried on deck, the Carrier shall not be required to note, mark or stamp on the Bill of Lading any statement of such on-deck carriage. In the absence of the mention "under deck" of the back hereof, or any similar mention, the goods shall be presumed carried on ship's deck. Stowage and Carriage on deck shall be deemed approved by the Merchant. Goods which are out of gauge and/or are stowed on or in open top containers, flatracks or platforms, and which are stated herein to be carried on deck and livestock whether or not carried on deck, are carried without responsibility on the part of the carrier for loss or damage of whatsoever nature whether caused by unseaworthiness or negligence or any other cause whatsoever and the Hague Rules or the COGSA shall not apply. The Goods loaded on deck are carried at Merchant's expenses, risk and loss. The Master, the Carrier, its agents and servants, will not be responsible for any loss and/or damage incurred during the shipping transport, loading/unloading and transshipment.

(2) Goods carried on or under deck and whether or not stated to be carried on deck shall participate in general average and shall be deemed to be within the definition of Goods for the purpose of the Hague Rules or the COGSA or any compulsorily applicable legislation and shall be carried subject to such Rules or Act, whichever is applicable.

## **Art 16. MOTORS VEHICLES**

Privately owned vehicles (automobiles, trucks, motorcycles, scooters) shall not be accepted unless in-

sured. The Carrier only receives motors vehicles and do not take on any responsibility regarding the eventual contents put into it by the Merchant.

## **Art 17. PERSICHABLE GOODS, REFRIGERATED VEHICLES AND CONTAINERS**

(1) Special Containers with refrigeration, heating or insulation shall not be furnished unless contracted for on the front of this Bill of Lading. If a carrying temperature is noted on the front of this Bill of Lading, the Merchant shall deliver the Goods to the Carrier at plus or minus 2 degrees Celsius from the noted temperature, and the Carrier shall exercise due diligence to maintain such supply air temperature, plus or minus 2 degrees Celsius while the Goods are in its possession. It is the merchant's obligation to set and/or check that the temperature controls on the container are at the required carrying temperature and to properly set the vents. The Carrier does not undertake to deliver empty refrigerated Containers to the Merchant at any specific temperature. The Carrier has the right but not the obligation to refuse any Container loaded by the Merchant for shipment where the Goods are not or were not loaded into the Container within plus or minus 2 degrees Celsius of the contracted carrying temperature.

(2) The Merchant undertakes that the Goods have been properly stowed in the Container and that the thermostatic controls have been adequately set by him before receipt of the Goods by the Carrier and, if necessary, that the Goods have been pre-chilled before the loading into the Container. The Merchant's attention is drawn to the fact that refrigerated Containers are not designed to freeze down Goods which have not been presented for stuffing at or below its designated carrying temperature and the Carrier shall not be responsible for the consequences of cargo presented at a higher temperature than that required for the transportation.

(3) The carrier accepts no responsibility for damage sustained by the cargo arising out of defects or breakdowns on the container refrigerating unit accessories and/or thermostat. The carrier shall only provide electric power to the containers refrigerating systems and shall not be liable for power supply breakdowns. The carrier is not responsible for damage or losses to the goods originating from thermostatic controls not being carried out or being wrongly carried out by the Merchant, as well as for losses or damage originating from latent defect or from latent defect or from breakdowns to the cooling systems or to whichever electric plant either of the goods or of the ship.

(4) The term "apparent good order and condition" when used in this Bill of Lading with reference to Goods which require refrigeration does not mean that the Goods, when received were verified by the Carrier as being at the designated carrying temperature.

(5) The Carrier shall in no event be held liable for damage to Goods due to condensation.

(6) The Merchant is free to use its own temperature recording device. In no circumstance shall the Carrier be under any obligation to release the extracted data log records of the Container itself to the Merchant or any other Person.

## **Art 18. OPTIONS**

(1) Notwithstanding any custom of the port, regulations or conventions, and even prior to declaring the vessel entry to the customs and/or complying with any customs or other formality, the Master and Owner shall have the right to load, discharge, trans-ship the cargo or have it trans-shipped to barges, lighters, boats, or discharge same or have it discharged onto quay, into bonded stores, agent's warehouse or other places, stores, docks, silos, ect..., whether by day or night, on Sunday as on holidays, as they deem fit, but at the cost and risk of the cargo. Under no circumstances shall the Master and/or Carrier be obliged to notify the receiver of the arrival of the goods.

