

**Standard Conditions Governing Multimodal Transport Documents issued in accordance with Multimodal Transportation of Goods Act, 1993.**

**(Face Clause)**

Taken in charge in apparently good condition herein at the place of receipt for transport and delivery as mentioned above, unless otherwise stated.

The MTO in accordance with the provisions contained in the MTD undertakes to perform or to procure the performance of the multimodal transport from the place at which the goods are taken in charge to the place designated for delivery and assumes the responsibility for such transport. One of the MTD(s) must be surrendered, duly endorsed in exchange for the goods.

In witness where of the original MTD all of this tenor and date have been signed in the number indicated below one of which being accomplished the other(s) to be void.

**(Back Clause)**

**1. Definitions:**

- (a) **“Carrier”** means a person who is engaged in the business of transporting, for hire, goods by road, rail, inland waterways or sea.
- (b) **“Consignee”** means the person named as consignee in the multimodal transport contract.
- (c) **“Consignment”** means the goods entrusted to a MTO for Multimodal transportation.
- (d) **“Consignor”** means the person, named in the multimodal transport contract as consignor, by whom or on whose behalf, the goods covered by such contract are entrusted to MTO for multimodal transportation.
- (e) **“Deliver”** means –
  - (i) In the case of a negotiable MTD delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any other person entitled to receive it;
  - (ii) In the case of a non-negotiable MTD delivering of the consignment to or placing the consignment at the disposal of the consignee or any person authorized by the consignee to accept delivery of the consignment on his behalf.

- (f) **“Endorsement”** means the signing by the consignee or the endorsee after adding a direction on a negotiable MTO to pass the property in the goods mentioned in such document to a specified person.
- (g) **“Goods”** includes – (i) containers, pallets or similar articles of transport used to consolidate goods; and (ii) animals.
- (h) **“Mode of transport”** means carriage of goods by road, rail, inland waterways or sea.
  - (i) **“Multimodal transportation”** means carriage of goods by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India.
  - (ii) **“Multimodal transport contract”** means a contract entered into by the consignor and the MTO for multimodal transportation.
- (j) **“Multimodal transport operator”** MTO means any person who –
  - (i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;
  - (ii) acts as principal and not as an agent, either of the consignor or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract; and
  - (iii) is registered under sub section (3) of section 4 of the Act.
- (k) **“Negotiable MTD”** means a MTD which is – (i) Made out to bearer; or (ii) Made out to order and is transferable by endorsement; (iii) Made out to bearer and is transferable without endorsement.
- (l) **“Non-negotiable MTD”** means a MTD which indicates only one named consignee.

## 2. **Applicability:**

The provision set out and referred to in this MTD shall apply if the transport as described on the face of the documents is by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India.

## 3. **Effect of Issuance of MTD:**

- (1) The issuance of the MTD confers and imposes on all parties having or acquiring hereafter an interest in the rights / obligations and defence set out in the conditions mentioned in this document.
- (2) By the issuance of the MTD the MTO.
  - (a) Undertakes to perform and/or in his own name to procure performance of the multimodal transport including all services which are necessary to such transport from the time of taking the goods in charge to the time of delivery and accepts responsibility for such transport and such services to the extent set out in these conditions.
  - (b) Accepts responsibility for the acts and omissions of his agents or servant, when such agents or servants are acting within their scope of their employment, as if such acts and omissions were own;
  - (c) Accepts responsibility for the acts and omissions on any other person whose services he uses for the performance of the contract evidenced by this MTD.
  - (d) Undertakes to perform or to procure performance of all acts necessary to ensure delivery.
  - (e) Assumes liability to the extent set out in these conditions of loss of or damage to the goods occurring between the time of taking them into his charge and the time of delivery, and undertakes to pay compensation as set out in these conditions in respect of such loss or damage.
  - (f) Assumes liability to the extent set out in these conditions for delay in delivery of the goods and undertakes to pay compensation as set out in that conditions.

#### **4. Negotiability and Title to the Goods:**

By accepting the Multimodal Transportation Document the consignor and his transferees agree with the MTO that, unless it is marked "nonnegotiable" it shall constitute title to the goods and the holder, by endorsement of this MTD, shall be entitled to receive or to transfer the goods mentioned in this MTD.

#### **5. Reservations:**

If the MTD contains particulars concerning the general nature leading marks, number of packages or pieces, weight or quantity of the goods which, the MTO or a person acting on his behalf knows, or has reasonable grounds to suspect, do not accurately represent the goods actually taken in charge, or if he has no reasonable means of checking such particulars, the MTO or a person acting on his behalf shall insert in the MTD a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking. If the MTO or a person acting on his behalf fails to note on the MTD the apparent condition of the goods, he is deemed to have noted on the MTD that the goods were in apparent good condition.

**6. Evidentiary effect of the MTD:**

- (1) The MTD shall be prima facie evidence of the taking in charge by the MTO of the goods as described therein; and
- (2) Proof to the contrary by the MTO shall not be admissible if the MTD is issued in negotiable form and has been transferred to a third party including a consignee who has acted in good faith in reliance on the description of goods therein.

**7. Guarantee by the consignor:**

- (1) The consignor shall be deemed to have guaranteed to the MTO the accuracy at the time the goods were taken in charge by the MTO of particulars relating to the general nature of the goods, their marks number weight and quantity and if applicable to the dangerous character of the goods as furnished by him for insertion in the MTD.
- (2) The consignor shall indemnify the MTO against loss resulting from inaccuracies or inadequacies of the particulars. The consignor shall remain liable even if the MTD has been transferred by him. The right of the MTO to such indemnity shall in no way limit his liability under the Multimodal Transport Contract to any person other than the consignor.

