

# Yusen Logistics Co., Ltd.

## Terms and Conditions

BILL OF LADING · SEA WAYBILL

2018-06-01

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## **Terms and Condition**

June 01, 2018

### **(FACE CLAUSE)**

RECEIVED by the Carrier from the Shipper in apparent good order and condition unless otherwise indicated herein, the Goods, or the Container(s) or package(s) said to contain the Goods, to be carried subject to all the terms and conditions herein by the vessel named on this Bill or any substitute at the Carrier's option and /or other means of transport, from the Place of Receipt or the Port of Loading to the Port of Discharge or the Place of Delivery shown herein and there to be delivered unto order or assigns.

Delivery of the Goods to the Carrier for Carriage hereunder constitutes the Merchant's acceptance of all the stipulations, exceptions, terms and conditions of this Bill as fully as if signed by him, any contrary local custom or privilege notwithstanding. This Bill supersedes all prior agreements or freight engagements for the Goods.

This Bill (duly endorsed if it is negotiable) must be surrendered in exchange for the Goods or delivery order. Where issued as a Sea Waybill, this Bill is not negotiable or a document of title and delivery shall be made to the named consignee on production of such reasonable proof of identity as may be required by the Carrier.

In witness whereof, the undersigned, on behalf of the Carrier, has signed the number of Bills stated hereunder, all of this tenor and date. Where issued as a Bill of Lading, delivery may be made against only one original Bill in which case, the others shall stand void.

(Terms continued on back hereof and enlarged copy of back clauses is available from the Carrier upon request).

### **(BACK CLAUSE)**

#### NOTICE OF LIMITATION OF LIABILITY

THE CARRIER'S LIABILITY SHALL BE LIMITED TO AN AMOUNT LESS THAN THE FULL VALUE OF THE GOODS UNLESS THE NATURE AND VALUE OF SUCH GOODS IS DECLARED IN ADVANCE OF SHIPMENT, INSERTED ON THE FACE OF THIS BILL, AND THE APPLICABLE AD VALOREM FREIGHT CHARGES PAID. SEE ARTICLES 2 AND 30 BELOW.

#### **1. (Definition)**

The following words herein have the meaning hereby assigned;

- (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) "Carrier" means the party on whose behalf this Bill of Lading or Sea Waybill has been signed;
- (c) "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;

- (d) "Container(s)" includes any container (including any open top, flat rack or platform container) and has the same meaning as the term "container" in the International Convention for Safe Containers, 1972, as amended and means an article of transport equipment;
- (e) "Defence(s)" mean(s) all rights, privileges, immunities, exemptions, exceptions and limitations no matter whether arising by law, by contract, by tariff, or otherwise, and no matter whether they bar, abate or diminish any recovery or relief;
- (f) "Goods" means the cargo described herein and, if the cargo is packed into Container(s) supplied or furnished by or on behalf of the Merchant, includes the Container(s) as well;
- (g) "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) act 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; (ix) bad weather, shallow water, ice, earthquake, landslip or other obstacles in the Carriage; (x) suspension or denial of the Container to load onto the Vessel by the Master of the Vessel or his representative and the terminal representative arising out of failure of the Merchant to comply with all laws, statutes or regulations applicable to this Bill, such as the Shipper's inaccurate verification of gross weight of the packed Container under the International Convention for the Safety of Life at Sea; (xi) any obstacle in the Carriage arising out of abandonment of the Carriage or withdrawal of Vessel by the Sub-Contractor(s), or arrest of, distress of, or seizure of the Vessel, or detention of or seizure of the Container;
- (h) "Merchant" includes the Shipper, consignor, consignee, owner and receiver of the Goods, and the holder of this Bill and any other person acting on their behalf;
- (i) "Multimodal Transport" arises if the Place of Receipt and/or the Place of Delivery are indicated herein in the relevant spaces on this Bill;
- (j) "Person" includes an individual, group, company, or other entity;
- (k) "Shipper" means Person(s) described as shipper on this Bill and/or Person(s) who entered into the contract of Carriage;
- (l) "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;
- (m) "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;
- (n) The information in the columns "Final Destination" and "Export Reference" which is inserted in

accordance with Merchant declaration herein is solely for the purpose of the Merchant's reference and shall not give rise to any liability on the part of the Carrier. Also the information in the column "Export Reference" which is inserted by the Carrier, it shall not give rise to any liability on the part of the Carrier;