(2) If the B/L is issued with optional ports, the port of discharge and/or place of delivery for optional cargo must be declared to the vessel's Agent no later than 24 hours before the vessel's arrival in the first optional port or place of delivery. Failing such a declaration, the Master shall discharge the cargo in the optional port or place of delivery mentioned in the Bill of Lading deemed the most convenient for the vessel's schedule.

(3) The ocean vessel shall be at liberty to call at ports by, or out of the customary route, to attend dry-docking with cargo on board, to transship the goods and use of another vessel or vessels, and



dispatching the same via inland transit, thereby incurring no liability to the cargo or obligation to advise the shippers who hereby waive any claim they may have in connection therewith, including but not limited to, claims for delayed delivery in the trans-shipment port. Neither in this nor in any other case, shall the vessel Master or carrier be responsible for the insurance of the goods. The carrier's liability, if any, shall cease when the goods are taken over by the succeeding transport contractor.

## **Art 19. METHODS AND ROUTE OF TRANSPORTATION**

(1) The carrier may at any time and without notice to the Merchant

- (a) use any means of transport or storage whatsoever ;
- (b) transfer the Goods from own conveyance to another including but not limited to transshipping or carrying the same on another vessel than that named on the back hereof or by any other means of transport whatsoever ;
- (c) unpack and remove Goods which have been stowed into a Container and forward the same 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) 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 any such port is named overleaf as Port of Loading or 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 having under the terms of the insurance on the 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 to be towed or to be in dry dock.

(2) The liberties set out in sub-clause(1) above may be invoked by the Carrier of the Goods for any purpose whatsoever whether or not connected with the Carriage of the Goods including bunkering, undergoing repairs, towing or being towed, adjusting instruments, dry docking and assisting vessels in all situations. Anything done in accordance with sub-clause (1) or any delay arising there from shall be deemed to be within the contractual carriage and shall not be a deviation.

## **Art. 20 - LIBERTY CLAUSE**

If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Goods safety 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 accepted for Carriage) the Carrier (whether or not the Carriage is commenced) may either.

- (a) carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, either by the intended or the 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) hereof, he shall be entitled to charge such additional Freight, including extra war risk charge as the Carrier may determine, or
- (b) suspend the Carriage of the Goods and store them ashore or afloat upon the Terms and Conditions of this Bill of Lading and endeavour 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 and Conditions of this Clause 19 (b) then, he shall be entitled to charge 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 Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full 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 its right subsequently to abandon the Carriage under Clause 19 (c).

## **Art 21. DANGEROUS GOODS**

(1) No Goods which are or may become dangerous, inflammable or damaging (including radioactive materials), or which are or may cause damage to any property whatsoever, shall be tendered to the Carrier for Carriage without his express consent in writing and without the Container or other piece of equipment in which the Goods are to be transported and the Goods being distinctly marked on the outside so as to indicate the nature and the character of any such articles and to comply with any applicable laws, regulations or requirements, if any such articles are delivered to the Carrier without such written consent and marking or if in the opinion of the Carrier the articles are or are liable to become of a dangerous, inflammable or damaging nature, the same 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.

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

(3) 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 any breach of the provisions of this clause.

(4) Nothing contained in this clause shall deprive the Carrier of any of his rights otherwise provide for.

## **Art 22. NOTIFICATION AND DELIVERY**

(1) Any term mentioned herein providing for the 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.

(2) The Merchant shall take delivery of the Goods upon discharge. All expenses incurred because of the Merchant's failure to take delivery of the Goods as aforesaid shall be for the Merchant's account.

(3) If delivery of the Goods or any part thereof is not taken by the Merchant at the time and place when and where the Carrier is entitled to call upon the Merchant to take delivery thereof, the Carrier shall be entitled without notice to unstow the Goods or that part thereof if stowed in Containers and/or to store the Goods or that part thereof ashore, afloat, under shelter or not 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 or that part thereof stored as aforesaid (as the case may be) shall wholly cease and the cost of such storage (if paid or payable by the Carrier or any agent or sub-contract or of the Carrier shall forthwith upon demand be paid by the Merchant to the Carrier.