**8. Dangerous goods:**

- (1) The consignor shall mark or label dangerous goods in a suitable manner as “dangerous goods”.
- (2) Where the consignor hands over dangerous goods to the MTO or any person acting on his behalf the consignor shall inform him of the dangerous character of the goods and if necessary the precautions to be taken. If the consignor fails to do so and the MTO does not otherwise have knowledge of their dangerous character then.
  - a. The consignor shall be liable to the MTO for all loss resulting from the shipment of such goods and
  - b. The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.
- (3) The above provisions may not be invoked by any person if during the Multimodal Transport he has taken the goods in his charge with knowledge of their dangerous character.
- (4) If in cases where the provisions (2) (b) referred to above do not apply or may not be invoked dangerous goods become an actual danger to life or property they may be unloaded destroyed or rendered innocuous, as the circumstances may require without payment of compensation except where there is an obligation to contribute in general average or where the MTO is liable in accordance with the provisions of relevant conditions.

**9. Period of responsibility:**

- (1) The responsibility of the MTO for the goods covers the period from time he takes the goods in his charge to the time of their delivery. For the purpose of his responsibility, the MTO is deemed to be in charge of the goods:-
  - (a) From the time he has taken over the goods from (i) the consignor or a person acting on his behalf or (ii) an authority or other third party to whom, pursuant to law or regulations applicable at the place of taking charge the goods must be handed over for transport.
  - (b) Until the time he has delivered the goods (i) by handing them over to the consignee; or (ii) by placing them at the disposal of the consignee in accordance with the Multimodal Transport Contract or with the law or with the usage of the particular trade applicable at the place of

delivery; or (iii) by handing over the goods to an authority or other third party to whom pursuant to law or regulations, applicable at the place of delivery, the goods must be handed over.

- (2) Reference to the MTO in this regard shall include his servants or agents or any other person of whose services he makes use of for performance of the Multimodal Transport Contract, and reference to the consignor or consignee shall include their servants or agents.

**10. Basis of liability:**

- (1) The MTO shall be liable for loss resulting from loss of or damage to the goods; delay in delivery and any consequential loss or damage arising from such delay if the occurrence which caused such loss, damage or delay in delivery, took place while the goods were in his charge unless the MTO proves that he, his servants or agents or any other person whose services he uses for the performance of the contract evidenced by this MTD, took all measures that could reasonably be required to avoid the occurrence and its consequences.
- (2) Where fault or neglect on the part of the MTO, his servants or agents or any other person whose services he uses for the performance of the contract evidenced by this MTD, combines with another cause to produce loss or damage or delay in delivery, the MTO shall be liable only to the extent that the loss, damage or delay in delivery which is attributable to such fault or neglect, provided that the MTO proves the part of the loss, damage or delay in delivery is not attributable thereto.
- (3) Delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon or in the absence of such agreement within reasonable time required by a diligent MTO, having regard to the circumstances of the case to effect the delivery of goods.
- (4) If the goods have not been delivered within ninety consecutive days following the date of delivery expressly agreed upon the claimant may treat the goods as lost.

**11. Liability for loss or damage when the stage of Transport where the loss or damage occurred is not known:**

- (1) When the MTO is liable to pay compensation in respect of loss of or damage to, the goods occurring between the time of taking them into his charge and the time of delivery and the stage of Transport where the loss or damage occurred is not known:
  - (a) Such compensation shall be calculated by reference to the value of such goods at the place and time they are delivered to the consignee or at the place and time when in accordance with the contract of multimodal transport, they should have been so delivered.
  - (b) The value of the goods shall be determined according to the current commodity exchange price or there is not such price, according to the current market price, or if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

However, the MTO shall not, in any case be liable for an amount greater than the actual loss to the person entitled to make the claim.

- (2) Where a MTO becomes liable for any loss or damage to any consignment, the nature and value whereof have not been declared by the consignor before such consignment has been taken in charge by the MTO and the stage of transport at which such loss or damage occurred is not known, the liability of the MTO to pay compensation shall not exceed two Special Drawings Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67 Special Drawing Rights per package or unit lost or damaged whichever is higher.
- (3) Notwithstanding anything contained above if the multimodal transportation does not according to the multimodal transport contract, include carriage of goods by sea or by inland waterways, the liability of the MTO shall be limited to an amount not exceeding 3.33 Special Drawing Rights per kilogram of the gross weight of the goods lost or damaged.

**12. Liability for loss or damage when the stage of transport where the loss of damage occurred is known:**

- (1) When the MTO is liable to pay Compensation in respect of loss of or damage to the goods occurring between the time of taking them into his charge and the time of delivery and the stage of transport where such loss

or damage occurred is known, the liability of the MTO in respect of such loss or damage shall be determined by the applicable Indian Law if the loss or damage occurs in India, or by the provisions of the applicable law of the country where the loss or damage occurred as the case may be where provisions of the Indian law or the applicable law outside India.

- (a) cannot be departed from by private contract to the detriment of the claimant and
  - (b) would have applied if the claimant had made a separate and direct contract with the MTO in respect of the particular stage of transport when the loss or damage occurred.
- (2) Without prejudice to the provisions contained in para 3(2) (b) and (c) mentioned in this document when under the provisions of condition (1) mentioned above the liability of the MTO shall be determined by the provisions of the Law referred to condition (1) above the liability shall be determined as though the MTO was a carrier referred to in such law. However the Multimodal Transport Operator shall not be exonerated from liability where the loss or damage is caused or contributed to by the acts or omissions of the MTO in his capacity as such, or his servants or agents when acting in such capacity and not in the performance of the carriage.

