

# TERMS AND CONDITIONS

## 1. DEFINITIONS

"Carrier" means the whole of the operations and services undertaken or performed by or on behalf of the Carrier in respect of the Goods.  
"Carrier" means the company stated on the front of this Bill of Lading as being the Carrier and on whose behalf this Bill of Lading has been signed.  
"Charges" includes freight and all expenses and money obligations incurred and payable by the Merchant.  
"COGSA" means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936.  
"COGSA" means the Carriage of Goods by Sea Act 1991 of the Commonwealth of Australia and includes the Carriage of Goods by Sea Regulations 1998 made thereunder (including any amendments, variations or modifications from time to time).  
"COGWA" means the Carriage of Goods by Water Act 1936 of Canada.  
"Combined Transport" arises where the Carriage called for by this Bill of Lading is not Port to Port.  
"Container" includes any container, trailer, transportable tank, lift van, flat, pallet or any similar article of transport used to consolidate goods.  
"Goods" includes the cargo supplied by the Merchant and includes any Container not supplied by or on behalf of the Carrier.  
"Hague Rules" means the provisions of the International Convention for Unification of Certain Rules Relating to Bills of Lading signed at Brussels on 25th August 1924.  
"Hague-Visby Rules" means the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968.  
"Merchant" includes the shipper, the consignee, the receiver of the Goods, the holder of this Bill of Lading, any person owing or entitled to the possession of the Goods or this Bill of Lading, any person having an interest in the Goods or any person acting on behalf of any of the above mentioned persons.  
"Person" includes an individual, a partnership, a body corporate or other entity.  
"Port to Port Shipment" arises where the Place of Receipt and the Place of Delivery are not indicated on the front of this Bill of Lading or if both the Place of Receipt and the Place of Delivery indicated on the front of this Bill of Lading does not in the nomination of the Place of Receipt or the Place of Delivery on the front hereof specify any place or spot within the area of the port so nominated.  
"Shipping Unit" shall be determined in accordance with Clause 6(D) below, and shall include any such unit as determined in accordance with the Hague Rules or Hague-Visby Rules or any legislation making such Rules compulsorily applicable (including but not limited to COGSA, COGSA or COGWA) to this Bill of Lading.  
"Stuffed" includes vanned, filled, consolidated, packed, loaded or secured.

## 2. CARRIER'S TARIFF

The provisions of the Carrier's applicable tariff, if any, are incorporated herein. Copies of such provisions are obtainable from the Carrier or its agents upon request or, where applicable, from a government body with whom the tariff has been filed. In the case of inconsistency between this Bill of Lading and the applicable tariff, this Bill of Lading shall prevail to the extent of such inconsistency but no further.

## 3. WARRANTY

The Merchant warrants that in agreeing to the terms hereof it is, or is the agent of, and has the authority of, the person owning or entitled to the possession of the Goods or any person who has a present or future interest in the Goods.

## 4. NEGOTIABILITY AND TITLE OF THE GOODS

(1) This Bill of Lading shall be non-negotiable unless made out to 'order' in which event it shall be negotiable and shall constitute title to the Goods and the holder shall be entitled to receive or to transfer the Goods herein described.  
(2) This Bill of Lading shall be prima facie evidence of the taking charge by the Carrier of the Goods as herein described. However, proof to the contrary shall not be admissible when this Bill of Lading has been negotiated or transferred for valuable consideration to a third party acting in good faith.

## 5. CERTAIN RIGHTS AND IMMUNITIES FOR THE CARRIER AND OTHER PERSONS

(1) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage.  
(2) The Merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the Carrier, including, but not limited to, the Carrier's servants or agents, any independent contractor and its servants or agents, and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken, which imposes or attempts to impose upon any such person or vessel any liability whatsoever in connection with the Goods or the Carriage; and if any claim or allegation should nevertheless be made, to defend, indemnify and hold harmless the Carrier against all consequences thereof. Without prejudice to the foregoing every such person and vessel shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for its benefit and in entering into this contract the Carrier, to the extent of these provisions, does so not only on its own behalf but also as agent or trustee for such persons and vessels, and such persons and vessels shall to this extent be or deemed to be parties to this contract.  
(3) The Merchant shall defend, indemnify and hold harmless the Carrier against any claim or liability (and any expense arising therefrom) arising from the Carriage of Goods insofar as such claim or liability exceeds the Carrier's liability under this Bill of Lading. The definition of liability provided in this Bill of Lading shall apply in any action against the Carrier whether the action be found in Contract or in Tort.