- (o) The information in the column "Forwarding Agent Reference" which is inserted in accordance with Merchant appointed Forwarding Agent's declaration herein is solely for the purpose of Forwarding Agent's reference and shall not give rise to any liability on the part of the Carrier;
- (p) The information in the column "Point and country of origin of the Goods" which is inserted in accordance with Merchant declaration herein is solely for the purpose of the U.S. Electronic Export Information (EEI) and shall not give rise to any liability on the part of the Carrier;

## **2. (Clause Paramount)**

- (1) This Bill shall have effect subject to the provisions of the International Carriage of Goods by Sea Act, 1957 of Japan, as amended on 3 June, 1992 (hereinafter called "the Act"), unless it is adjudged that any other legislation of a nature similar to the International Convention for the Unification of Certain Rules of Law 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 "U.S. COGSA")(such similar legislation and U.S. 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. Notwithstanding anything else in this Bill, on all the Carriage to or from the United States of America (this expression includes its districts, territories and possessions), this Bill shall have effect subject to U.S. COGSA.
- (2) The Act or Hague Rules Legislation, whichever is 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 the custody of the Carrier, its agents, servants, representatives and Sub-Contractors. The Act or Hague Rules Legislation shall be deemed to be incorporated herein. If any provision of this Bill is held to be repugnant to any extent to the Act or Hague Rules Legislation or to any other laws, statutes or regulations applicable to the contract evidenced by this Bill, such provision shall be null and void to that extent but not further.
- (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 is deemed to be incorporated herein.

## **3. (Governing Law and Jurisdiction)**

The contract evidenced by or contained in this Bill shall be governed by Japanese law except as may be otherwise provided herein. Notwithstanding anything else contained in this Bill or in any other contract, any and all actions against the Carrier in respect of the Goods or arising out of the Carriage shall be

brought before the Tokyo District Court in Japan to the exclusion of the jurisdiction of any other courts whilst any such actions against the Merchant may be brought before the said Court or any other competent court at the Carrier's option. Where the Goods are subjected to adverse or competing claims, the Carrier may place the Goods in the custody of a court of competent jurisdiction for a determination of ownership and/or right to possession. The Carrier shall have no liability to the Merchant arising out of such placement. The Merchant consents to the exclusive jurisdiction of such Court.

#### **4. (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 case of inconsistency between this Bill and the applicable Tariff, this Bill shall prevail.

#### **5. (Limitation Statutes)**

Nothing in this Bill shall operate to limit or deprive the Carrier of any Defence.

#### **6. (Sub-Contracting and Indemnity)**

- (1) The Carrier shall be entitled to sub-contract the Carriage on any terms whatsoever, including liberty to further sub-contract.
- (2) The Merchant undertakes that no claim or allegation shall be made against any Person whomsoever by whom the Carriage is performed or undertaken (including all Sub-Contractors), other than the Carrier, which imposes or attempts to impose upon any such Person, or any vessel owned by any such Person, any liability whatsoever in connection with the Goods or the Carriage, whether or not arising out of negligence on the part of such Person. If any such claim or allegation should nevertheless be made, the Merchant shall indemnify the Carrier pursuant to Article 33 hereof. Without prejudice to the foregoing every such Person shall have the benefit of every Defence available to the Carrier including Article 3 hereof as if such provisions were expressly for his benefit and in entering into this contract, the Carrier, to the extent of these provisions, does so not only on his own behalf but also as agent and trustee for such Person.
- (3) The provisions of Article 6 (2), including but not limited to the undertakings of the Merchant contained therein, shall extend to claims or allegations of whatsoever nature against other Persons chartering space on the Vessel.
- (4) The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person other than in accordance with the terms and conditions of this Bill which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage, whether or not arising out of negligence on the part of the Carrier and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier pursuant to Article 33 hereof.