**13. Defence and limits for the MTO and his servants :**

- (1) The defence and limits of liability provided for in this MTD shall apply in action against the MTO in respect of loss resulting from loss or damage to goods delay in delivery and any consequential loss or damage arising from such delay.
- (2) If any action in respect of resulting from loss or damage to the goods or from delay in delivery is brought against the servant or agent of the MTO, if such servant or agent of the multimodal transport operator, if such servant or agent powers that he acted within the scope of his employment, or against any other person of whose services he makes use for the performance of the Multimodal Transport Contract, if such other person proves that he acted within the performance of the contract, the servant or agent or such other persons shall be entitled to avail himself of the defences and limits of liability which the MTO is entitled to invoke under this MTD.



- (3) Except as provided for liability for delay, as mentioned below, the aggregate of the amounts recoverable from the MTO and from a servant or agent or any other person of whose services he makes use offer the performance of the multimodal transport contract shall not exceed the limits of liability provided for in this MTD.

**14. Liability for delay:**

The liability of the MTO for loss resulting from delay in delivery as per condition 10 above be limited to an amount equivalent to the freight payable for the goods delayed but not exceeding the total freight payable under the Multimodal Transport Contract.

**15. Loss of the right to limit liability:**

- (1) The limits of liability established in conditions 11, 12 and 14 above shall not apply if it is provided that the loss, damage or delay in delivery resulted from an act or omission of the MTO (or his servants or agent or any other person of whose services he makes use for the performance of multimodal transport contract.) done with the intent to cause such loss, damage or delay in delivery or recklessly and with knowledge that such loss, damage or delay would probably results.
- (2) Notwithstanding the provisions 13(2) above, if it is proved that the loss, damage or delay in delivery resulted from and act or omission of a servant or agent (or any person of whose services the MTO makes use for the performance of the multimodal transport contract.) done with the intent to cause loss, damage or delay in delivery or recklessly and with knowledge that such loss, damage or delay in delivery would probably result, the servant or agent shall not be entitled to the benefit of limitation of liability provided for in these conditions.

**16. Delivery / non-delivery:**

- (1) If the goods are not taken delivery of by the consignee within a reasonable time after the MTO has called upon him to take delivery, the multimodal transport shall be at liberty to put the goods in safe custody on behalf of the consignee at the consignee's risk and expense or to place the goods at the disposal of the consignee in accordance with the Multimodal

Transport Contract or with the law or with the usage of the particular trade applicable at the place of delivery.

- (2) The consignor shall be liable for detention, demurrage, storage, duties, taxes, penalties and any kind of other charges, if the consignee fails to take charge of the goods or abandons the goods. All such costs and consequences arising out of abandonment of goods by the consignee shall be paid by the consignor and shall be liability of the consignor.
- (3) The MTO shall be discharged from his obligation to deliver goods if, where a negotiable MTD has been issued, in a set of more than one original, he or a person acting on his behalf, has in good faith delivered the goods against surrender at one of such originals.

**17. Notice of loss, damage or delay:**

- (1) Unless notice of loss or damage, specifying the general nature of such loss or damage is given in writing by the consignee to the MTO at the time of taking over the goods such handling over is prima facie evidence of the delivery by MTO of the goods as described in the MTD.
- (2) Where the loss or damage is not apparent, the provisions of condition (1) referred to above apply correspondingly if notice in writing is not given within six consecutive days after the days when the goods were handed over to the consignee.
- (3) If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties or their representative at the place of delivery, notice in writing need not be given of loss or damage ascertained during survey or inspection.
- (4) In the case of any actual or apprehended loss or damage the MTO and the consignee shall give all reasonable facilities to each other for inspecting and tallying the goods.
- (5) If any of the notice periods provided for in condition (2) and (4) referred to above terminates on a public holiday at the place of delivery, such periods shall be extended upto the next working day.

- (6) Notice given to a person acting on behalf of the MTO including any person of whose services he makes use at the place of delivery, shall be deemed to have given to the MTO.

**18. Freight and charges :**

- (1) Freight shall be deemed earned on receipt of goods by MTO and shall be paid for in any event.
- (2) For the purpose of verifying the freight basis, the MTO reserves the right to have the contents of the containers, trailers or similar articles of transport inspected in order to ascertain the weight, measurement, value or nature of the goods.
- (3) All dues, taxes and charges levied on the good and other expenses in connection therewith, shall be paid by the consignor or the consignee or the holder of MTD or the owner of the goods.

**19. Containers etc. :**

- (1) Goods may be stowed by the MTO by means of containers, trailers, transportable tanks, flats, pallets or similar articles of transport used to consolidate goods and these articles of transport may be stowed under or on deck.
- (2) If a container has not been filled, packed or stowed by the MTO, the MTO shall not be liable for any loss of or damage to its contents and the consignor shall cover any loss of expense incurred by the MTO, if such loss, damage or expense has been caused by:
  - (a) Negligent filling, packing or stowing of the container; or
  - (b) The contents being unsuitable for carriage in containers; or
  - (c) The unsuitability or defective condition of the container unless the containers has been supplied by the MTO and the unsuitable or defective condition would not have been apparent upon reasonable inspection at or prior to the time when the container was filled, packed and stowed.

The provisions of this condition also apply with respect to trailers, transportable tanks, flats and pallets, which have not been filled, packed or stowed by the MTO.