## 6. CARRIER'S RESPONSIBILITY

(A) Clause Paramount  
(1) Subject to clause 13 below, this Bill of Lading insofar as it relates to sea carriage by any vessel whether named herein or not shall have effect subject to the Hague Rules or any legislation making such Rules or the Hague-Visby Rules (or any statutory modification thereof) compulsorily applicable to this Bill of Lading (including, but not limited to COGSA, COGSA or COGWA) and the provisions of the Hague Rules or other applicable legislation shall be deemed incorporated herein. The Hague Rules (or COGSA or COGSA or COGWA if this Bill of Lading is subject to Australian, US or Canadian law respectively) shall apply to the carriage of Goods by inland waterways as if reference to carriage by sea in such Rules or legislation shall be deemed to include reference to inland waterways.  
(ii) If and to the extent that the provisions of the Harter Act of the United States of America 1893 or COGSA would otherwise be deemed to apply to the Goods to regulate the Carrier's responsibility for the Goods during any period prior to loading or after discharge from the vessel the Carrier's responsibility shall be determined by the provisions of clause 6(3) below, but if such provisions are found to be invalid such responsibility shall be subject to COGSA (as read with the provisions of clause 6(3) below).  
(B) The Carrier shall be entitled to (and nothing in this Bill of Lading shall operate to deprive or limit such entitlement) the full benefit of, and rights to, all limitations and exclusions of liability and all rights conferred or authorised by any applicable law, statute or regulation of any country (including, but not limited to, where applicable any provisions of sections 4281 to 4287 inclusive, of the Revised Statutes of the United States of America and amendments thereto and where applicable any provisions of the laws of the United States of America), if any loss of or damage to Goods occurs at sea or on inland waterways and the owners, charterers or operators of the vessel establish a limitation fund, the liability of the Carrier shall be limited to the proportion of the said limitation fund allocated to the Goods.  
(C) Notwithstanding any other provision of this Bill of Lading, this Bill of Lading shall have effect subject to any legislation making the United Nations Convention on the Carriage of Goods by Road 1978 (the "Carnegie Rules") compulsorily applicable to this Bill of Lading and in such circumstances the Hamburg Rules nullify any stipulation derogating therefrom to the detriment of the shipper or consignee. If any term of this Bill of Lading is repugnant to any legislation making the Hamburg Rules compulsorily applicable to this Bill of Lading, such term shall be void to the extent of such repugnancy but no further.

## 7. PORT TO PORT SHIPMENT

Subject to sub-clause 6(1)(A)(ii) above, the responsibility of the Carrier is limited to that part of the Carriage from and during loading onto the vessel up to and during discharge from the vessel and the Carrier shall be liable for any loss or damage whatsoever in respect of the Goods or for any other matter arising during any other part of the Carriage even though Charges for the whole Carriage have been charged by the Carrier. The Merchant constitutes the Carrier as agent to enter into contracts on behalf of the Merchant with others for transport, storage, handling or any other services in respect of the Goods prior to loading and subsequent to discharge of the Goods from the vessel without responsibility for any act or omission whatsoever on the part of the Carrier or others and the Carrier may as such agent enter into contracts with others on any terms whatsoever including terms less favourable than the terms of this Bill of Lading.