(4) If the Merchant fails to take delivery of the Goods within ten days of the delivery date, in conformity with under sub-clause (3) here above, or if the Carrier judges that the goods risk deteriorating, decaying, becoming worthless or incurring in charges whether for storage or otherwise exceeding their value, and if it is a transport from one port to another or with direct bill of lading, without prejudice to all other rights that he can claim from the Merchant, the Carrier may, without notice and without any responsibility whatsoever, dispose of the Goods and apply the proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading. Also the carrier may return the good at Merchant's expenses and risk. As regards to containers owned or hired by the carrier, over a period of free detention and parking, the Merchant will be liable per demurrages and detention taxes in case the receiver refuses to take delivery of the cargo, the Carrier is then entitled to recuperate the cargo and to sell same in order to recover any outstanding expenses and charges if the sales proceeds are deemed insufficient by the Carrier, the latter is entitled to claim the balance of the cost from the shipper.

## **Art 23. NON VESSEL OPERATING COMMON CARRIER (NVOCC)**

If the Merchant is a Non Vessel Operating Common Carrier (NVOCC), and has issued, or intends to

issue, other contracts of Carriage to third parties covering the Goods, or part of the Goods, transported by this Bill of Lading, said NVOCC hereby warrants and guarantee that all contracts of Carriage issued by him in respect of the Goods under this Bill of Lading shall incorporate the Terms and Conditions of this Bill of Lading. Should the said NVOCC fail to incorporate those Terms and Conditions, the NVOCC shall indemnify the Carrier, its servants, agents and Sub-Contractors against all resulting consequences.

## **Art 24. BOTH-TO-BLAME CLAUSE**

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 Carrier in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her Owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying ship or her Owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying Vessel or Carrier. The foregoing provisions 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 ships or objects are at fault in respect of a collision or contact

## **Art 25. GENERAL AVERAGE**

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

(2) General average shall be adjusted in Nouméa, in accordance with the 1974 YORK-ANTWERP rules, by one General Average Adjuster or more appointed by the Carrier without legal formalities.

(3) Notwithstanding any provision to the contrary in the YORK - ANTWERP Rules 1974, including but not limited to the article 7 of the said Rules, any and all sacrifices, losses and expenses made or incurred for the common benefit of the vessel and of the cargo, even without imminent danger, shall be deemed general average.

(4) It is hereby formally agreed that the Carrier reserves the right to retain the goods until payment of all contributions, whether provisional, final or contingent to general average, is affected in full and after the relevant average deposit is received by a bank.

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

(6) In case of assistance to the vessel and to the cargo, the Owner is given express authority to agree the cost of assistance, cargo interests declaring that they accept in advance the said agreed cost.

## **Art 26. VARIATION OF THE CONTRACT**

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

## **Art 27. VALIDITY**

In the event that anything herein contained is inconsistent with any applicable international convention 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.

## **Art 28. LAW AND JURISDICTION**

Except as specifically provided elsewhere herein, French law shall apply to the Terms and Conditions

of this Bill of Lading, and French law shall also be applied in interpreting the Terms and Conditions hereof. In case of divergence of interpretation of the above terms only the French version shall be valid. All disputes arising upon interpretation or fulfilment of herein B/L shall exclusively be brought before the Tribunal de Commerce de Nouméa and no other Court shall have jurisdiction with regards to any such claim or action even in case of recourse in warranty or plurality of respondents. Merchants and claimants declare formally that they accept this competence. Notwithstanding the aforesaid, the Carrier is also entitled to bring the claim or action before the Court of the place where the defendant has its registered office.

## **Art 29. SHIPMENT TO AND/OR FROM WALLIS & FUTUNA**

Where the carriage evidenced by this Bill of Lading shall provide for delivery of the goods at Wallis & Futuna, Norfolk Island or Funafuti, the Carrier shall not be liable for any loss or damage of any nature whatsoever suffered by the Merchant when the consignee/receiver shall have uplifted the goods referred to in this Bill of Lading without presentation of the original copy of this Bill of Lading. The Merchant acknowledges that at these ports there is an absence of any proper port infrastructure to properly control the delivery of cargoes to consignees/receivers & which may give rise to the delivery of goods to consignees/receivers without presentation of the original Bill of Lading