- (3) The MTO does not accept liability for the functioning to reefer equipment or trailer supplied by the consignor.
- (4) If, by order of the authorities of any place, the goods have to be unpacked from their containers to be inspected, the MTO shall not be liable for the loss or damage incurred during the unpacking inspection or repacking. The MTO shall be entitled to recover the cost of unpacking inspection and repacking from the consignor / consignee.

**20. Hindrance etc. affecting performance:**

The MTO shall use reasonable endeavours to complete the transport and to deliver the goods at the place designated for delivery.

**21. Lien:**

The MTO shall have a lien on the goods, for any amount due, under this Multimodal Transport Contract and for the costs of recovering the same and, may enforce such lien in any reasonable manner.

**22. Limitation of action:**

Any action relating to Multimodal Transport under these condition shall be time barred if judicial proceedings have not been instituted within a period of nine months after:

- (1) The date of delivery of the goods, or
- (2) The date when the goods should have been delivered, or
- (3) The date on and from the party entitled to receive has the right to treat the goods as lost.

**23. Jurisdiction:**

In judicial proceedings relating to the contract for MTD under these conditions, the plaintiff, at his option, may institute an action in a court which according to the law of the country where the court is situated is competent and within the jurisdiction of which is situated one of the following places.

- (a) The principal place of business or, in the absence thereof, the habitual residence of the defendant or

- (b) the place where the Multimodal Transport Contract was made, provided that the defendant has there a place of business branch or agency at such place, or
- (c) the place of taking charge of the goods for multimodal transport or the place of delivery thereof, or
- (d) any other place specified for that purpose in the Multimodal Transport Contract and evidenced in the MTD.

#### **24. General average**

The consignee or consignor, the holder of the MTD the receiver and the owner of the goods shall indemnify MTO in respect of any claims of the general average nature which may be made on him and shall provide such security as may be required by the MTO in this connection.

#### **25. Arbitration:**

The contract evidenced hereby or contained herein shall be governed by and, construed, according to Indian laws. Any difference of opinion or dispute thereunder can be settled by arbitration in India or a place mutually agreed with each party appointing an arbitrator.

### **Additional Terms**

#### **1. Definitions:**

- (a) **“Bill”** means this document, whether issued as a Bill of Lading or a Sea Waybill, and whether issued in paper or electronic form;
- (b) **“Carriage”** means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods covered by this Bill;
- (c) **“Hindrance”** means any real or apprehended hindrance, risk, delay, difficulty or disadvantage of whatsoever kind to the Carriage, the Carrier, Sub-Contractor(s), the Vessel, or the Goods or any property including without limitation the existence or apprehension of (i) acts of God; (ii) war, hostilities, civil commotions, acts of public enemies, or terrorism; (iii) governmental restraints on commerce, shipping or trading (including voluntary import or export quotas arising from the threat of governmental restraints); (iv) quarantine, sanitary or other similar regulations or restrictions; (v) epidemics or diseases; (vi) work stoppages, strikes, or lockouts, whether or not

conducted by employees of the Carrier or Sub-Contractor(s); (vii) accidents, casualties, fire, or transportation disasters; (viii) congestion of, closure of, obstacle in or danger to any canal, strait, waterway, port, wharf, sea terminal, or any other place; or (ix) bad weather, shallow water, ice, earthquake, landslip or other obstacles in the Carriage;

- (d) "**Merchant**" includes the Consignor, Consignee, owner and receiver of the Goods, and the holder of this Bill and any other person acting on their behalf;
- (e) "**Person**" includes an individual, group, company, or other entity;
- (f) "**Sub-Contractor**" includes owners and operators of the Vessel or any other vessel (other than the Carrier), sea, water, rail, road, air or other transport operators or carriers, stevedores, terminal operators, warehousemen, and any independent contractors employed by the Carrier in performance of the Carriage and any sub-contractor thereof; and
- (g) "**Vessel**" means the vessel named herein and includes any vessel, ship, craft, lighter or other means of transport which is or shall be substituted, in whole or in part, for her.

## 2. (Clause Paramount)

- (1) This Bill shall have effect subject to the provisions of Article 25 of the Standard Conditions under Indian law hereinabove unless it is adjudged that any other legislation of a nature similar to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August, 1924, or the amendments by the Protocol signed at Brussels on 23 February, 1968, or the amendments by the Protocol signed at Brussels on 21 December, 1979, including without limitation, the Carriage of Goods by Sea Act, 1936, of the United States (hereinafter called "**US COGSA**") (such similar legislation and US COGSA shall hereinafter be called "**Hague Rules Legislation**"), compulsorily applies to this Bill, in which case it shall have effect subject to the provisions of such Hague Rules Legislation.
- (2) The Hague Rules Legislation, if applicable pursuant to Article 2(1) shall also apply and govern the Carriage before the Goods are loaded on and after they are discharged from the Vessel and throughout the entire time the Goods are in custody of the Carrier, its agents, servants, representatives and Sub-Contractors.
- (3) Where this Bill is issued as a Sea Waybill, this Bill shall have effect subject to the CMI Uniform Rules for Sea Waybills, which are deemed to be

incorporated herein; provided, however, that if any provisions of such Rules are inconsistent with those of this Bill, the latter shall prevail.

**3. Carrier's Tariff:**

The terms of the Carrier's applicable tariff are deemed to be incorporated herein. Copies of the relevant provisions of the applicable tariff are obtainable from the Carrier upon request. In the case of inconsistency between this Bill and the applicable tariff, this Bill shall prevail.