## 8. COMBINED TRANSPORT

Except as is otherwise provided in this Bill of Lading, the Carrier shall be liable for loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery to the extent set out below:  
(A) Where the stage of Carriage or damage occurred cannot be proved:  
(i) The Carrier shall be entitled to rely upon all exclusions of liability under the Rules or legislation that would have applied under sub-clause 6(1)(A)(ii) above had the loss or damage occurred at sea or, if there was no carriage by sea, under the Hague-Visby Rules (or COGSA or COGSA or COGWA if this Bill of Lading is subject to Australian, US or Canadian law respectively).  
(ii) Where under sub-paragraph (i) above, the Carrier is not liable in respect of some of the factors causing the loss or damage, it shall only be liable to the extent that those factors for which it is liable have contributed to the loss or damage.  
(iii) Subject to sub-clause 6(4)(C) below, where the Hague Rules or any legislation applying such Rules or the Hague-Visby Rules or any legislation applying such Rules (including, but not limited to COGSA, COGSA or COGWA) is not compulsorily applicable, the Carrier's liability shall not exceed US\$2.00 per kilo of the gross weight of the Goods lost or damaged or, if the value of the Goods or the value of such Goods, whichever is the lesser (provided that if the loss or damage is sustained in any other currency, the limit of the Carrier's liability hereunder shall be calculated according to the exchange rate applicable as at the date that the Goods were delivered or should have been delivered).  
(iv) The value of the Goods shall be determined according to the commodity exchange price at the place and time of delivery to the Merchant or at the place and time when they should have been delivered or if there is no such price according to the current market price or reference to the normal value of Goods of the same kind and quality, at such place and time.  
(B) Where the stage of Carriage where the loss or damage occurred can be proved:  
(i) The liability of the Carrier shall be determined by the provisions contained in any international convention or national law of the country which provisions: (a) shall be derogated from by private contract (including this Bill of Lading), and (b) would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of Carriage where the loss or damage occurred and had received as evidence thereof any

## 9. PARTICULAR DOCUMENT WHICH MUST BE ISSUED IN ORDER TO MAKE SUCH INTERNATIONAL CONVENTION OR NATIONAL LAW APPLICABLE

(i) The Carrier does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use and save as otherwise provided herein, the Carrier shall in no circumstances be liable for indirect or consequential loss or damage.  
(ii) The Carrier does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use and save as otherwise provided herein, the Carrier shall in no circumstances be liable for indirect or consequential loss or damage.  
(iii) Where sub-paragraphs (i), (ii) and/or (iii) above do not apply or are found unenforceable, any liability of the Carrier shall be determined by sub-clause 6(3)(A) above.  
(4) General Provisions  
(A) Delay, Consequential Loss  
(i) The Carrier does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use and save as otherwise provided herein, the Carrier shall in no circumstances be liable for indirect or consequential loss or damage.  
(ii) The Carrier does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use and save as otherwise provided herein, the Carrier shall in no circumstances be liable for indirect or consequential loss or damage.  
(iii) Where sub-paragraphs (i), (ii) and/or (iii) above do not apply or are found unenforceable, any liability of the Carrier shall be determined by sub-clause 6(3)(A) above.  
(B) Package or Shipping Unit Limitation  
Where the Hague Rules, or Hague-Visby Rules, or any legislation making such Rules compulsorily applicable (including but not limited to COGSA, COGSA or COGWA) to this Bill of Lading apply, the Carrier shall not, unless a declared value has been noted in accordance with section (C) below, be or become liable for any loss or damage to or in connection with the Goods in an amount per package or shipping unit in excess of the package or shipping unit limitation as laid down by such Rules or legislation making such Rules compulsorily applicable (including but not limited to COGSA or COGWA) and according to COGWA is CANS500 and if COGSA or the Maritime Transport Act 1994 of New Zealand, is compulsorily applicable under sub-clause (B) above, the Carrier's liability shall be limited to 2 SDR per kilo or 666.67 SDR per package of goods damaged and/or lost, whichever is the greater. If no limitation amount is compulsorily applicable under such Rules or legislation, the Carrier's liability shall be limited in accordance with sub-clause 6(3)(A)(iii) above.  
(C) Ad Valorem: Declared Value of Package or Shipping Unit  
The Carrier's liability may be increased to a higher value by a declaration in writing of the value of the Goods by the shipper or other than the Carrier of the Goods for shipment, such higher value being inserted on the front of this Bill of Lading in the space provided and, if required by the Carrier, extra freight paid. In such case, if the actual value of the Goods shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Carrier's liability if any shall be limited to the declared value and any material loss or damage shall be adjusted pro rata on the basis of such declared value.  
(D) Definition of Package or Shipping Unit  
Where a Container is used to consolidate Goods and such Container is stuffed by the Carrier, the number of packages or shipping units stated on the face of this Bill of Lading in the box provided shall be deemed the number of packages or shipping units for the purpose of any limit of liability per package or shipping unit provided in any international convention or national law relating to the carriage of goods by sea. Except as aforesaid the Container shall be considered the package or shipping unit. Where a Container is used to consolidate Goods and such Container is stuffed by the Carrier, the number of packages or shipping units stated on the face of this Bill of Lading in the box provided shall be deemed the number of packages or shipping units for the purpose of any limit of liability per package or shipping unit provided in any international convention or national law relating to the carriage of goods by sea. Except as aforesaid the Container shall be considered the package or shipping unit. Where a Container is used to consolidate Goods and such Container is stuffed by the Carrier, the number of packages or shipping units stated on the face of this Bill of Lading in the box provided shall be deemed the number of packages or shipping units for the purpose of any limit of liability per package or shipping unit provided in any international convention or national law relating to the carriage of goods by sea. Except as aforesaid the Container shall be considered the package or shipping unit. Where a Container is used to consolidate Goods and such Container is stuffed by the Carrier, the number of packages or shipping units stated on the face of this Bill of Lading in the box provided shall be deemed the number of packages or shipping units for the purpose of any limit of liability per package or shipping unit provided in any international convention or national law relating to the carriage of goods by sea. Except as aforesaid the Container shall be considered the package or shipping unit.