## **7. (Modes, Route of Transport, Transshipment and Forwarding)**

- (1) Whether arranged beforehand or not, the Carrier may at any time and without notice to the Merchant;
  - (a) carry the Goods wholly or partly by the named or any other vessel(s), craft or other means of transport by water, land or air, whether owned or operated by the Carrier or others;
  - (b) use any means of transport or storage whatsoever;
  - (c) transfer the Goods from one conveyance to another including trans-shipment or carrying the same on another vessel or means of transport other than the Vessel named herein;
  - (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 and discharge the Goods at any place or port (whether or not any such port is named herein as the Port of Loading or Port of Discharge) and store the Goods at any such place or port. The Vessel shall at all times have liberty to go dry dock, go to repair yards, shift berths, and shift or re-stow cargo, and take in fuel or stores.
- (2) These liberties may be invoked by the Carrier for any purpose whatsoever and 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.

## **8. (Liability)**

- (1) The Carrier shall not be liable 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.
  - (a) The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or in time to meet any particular market or use and the Carrier shall not be liable for any direct or indirect loss or damage which is caused through delay.
  - (b) Notwithstanding the preceding paragraph, in case loading and/or discharge are effected by the Merchant at his expense where the terms "FI", "FO", "FIO" or "FIOST" are shown in this Bill as the case may be, the Carrier's liability shall commence when loading has been completed and/or cease when discharge has begun respectively, and shall be exonerated from any loss of or damage to or in connection with the Goods occurring during such loading and/or discharge, even if such loading and/or discharge are done with the assistance and/or advice of the Master/Vessel's officers/crew, who in such cases, are deemed to be an agent(s) or employee(s) of the Merchant.
- (2) The Carrier is entitled to claim to the Merchant any additional expenses or deposit incurred as a result of caring for the Goods, protecting, securing, regaining, loading, discharging, landing, storing or other means whatsoever taken by the Carrier in relation to the Goods and shall be relieved of liability for any loss, damage or delay in delivery as caused by;
  - (a) The wrongful act or neglect of the Merchant;
  - (b) Act of God;

- (c) Perils, dangers or accidents peculiar to any sea or canal, strait, waterway, port, wharf and sea terminal;
  - (d) Compliance with the instructions of the person entitled to give them;
  - (e) Inherent vice or nature of the Goods;
  - (f) Fire, unless caused by the actual fault or privity of Carrier or Sub-Contractors;
  - (g) Quarantine restrictions, seizure under legal process or the disposal by any other public authorities;
  - (h) Saving or attempting to save life or property at sea;
  - (i) A nuclear incident if the operator of a nuclear installation or a person acting for shall be imposed to be liable for the damage and/or loss under an applicable international convention or national law governing liability in respect of nuclear energy;
  - (j) Insufficiency of packing or inadequacy of marks;
  - (k) Defect of the Container used to consolidate the Goods if supplied by the Merchant;
  - (l) Handling, loading, stowage into or discharge from Container by the Merchant;
  - (m) War, warlike operations, piracy, terrorism, riots, civil commons and strikes or lockouts, or stoppage, or restraint of labor from whatever cause;
  - (n) Improper manner or failure to meet requirements to the Merchant(s) under all applicable laws, statutes, or regulations of all countries to this Bill, including the Shipper's obligation to ensure verification of gross weight of the packed Container, or the sum of the Goods and all packages, and in addition to weight of all packing and securing materials in case the Goods are packed or secured by the Shipper;
  - (o) Breakage of seals of the Container(s) by the customs or other authorities for inspection of the contents of the Container(s);
  - (p) Abandonment of the Carriage or withdrawal of the Vessel by the Sub-Contractor(s) or the arrest of, distress of or seizure of the Vessel, or detention of or seizure of the Container, whether partial or general;
  - (q) Any cause or event which the Carrier could not avoid and the consequence whereof the Carrier could not prevent by the exercise of due diligence.
- (3) It is contemplated that the Carriage hereunder may be in Multimodal Transport. If it is established that loss of or damage to or in connection with the Goods or the Carriage occurred while in custody of the Carrier, Sub-Contractors, or their respective agents, servants, or representatives, when the Carriage is Multimodal Transport, the Carrier's liability shall be determined in the following manner;
- (a) If it is further established that such loss or damage occurred during the period from the time the Goods arrived at the sea terminal at the port of loading to the time when they left the sea terminal at the port of discharge or during any previous or subsequent part of the Carriage by sea or inland waterways, the Carrier shall be responsible for such loss or damage subject to the provisions of this Bill and the Act or applicable Hague Rules Legislation (excluding the scope of application provisions therein) as the case may be.