**4. Sub-Contracting:**

The Carrier shall be entitled to sub-contract the Carriage on any terms whatsoever, including liberty to further sub-contract.

**5. Modes, Route of Transport:**

The Carrier may at any time and without notice to the Merchant; (i) use any means of transport whatsoever; (ii) transfer the Goods from one conveyance to another including trans-shipping or carrying the same on another vessel or means of transport other than the Vessel named herein; (iii) 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. The Vessel shall at all times have liberty to dry dock, go to repair yards, shift berths, and shift or restow cargo, and take in fuel or stores. These liberties may be invoked by the Carrier for any purpose whatsoever and subject to Article 10 of the Standard Conditions under Indian law hereinabove anything done in accordance with this Article or any delay arising therefrom shall not be deemed to be a breach by the Carrier of the contract evidenced by this Bill or a deviation. Should the Carrier be held liable in respect of any such action, the Carrier shall be entitled to the full benefit of the Carrier's defences.

**6. Responsibility:**

The Carrier shall not be responsible for the loss of or damage to or in connection with the Goods or the Carriage occurring before receipt of the Goods by the Carrier at the place of receipt or port of loading or after delivery by the Carrier at the port of discharge or place of delivery.

**7. Liberties**

- (1) In any situation whatsoever, whether real or anticipated, before or during the Carriage, which may give rise to any Hindrances in the judgement of the Carrier (meaning for the purpose of this Article the Carrier, Sub-Contractor, and their respective agents, servants and representatives), then the Carrier shall be entitled to:
- (i) if the Carriage has already commenced, unpack the container(s), and/or suspend, cancel or continue loading onto or discharge from the Vessel or any other means of transport, store on board the Vessel or any other means of transport, in warehouses or open areas, return or send to the port of loading or place of receipt or any other port or place selected by the Carrier and require the Merchant to take delivery of thereat, and/or otherwise dispose of, the Goods or any part thereof in such way as the Carrier may deem advisable at the sole risk and the expense of the Merchant; or
  - (ii) if the Carriage has not yet commenced, cancel the Carriage or the contract of Carriage; all without compensation to the Merchant.

Any such actions shall constitute complete and final delivery and full performance of the contract of Carriage, with the Carrier entitled to full freight hereunder, but freed from any further responsibility in respect of the Goods. Thereafter, any and all operations and services which the Carrier may (but shall not be required to) undertake in respect of the Goods shall be undertaken solely as agent for the Merchant and not as a carrier, bailee, custodian, or warehouseman of the Goods. The Carrier shall be entitled to compensation for such operations and services together with reimbursement for all expenses, all of which shall be secured by a lien in the Carrier's favour against the Goods and the documents related thereto.

- (2) The Carrier, in addition to all other liberties provided for in this Article, shall have liberty to comply with orders, directions, regulations, recommendations or suggestions in respect of the Goods or the Carriage given by any Person acting or purporting to act with the authority of any government, quasi-government or public authority or by any Person having, under the terms of any insurance on the Vessel, the right to give such orders, directions, regulations, recommendations or suggestions. Such compliance shall not be a breach of the contract of Carriage by the Carrier or a deviation.

## **8. Use of Container**

Where the Goods are not already packed into container(s) at the time of receipt, the Carrier shall be at liberty to pack and carry them in any type of container(s).



**9. Carrier's Container:**

- (1) The Merchant shall assume full responsibility for and shall indemnify the Carrier against any loss of or damage to the Carrier's container(s) and other equipment(s) which occurs while in the possession or control of the Merchant, his agents, servants or independent contractors engaged by or on behalf of the Merchant.
- (2) The Carrier shall in no event be liable for and the Merchant shall indemnify and hold the Carrier harmless from and against any loss of or damage to property of other Persons or injuries or death to other Persons caused by the Carrier's container(s) or the contents thereof during handling by, or while in the possession or control of the Merchant, his agents, servants or independent contractors engaged by or on behalf of the Merchant.
- (3) If container(s) supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty container(s), with interiors brushed and clean, to the point or place designated by the Carrier, agents or servants of the Carrier, within the time prescribed. Should container(s) not be returned within the time prescribed in the Carrier's applicable tariff, the Merchant shall be liable for any detention, loss or expenses which may arise from such non-return.

**10. Container Packed by Merchant:**

If the Goods received by the Carrier are container(s) into which contents have been packed by or on behalf of the Merchant,

- (1) This Bill is prima facie evidence of the receipt only of the number of container(s) as shown herein; and the order and condition of the contents and any particulars thereof (including marks and numbers, number and kind of packages or pieces, description, quality, quantity, gauge, weight, measure, nature, kind and value) are unknown to the Carrier, who accepts no responsibility in respect thereof, and
- (2) the Merchant warrants that the stowage of the contents of container(s) and their closing and sealing are safe and proper and also warrants that the container(s) and contents thereof are suitable for handling and the Carriage in accordance with the terms hereof; in the event of the Merchant's breach of said warranties, the Carrier shall not be responsible for any loss of or damage to or in connection with the Goods or the Carriage resulting from said breach and the Merchant shall be liable for loss of or damage to any other property, or for personal injury or death or the consequences of any other accidents or events whatsoever and shall indemnify the Carrier pursuant to Article 24 hereof, and

- (3) The Merchant shall inspect the container(s) when the same are furnished by or on behalf of the Carrier, and they shall be deemed to have been accepted by the Merchant as being in sound and suitable condition for the purpose of the Carriage, unless he gives notice to the contrary in writing to the Carrier, and
- (4) If the container(s) are delivered by the Carrier with seals intact, such delivery shall be deemed as full and complete performance of the Carrier's obligation hereunder and the Carrier shall not be liable for any loss of or damage to the contents of the container(s), and
- (5) The Carrier shall be at liberty to open the container(s) and to inspect the contents of the container(s) without notice to the Merchant at such time and place as the Carrier may deem necessary and all expenses incurred therefrom shall be borne by the Merchant; in case the seals of container(s) are broken by the customs or other authorities for inspection of the contents of the said container(s), the Carrier shall not be liable for any loss, damage, expenses or any other consequences arising or resulting therefrom.