## 10. INSPECTION OF GOODS

The Carrier or any person authorised by the Carrier shall be entitled, but under no obligation, to open any Container or package at any time and to inspect the Goods.

## 11. MATTERS AFFECTING PERFORMANCE

(1) If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including the condition of the Goods), whencesoever and however arising (whether or not the Carriage has commenced) the Carrier may:  
(A) Without notice to the Merchant abandon the Carriage of the Goods and where reasonably possible place the Goods or any part of them at the Merchant's disposal at any place which the Carrier may deem safe and convenient, where upon the responsibility of the Carrier in respect of such Goods shall cease;  
(B) Without prejudice to the Carrier's right subsequently to abandon the Carriage under section (A) above, continue the Carriage.  
In any event the Carrier shall be entitled to bill Charges on Goods received for Carriage and the Merchant shall pay any additional costs resulting from the above mentioned circumstances.  
(2) The liability of the Carrier in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with the orders or recommendations given by any government or authority or any person acting or purporting to act as or on behalf of such government or authority.

## 12. METHODS AND ROUTE OF TRANSPORTATION

(1) The Carrier may at any time and without notice to the Merchant (and the Merchant hereby authorises the Carrier at the Carrier's sole discretion to):  
(A) use any means of transport or storage whatsoever;  
(B) load or carry the Goods on an aircraft or other conveyance named on the front hereof or not; transfer the Goods from one conveyance to another including transhipping or carrying the same on another vessel than that named on the front hereof or by any other means of transport whatsoever;  
(C) load or unload the Goods from any conveyance at any place (whether or not the place is a port named on the front hereof as the intended port of loading or intended port of discharge);  
(D) comply with any orders or recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority or having authority or having control of the insurance or conveyance employed by the Carrier the right to give orders or directions; permit the vessel to proceed with or without pilots, to tow or be towed or to be dry-docked; permit the vessel to carry livestock, goods of all kinds, dangerous, or otherwise, contraband, explosives, munitions or warlike stores and sail armed or unarmed.

## 13. DECK CARGO (AND LIVESTOCK)

(1) Goods of any description whether containerised or not may be stowed on, above or under deck without notice to the Merchant and such stowage shall not be a deviation of whatsoever nature or degree. Subject to sub-clause (2) below, such Goods whether carried on or above deck or under deck shall participate in General Average and such Goods (other than livestock) shall be deemed to be within the definition of Goods for the purposes of the Hague Rules or any legislation making such Rules or the Hague-Visby Rules or any statutory modification thereof compulsorily applicable to this Bill of Lading (including, but not limited to COGSA, COGSA or COGWA).  
(2) Goods (not being Goods stuffed in or on Containers other than open flats or pallets) which are stowed on the front of this Bill of Lading to be carried on or above deck and which are so carried (and livestock, whether or not carried on or above deck and whether or not carried without notice to the Merchant for loss or damage of whatsoever nature arising during carriage by sea or inland waterway whether caused by unseaworthiness or negligence or any other cause whatsoever. The Merchant shall defend, indemnify and hold harmless the Carrier against all and any extra cost incurred for any reason whatsoever in connection with the loss of or damage to such Goods.  
(3) Where COGSA has compulsory application, the carriage of any Goods on or above deck shall be subject to the provisions of COGSA that are applicable to such carriage.