- (b) Notwithstanding Article 2 (2), the Carrier shall have the benefit of all the Sub-Contractor's Defences and, without prejudice to any of the Carrier's other Defences including without limitation the "Governing Law and Jurisdiction Clause" herein, the Carrier's liability shall be no greater than that of the Sub-Contractor.
- (c) For the Goods carried in Multimodal Transport, if it is established that the loss of or damage to or in connection with the Goods or the Carriage occurred during the period from the receipt by the Carrier at the place of receipt to the delivery by the Carrier at the place of delivery but the Merchant is unable to prove where the Goods were when the loss or damage occurred, the Act or applicable Hague Rules Legislation, as the case may be, as provided for in Article 2 hereof shall apply. In any action by the Carrier for indemnity or contribution, this paragraph shall not create an inference or presumption that the loss or damage occurred in the Carrier's custody.
- (d) Subject to Article 8 (3) (b) above, where the Multimodal Transport is to or from or through the United States of America, the liability of the Carrier shall be governed by the provisions of Article 2 hereof.

## **9. (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-Contractors, and their respective agents, servants and representatives), then the Carrier shall be entitled to;
  - (a) If the Carriage has already commenced, unpack the container(s), 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 the Goods 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;
  - (b) 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 liability 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 or a deviation by the Carrier.

#### **10. (Unknown Clause)**

- (1) Any reference herein to marks, numbers, description, quality, quantity, gauge, weight, measure, nature, kind, value and any other particulars of the Goods is as furnished by the Merchant, and the Carrier shall not be liable for the accuracy and completeness thereof. The Merchant warrants to the Carrier that the particulars furnished by him are accurate and complete. If they are nevertheless inaccurate or incomplete, the Merchant undertakes to indemnify the Carrier pursuant to Article 33 hereof.
- (2) The Shipper warrants to ensure verification of gross weight of the packed Container or the gross weight of items of the Goods and packages, including the mass of pallets, dunnage and other securing materials to be packed in the Container in case the Goods are packed or secured by the Shipper in accordance with the applicable Convention and its relative legislations. If they are nevertheless inaccurate and incomplete, the Shipper undertakes to indemnify the Carrier pursuant to Article 33 hereof.

#### **11. (Cargo Less than Container Load)**

- (1) 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).
- (2) If the Goods less than container load are packed into Containers by the Carrier for and on behalf of the Shipper, the Shipper warrants to provide the necessary information including accurate gross weight of the Goods and all packages as well as shipping documents in order to enable the Carrier to have the Master of the Vessel or his representatives to accept loading the Goods onto the Vessel. If they are nevertheless inaccurate and incomplete, the Shipper undertakes to indemnify the Carrier pursuant to Article 33 hereof.

#### **12. (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) including the Sub-Contractor's one(s) (hereinafter in this Article, Container(s) means the Carrier's Container including the Sub-Contractor's one(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 un-return.

### **13. (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;

- (a) 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 liability in respect thereof, and
- (b) 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 including Article 16, in the event of the Merchant's breach of said warranties, the Carrier shall not be liable 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 33 hereof, and
- (c) 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
- (d) 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
- (e) 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.

#### **14. (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 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 liability 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).

#### **15. (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 Shipper 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 15 (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 are received in compliance with Article 15 (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 anytime 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 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.

#### **16. (Deck Cargo)**

- (1) The Carrier has the right to carry the Goods in Container(s) under deck or on deck.
- (2) Any Goods whether packed in Containers or not, may be carried on deck or under deck without notice to the Merchant unless on the face hereof it is specifically stipulated that the Container(s) or the Goods will be carried under deck. If carried on deck, the Carrier shall not be required to note, mark or stamp on the Bill any statement of such on deck carriage. Subject to Paragraph (3) below, such the Goods whether carried on deck 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 the Goods for the purpose of the Act or of Hague-Rules Legislation as provided for in Article 2 hereof.
- (3) The Carrier shall not be liable in any capacity whatsoever for any non-delivery, miss delivery, any loss of or damage to or in connection with the Goods or the Carriage which are carried on deck and specially stated on this Bill to be so carried, whether or not caused by the Carrier's negligence or the Vessel's unseaworthiness.