**11. Special Container:**

- (1) The Carrier shall not undertake to carry the Goods in refrigerated, heated, insulated, ventilated or any other special container(s), nor to carry special container(s) packed by or on behalf of the Merchant as such; but the Carrier will treat such Goods or container(s) only as ordinary goods or dry container(s) respectively, unless (i) special arrangements for the carriage of such Goods or container(s) have been agreed to in writing between the Carrier and the Merchant and (ii) such special arrangements are noted herein and (iii) special freight as required has been paid. The Carrier shall not accept responsibility for the function of special container(s) supplied by or on behalf of the Merchant.
- (2) As regards the Goods which have been agreed to be carried in special container(s) the Carrier shall exercise due diligence to maintain the facilities of the special container(s) while they are in his actual custody and control, and shall not be liable for any kind of loss of or damage to the Goods caused by latent defects, derangement or breakage of facilities of the container(s).
- (3) If the Goods have been packed into refrigerated container(s) by the Carrier and the particular temperature range requested by the Merchant is inserted in this Bill, the Carrier will set the thermostatic controls within the requested temperature

range, but does not guarantee the maintenance of such temperature inside the container(s).

- (4) If the cargo received by the Carrier is refrigerated container(s) into which the contents have been packed by or on behalf of the Merchant, it is the obligation of the Merchant to stow the contents properly and set the thermostatic controls exactly. The Carrier shall not be liable for any loss of or damage to the Goods arising out of or resulting from the Merchant's failure in such obligation and further does not guarantee the maintenance of the intended temperature inside the container(s).

## **12. Dangerous Goods, Contraband and Other Special Cargoes:**

- (1) The Carrier undertakes to carry the Goods of an explosive, inflammable, radioactive, corrosive, damaging, noxious, hazardous, poisonous, injurious or dangerous nature only upon the Carrier's acceptance of a prior written application by the Merchant for the carriage of such Goods. Such application must accurately state the nature, name, label and classification of the Goods as well as the method of rendering them innocuous, with the full names and addresses of the Consignor and the Consignee.
- (2) The Merchant undertakes that the nature of the Goods referred to in the preceding paragraph is distinctly and permanently marked and manifested on the outside of the package(s) and container(s) and shall also undertake to submit the documents or certificates required by any applicable laws or regulations or by the Carrier.
- (3) Whenever the Goods are discovered to have been received by the Carrier without complying with Article 12(1), (2), or (6), or the Goods are found to be contraband or prohibited by any laws or regulations of the port of loading, discharge or call or any place or waters during the transport, the Carrier shall be entitled to have such Goods rendered innocuous, thrown overboard or discharged or otherwise disposed of at the Carrier's discretion without compensation and the Merchant shall be liable for and indemnify the Carrier against any kind of loss, damage or liability including loss of freight, and any expenses directly or indirectly arising out of or resulting from such Goods.
- (4) The Carrier may exercise or enjoy the right or benefit conferred upon the Carrier under the preceding paragraph whenever it is apprehended that the Goods received in compliance with Article 12(1), (2), and (6) become dangerous to the Carrier, Vessel, cargo, Persons and/or other property.

- (5) The Carrier has the right to inspect the contents of the package(s) or container(s) at any time and anywhere without the Merchant's agreement but only at the risk and expense of the Merchant.
- (6) The Merchant shall be obligated to provide the Carrier, in writing and in advance of shipment, with all up to date information within his knowledge as to requirements for the safe Carriage of the Goods and any other information with respect to the Goods, the Carriage and/or the Merchant required by any applicable law or regulation or by the Carrier.

**13. Deck Cargo:**

When the Goods are carried on deck, the Carrier shall not be required to specially note, mark or stamp any statement of "on deck stowage" on this Bill, any custom to the contrary notwithstanding. The stowage of such Goods shall constitute under deck stowage for all purposes including general average.

**14. Live Animals and Plants:**

The Carrier shall not be responsible for any accident, disease, mortality, loss of or damage to live animals, birds, reptiles, and fish and plants arising or resulting from any cause whatsoever if the Carrier can prove that he, his servants, agents or any Sub-contractor took all measures that could reasonably be required to avoid the occurrence and its consequences.

**15. Valuable Goods:**

The Carrier shall not be liable to any extent for any loss of or damage to or in connection with platinum, gold, silver, jewelry, precious stones, precious metals, radioisotopes, precious chemicals, bullion, specie, currency, negotiable instruments, securities, writings, documents, pictures, embroideries, works of art, curios, heirlooms, collections of every nature or any other valuable goods whatsoever including goods having particular value only for the Merchant, unless the true nature and value of the Goods have been declared in writing by the Merchant before receipt of the Goods by the Carrier, and the same is inserted on the face of this Bill and ad valorem freight has been prepaid thereon and the Carrier can prove that he, his servants, agents or any Sub-contractor took all measures that could reasonably be required to avoid the occurrence and its consequences.

**16. Delivery by Marks:**

- (1) The Carrier shall not be liable for failure of or delay in delivery in accordance with marks unless such marks shall have been clearly and durably stamped or marked upon the Goods, package(s) and container(s) by the Merchant before they are received by the Carrier in letters and numbers not less than two inches high, together with names of the port of discharge and place of delivery.
- (2) In no circumstances shall the Carrier be responsible for delivery in accordance with other than leading marks.
- (3) The Merchant warrants to the Carrier that the marks on the Goods, package(s) and container(s) correspond to the marks shown on this Bill and also in all respects comply with all laws and regulations in force at the port of discharge or place of delivery, and shall indemnify the Carrier against all loss, damage, expenses, penalties and fines arising or resulting from incorrectness or incompleteness thereof.
- (4) Goods which cannot be identified as to marks and numbers, cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated for the purpose of completing delivery to the various merchants of goods of like character, in proportion to any apparent shortage, loss of weight or damage, and such goods or parts thereof shall be accepted as full and complete delivery.

**17. Delivery:**

- (1) The Carrier shall have the right to deliver the Goods from or at the Vessel's side, custom house, warehouse, wharf, quay or any other place designated by the Carrier within the geographic limits of the port of discharge or place of delivery shown herein.
- (2) In case the Goods received by the Carrier are container(s) into which contents have been packed by or on behalf of the Merchant, the Carrier shall only be responsible for delivery of the total number of container(s) shown herein, and shall not be required to unpack the container(s) and deliver the contents thereof in accordance with brands, marks, numbers, sizes or types of packages or pieces; provided, however, that at the Carrier's absolute discretion and upon the Merchant's demand in writing reaching the Carrier at least 3 days prior to the scheduled date of arrival of the Vessel at the port of discharge concerned, container(s) may be unpacked and the contents thereof may be delivered by the Carrier to one or more receivers in accordance with the written instructions, in which case if the seal of the container(s) is intact at the time of unpacking, all the Carrier's obligations hereunder shall be deemed to have been discharged and the

Carrier shall not be responsible for any loss of or damage to the contents arising or resulting from such delivery and the Merchant shall be liable for an appropriate adjustment of the freight and any additional charges incurred.

- (3) In case the Goods have been packed into container(s) by the Carrier, the Carrier shall unpack the container(s) and deliver the contents thereof and shall not be required to deliver the Goods in container(s); provided, however, that at the Carrier's absolute discretion and subject to prior arrangement between the Consignor and the Carrier, Goods may be delivered to the Merchant in container(s), in which case if the container(s) are delivered by the Carrier with seals intact, such delivery shall be deemed as full and complete performance of the Carrier's obligations hereunder and the Carrier shall not be responsible for any loss of or damage to the contents of the container(s).
- (4) Optional delivery shall be granted only when arranged prior to the time of receipt of the Goods and so expressly provided herein. The Merchant desiring to avail himself of the option so expressed must give notice in writing to the Carrier at the first port of call of the Vessel named herein in the option at least 48 hours prior to the Vessel's arrival there, otherwise the Goods shall be landed at any of the optional ports at the Carrier's option and the Carrier's responsibility shall then cease.
- (5) The Carrier shall take reasonable care to ascertain the identity of the Merchant entitled to delivery of the Goods hereunder and shall have no liability whatsoever and howsoever arising for misdelivery unless due to failure to take such reasonable care.
- (6) Where this Bill is issued as a Sea Waybill, delivery of the Goods shall be made to the named Consignee upon production of such proof of identity as may be required by the Carrier. The Consignee will not be required to produce an original of this Sea Waybill unless requested to do so by the Carrier in its absolute discretion.
- (7) Where this Bill is issued as a Sea Waybill, the Consignor may opt to transfer all right of control over the Goods to the consignee provided that (a) such option is exercised not later than the time of receipt of the Goods by the Carrier, and (b) the transfer is noted in this Bill. Subject to the foregoing, and subject to applicable law and the Carrier's consent, on production of the full sets of the Sea Waybill the Consignor may stop the Carriage or delivery of the Goods or change the consignee, the port of discharge and/or the place of delivery provided that notice to that effect is given to the Carrier (i) in writing, (ii) prior to the consignee claiming delivery of the Goods after their arrival at place of delivery, and (iii) sufficiently early to allow the Carrier a reasonable opportunity to implement the request. The Consignor

shall indemnify, defend and hold the Carrier harmless from all consequences of the Carrier complying with said request.

**18. Fire**

The Carrier shall not be responsible for any loss of or damage to or in connection with the Goods or the Carriage arising or resulting from fire occurring at any time and even though before loading on or after discharge from the Vessel, unless caused by the actual fault or privity of the Carrier.

**19. Lien**

The Carrier shall have a lien on the Goods, which shall survive delivery, for all freight, dead freight, demurrage, storage, general average, salvage, damage, loss, charges, expenses, and any other sums whatsoever payable by or chargeable to or for the account of the Merchant under this Bill and the cost and expenses of recovering the same including attorneys' fees, and.