#### **17. (Live Animals and Plants)**

The Carrier shall not be liable 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 including the Carrier's negligence or the Vessel's unseaworthiness, and shall have the benefit of all the provisions of this Bill, except those inconsistent with the provisions of this Article.

#### **18. (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.

#### **19. (Heavy Lift)**

- (1) The weight of a single piece or package exceeding 2,240lbs.(1,000.0kgs) gross must be declared by the Merchant in writing before receipt by the Carrier and must be marked clearly and durably on the outside of the piece or package in letters and figures not less than two inches high.
- (2) In case of the Merchant's failure in his obligations under the preceding paragraph, the Carrier shall not be liable for any loss of or damage to or in connection with the Goods, and at the same time the Merchant shall be liable for loss of or damage to any property or for personal injury or death arising as a result of the Merchant's said failure and shall indemnify the Carrier against any kind of loss or liability suffered or incurred by the Carrier as a result of such failure.

#### **20. (Automobile and other unpacked goods)**

The term "apparent good order and condition" with reference to any automobile, rolling stock, tractor, machinery, coil, yacht, pleasure boat and other unpacked goods does not mean that the condition of the Goods when received were free of any dent, scratch, hole, cut and bruise that could not have been found by ordinary care and diligence. The Carrier shall in no event be liable for such conditions.

#### **21. (Iron, Steel and Metal Products)**

In case of the shipment of iron, steel and metal products, rust, corrosion, oxidation, moisture, or the like is inherent to the nature or vice of the Goods, the term "apparent good order and condition" on the face hereof does not mean any admission or representation by Carrier as to the absence of such rust, corrosion, oxidation, moisture or the like. Carrier shall not be liable to the Merchant (including the holder of this Bill in good faith) for such disorder.

#### **22. (Bulk Cargo)**

As to Goods shipped in bulk, the limitation applicable thereto shall be the limitation provided in such convention or law which may be applicable, and in no event shall anything herein be construed to be a waiver of limitation as to the Goods shipped in bulk.

#### **23. (Delivery)**

- (1) Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.
- (2) The Carrier shall have the right to deliver the Goods at any time 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.

- (3) In any case the Carrier's liability shall cease when the Goods have been delivered to the Merchant or inland carriers or any other Person entitled to receive the Goods on his behalf at the place designated by the Carrier. Delivery of the Goods to the custody of customs or any other authorities shall constitute final discharge of the Carrier's liability hereunder.
- (4) 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 liable 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 instruction, 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 liable 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.
- (5) 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 agreement between the Shipper and the Carrier, Goods may be delivered to the Merchant in Container(s), in which case if the Container(s) is 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 liable for any loss of or damage to the contents of the Container(s).
- (6) Optional delivery shall be granted only when agreed 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 liability shall then cease.
- (7) 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 miss delivery unless due to failure to take such reasonable care.
- (8) 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.
- (9) Where this Bill is issued as a Sea Waybill, the Shipper 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 Shipper 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) early enough for the Carrier a reasonable opportunity to implement the request. The Shipper shall indemnify, defend and hold the Carrier harmless from all consequences of the Carrier complying with said request.

#### **24. (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 liable 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.

#### **25. (Fire)**

The Carrier shall not be liable 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.

#### **26. (Lien)**

- (1) 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 any other contracts of carriage with the Merchant whatsoever, whether they may be relevant to this Bill or not, and the cost and expenses of recovering the same including attorneys' fees, and the



Carrier may sell the Goods privately or by public auction without notice to the Merchant. If on sale of the Goods, the proceeds fail to cover the amount due and the cost and expenses incurred, the Carrier shall be entitled to recover the deficit from the Merchant.

- (2) If the Goods are unclaimed during a reasonable time, or whenever in the Carrier's opinion, the Goods will become deteriorated, decayed or worthless, the Carrier may, at his discretion and subject to his lien and without any liability attaching to him, sell, abandon or otherwise dispose of such Goods solely at the risk and expense of the Merchant.