**20. Freight and Charges:**

- (1) Freight may be calculated on the basis of the particulars of the Goods furnished by the Merchant who shall be deemed to have guaranteed to the Carrier the accuracy of the contents, weight, measure or value as furnished by him, at the time of receipt of the Goods by the Carrier, but the Carrier may, for the purpose of ascertaining the actual particulars, at any time, open the container(s) and/or package(s) and examine contents, weight, measure and value of the Goods at the risk and expense of the Merchant. In case of incorrect declaration of the contents, weight, measure or value of the Goods, the Merchant shall be liable for and bound to pay to the Carrier, (i) the balance of freight between the freight charged and that which would have been due had the correct details been given, (ii) as and by way of liquidated and ascertained damages, a sum equal to the correct freight, plus (iii) all expenses including attorneys' fees incurred by the Carrier in ascertaining the inaccuracies and collecting all sums due to him.
- (2) The Carrier shall be entitled to all freight and other charges due hereunder, whether actually paid or not, and to receive and retain them irrevocably under any circumstances whatsoever, whether the Vessel and/or the Goods be lost or not, or the Carriage be broken up or frustrated or abandoned at any stage of the entire transit subject to the Standard Conditions under Indian law hereinabove. Full freight shall be paid on damaged or unsound Goods subject to the Standard Conditions under Indian law hereinabove.

- (3) The payment of freight and/or charges shall be made in full and in cash without any offset, counterclaim or deduction. Freight and all other charges shall be paid in the currency named in this Bill, or at the Carrier's option, in its equivalent in the currency of the Port of Loading or of Discharge or the Place of Receipt or of Delivery or as specified in the applicable Carrier's tariff or custom at the place of payment.
- (4) Goods once received by the Carrier cannot be taken away or disposed of by the Merchant except upon the Carrier's consent and against payment of full freight and compensation for any loss sustained by the Carrier through such taking away or disposal. If the Goods are not available when the Vessel is ready to load, the Carrier is relieved of any obligation to load such Goods, and the Vessel may leave the port without further notice, and dead freight shall be paid by the Merchant.
- (5) The Merchant shall be liable for, and indemnify the Carrier against all dues, duties, taxes and charges including consular fees levied on the Goods, or all fines and/or loss sustained or incurred by the Carrier in connection with the Goods howsoever caused, including the Merchant's failure to comply with laws and regulations of any government or public authorities in connection with the Goods or to procure consular, Board of Health or other certificate to accompany the Goods. The Merchant shall be liable for return freight and charges on the Goods refused exportation or importation by any government or public authorities. If the Carrier is of the opinion that the Goods stand in need of sorting, inspecting, mending or repairing or reconditioning or otherwise require protecting or caring for, the Carrier may carry out such work at the cost and expense of the Merchant and the Goods. The Merchant authorizes the Carrier to pay and/or incur all such charges and expenses and to do any matters mentioned above at the expense of and as agents for the Merchant and to engage other Persons to regain or seek to regain possession of the Goods and do all things deemed advisable for the benefit of the Goods.
- (6) The parties defined herein as the Merchant shall be jointly and severally liable to the Carrier for the payment of all freight and charges and for the performance of the obligation of each of them hereunder.

**21. Limitation of Liability:**

- (1) The limitations referred to in Article 11 (2) and (3) of the Standard Conditions under Indian law hereinabove shall apply unless the nature and value of such Goods have been declared by the Merchant before shipment and inserted on the face of this Bill and extra freight has been paid as required. A declaration of higher value,



if inserted on the face of this Bill, shall be prima facie evidence of the value of the Goods, but shall not be conclusive on the Carrier.

- (2) Where the Goods have been either packed into container(s) or unitized into similar article(s) of transport by or on behalf of the Merchant, and when the number of packages or units packed into container(s) or unitized into similar article(s) of transport is not enumerated herein, each container or similar article including the entire contents thereof shall be considered as one package for purpose of the application of the limitation of liability provided for herein.

## **22. General Average, New Jason Clause**

- (1) General average shall be adjusted, stated and settled at Tokyo or any other port or place at the Carrier's option according to the York-Antwerp Rules, 1994, and as to matters not provided for by these Rules, according to the laws and usages of the port or place of adjustment, and in the currency selected by the Carrier. The general average statement shall be prepared by the adjusters appointed by the Carrier. Average agreement or bond and such cash deposit as the Carrier may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon and any other additional securities as the Carrier may require shall be furnished by the Merchant to the Carrier before delivery of the Goods.
- (2) The New Jason Clause as published by the Baltic and International Maritime Council is hereby incorporated into this Bill.

## **23. Both to Blame Collision Clause:**

The Both to Blame Collision Clause as published by the Baltic and International Maritime Council is hereby incorporated into this Bill.

## **24. Indemnity:**

The Merchant shall indemnify, defend and hold the Carrier harmless from all consequences of any (i) failure by the Merchant to comply with any provision of this Bill, Carrier's applicable tariff, and/or any applicable circulars or contracts, laws or regulations, and/or (ii) breach of any of the Merchant's representations or warranties or undertakings. The Merchant's obligation to so indemnify, defend and hold harmless shall include reimbursement of all expenses or amounts spend or incurred, including attorneys' fees, penalties or liabilities imposed, or loss of profit, directly or indirectly arising from or in connection with such failure or breach and

shall not be defeated or reduced by any negligence on the part of or attributable to the Carrier.

(Local Clause) In case this Bill covers the Goods moving to or from the United States of America and if it shall be adjudged that the Carriage of Goods by Sea Act, 1936, of the United States (hereinafter called "**US COGSA**") governs this Bill, Article 14 hereof shall be replaced by the following terms; "With respect to live animals, birds, reptiles and fish and plants and the Goods carried on deck and stated herein to be so carried, all risks of loss or damage by perils inherent in or incidental to such carriage shall be borne by the Merchant, but in all other respects in connection with the custody and carriage of such Goods, the Carrier shall have the benefit of the provisions of US COGSA, notwithstanding Section 1(c) thereof, and of all the terms and conditions of this Bill except those inconsistent with the provisions of this Article."