## **27. (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; (a) the balance of freight between the freight charged and that which would have been due had the correct details been given, (b) as and by way of liquidated and ascertained damages, a sum equal to the correct freight, plus (c) all expenses including attorneys' fees incurred by the Carrier in ascertaining the inaccuracies and collecting all sums due to him.
- (2) Full freight to the Port of Discharge or Place of Delivery named herein shall be considered as completely earned on receipt of the Goods by the Carrier, whether the freight be stated in this Bill or intended to be prepaid or to be collected. 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. Full freight shall be paid on damaged or unsound Goods.
- (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, the hygiene authorities 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. The Merchant shall pay such dues, duties, taxes and other charges in advance upon the Carrier's request.

- (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.

#### **28. (Notice of Claim and Time for Suit)**

- (1) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier 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 be not apparent, within 3 days after delivery, the Goods shall be deemed to have been delivered as described in this Bill.
- (2) Where the Goods have been or may have been lost or damaged during the custody of Sub-Contractors, the Carrier shall be discharged from all liabilities whatsoever in respect of the Goods unless the Merchant gives the Carrier notice of loss and notice of claim in time for the Carrier to comply with the requirements of the Sub-Contractors. It is the Merchant's obligation to inquire as to those requirements. The Carrier is not obligated to volunteer that information.
- (3) In any event, except as provided in Article 28 (2) above, the Carrier shall be discharged from all liability whatsoever in respect of the Goods unless suit is brought within 9 months after delivery of the Goods or the date when the Goods should have been delivered.

#### **29. (Defences and Limits for the Carrier)**

The defences and limits of liability provided for in this Bill shall apply in any action against the Carrier for all liability whatsoever in respect of the Goods whether the action be founded in contract, in tort or otherwise.

#### **30. (Limitation of Liability)**

- (1) The Carrier shall not in any event be liable for any loss of or damage to or in connection with the Goods or the Carriage in an amount exceeding 666.67 Units of Account per package or unit or 2

Units of Account per kilogramme of gross weight of the Goods lost or damaged, whichever is the higher. The Unit of Account mentioned in the preceding sentence is the Special Drawing Right (SDR) as defined by the International Monetary Fund. Notwithstanding anything else contained herein, if this Bill covers the Goods moving to or from the United States of America, and if the following is not invalid or unenforceable under the local law of the jurisdiction in which legal proceedings are brought, then the amount of the foregoing limitation shall instead be US\$500 per package or customary freight unit. The limitations under this paragraph shall not prejudice the application of lower limitation of liability applicable under Article 8 (3) (b), if any.

- (2) The limitations referred to in Article 30 (1) 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.
- (3) 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 the purpose of the application of the limitation of liability provided for herein.
- (4) When the Carrier is liable for compensation in respect of any loss of or damage to the Goods, such compensation shall be calculated by reference to the value of the Goods at the place and time they are delivered from the Vessel, or at the place and time they should have been delivered. For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the value of the Goods is presumed to be the invoice value plus freight and insurance, if paid. In no event shall the Carrier be liable for any loss of possible profit or any consequential loss.
- (5) Higher compensation may be claimed only when, with the consent of the Carrier, the value of the Goods declared by the Shipper prior to the commencement of the Carriage, which exceeds the limits laid down in this Clause, has been inserted on the face hereof and extra freight paid, in which case such declared value shall be the limit and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

### **31. (General Average)**

- (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, or any modification thereof, and any other rule, law and usage of the port or place of adjustment as may be stated in the Bill issued for the Goods, 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) If the Carrier delivers the Goods without obtaining security for general average contributions, the

Merchant, by taking delivery of the Goods, undertakes responsibility to pay such contributions and to provide such cash deposit or other security for the estimated amount of such contributions as the Carrier shall require.

**32. (Both to Blame Collision Clause and New Jason Clause)**

The Both to Blame Collision Clause and New Jason Clause provided for in the Bill issued for the Goods by the owner or the operator of the carrying vessel shall be available to the Carrier and be deemed to be herein incorporated into this Bill and constitute a part hereof with the same force and effect as if fully set forth herein.

**33. (Indemnity)**

The Merchant shall indemnify, defend and hold the Carrier harmless from all consequences of; (a) any 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 (b) 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 spent 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.

**34. (Local Clause)**

In case this Bill covers the Carriage of Goods from or to or through a port or place in the United States of America and if it shall be adjudged that the U.S. COGSA governs this Bill, Article 16 (3) and Article 17 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 U.S. 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."