## 14. DELIVERY OF GOODS

(1) If delivery of the Goods or any part thereof is not taken by the Merchant at the time and place when and where the Carrier is entitled to call upon the Merchant to take delivery of the Goods, the Carrier shall be entitled without notice to remove from a Container the Goods or that part thereof if stuffed in or on a Container and to store the Goods or that part thereof afloat, aloft, in the open or under cover at the sole risk and expense of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods or that part thereof shall be deemed to have been discharged. Any such storage or other related costs will be for the account of the Merchant.  
(2) If the Merchant fails to take delivery of the Goods within thirty days of its becoming due under sub-clause (1) above, or if in the opinion of the Carrier they are likely to deteriorate, damage or be lost, or if the Merchant fails to pay any charges whether or otherwise in excess of their value, and whether the Carriage is a Port to Port Shipment or Combined Transport, the Carrier may, without prejudice to any other rights which it may have against the Merchant, without notice and without any responsibility whatsoever attaching to it, sell or dispose of the Goods and apply the proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.

## 15. BOTH-TO-BLAME COLLISION

If the vessel on which the Goods are carried (the carrying vessel) comes into collision with any other vessel or object (the non-carrying vessel or object) caused in part by the negligence of the non-carrying vessel or object or the owner of, charterer of or person responsible for the non-carrying vessel or object, the Merchant undertakes to defend, indemnify and hold harmless the Carrier against all and any expense arising (therefrom) any vessel or person in respect of any loss of, or damage to, or any claim whatsoever of the Merchant paid or payable to the Merchant by the non-carrying vessel or object, or the owner of, charterer of or person responsible for the non-carrying vessel or object, and shall off, recoup or recover by such vessel or object or person(s) against the Carrier, the carrying vessel, their owners or charterers.

## 16. GENERAL AVERAGE

(1) The Carrier may declare General Average which shall be adjustable according to the York/Antwerp Rules of 1994 or any subsequent amendment thereto at any place at the option of the Carrier and the Amended Jason Clause as approved by BIMCO as at the date of issue of this Bill of Lading is incorporated herein and the Merchant shall provide such security as may be required by the Carrier in connection with the same.  
(2) Notwithstanding sub-clause (1) above, the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claim (and any expense arising therefrom) of a General Average nature which may be made on the Carrier and under this Bill of Lading, arising from any cause of loss or damage to the Goods or any part thereof.  
(3) The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

## 17. CHARGES

(1) Charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.  
(2) The Charges have been calculated on the basis of particulars furnished by or on behalf of the Merchant and shall be payable by the Merchant on or with the commercial invoice for the Goods or true copy hereof and to inspect, reweigh, remeasure and revalue the Goods and if the particulars are found by the Carrier to be incorrect the Merchant shall pay the Carrier the correct Charges (credit being given for the Charges charged) and the costs incurred by the Carrier in establishing the correct particulars.  
(3) All Charges shall be paid without any set-off, counter-claim, deduction or stay of execution.

## 18. LIEN

The Carrier, its servants and or agents shall have a lien on the Goods and any documents relating thereto and a right to sell the Goods either by public or private sale or auction without notice for freight (including additional freight, advance freight and freight payable after delivery), port charges, dead freight, demurrage, detention charges, fines, salvage, general average contribution, coverage of any kind whatsoever and without limitation and for any and all debts, charges, expenses or other sums due and owing by the shipper or the consignee of the Goods to the Carrier or for the account of the Goods, whether arising under this Bill of Lading or under any other contract or agreement relating to the Carriage of other Goods by the Carrier on behalf of the shipper and or consignee. In addition this right of lien shall extend to cover the costs and expenses of exercising such the goods and nothing in this clause shall prevent the Carrier from recovering from the shipper or consignee the amount of any sums due to the Carrier or from any other person and the amount realised by the exercise of the rights given to the Carrier under this clause.

## 19. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorised or ratified in writing by a director or officer of the Carrier who has the actual authority of the Carrier so to waive or vary.

## 20. PARTIAL INVALIDITY

If any provision in this Bill of Lading is held to be invalid or unenforceable by any court or regulatory or supervisory agency or body such invalidity or unenforceability shall attach only to such provision and such provision shall be excised from and shall be deemed not to form part of this Bill of Lading. The validity of the remaining provisions shall not be affected thereby and this Bill of Lading contract shall be carried out as if such invalid or unenforceable provision were not contained therein.

## 21. WHARFINGER

Where the Goods are delivered to a licensed wharfinger and where such wharfinger is not a person or body authorised by the Merchant to receive the Goods, the Merchant shall defend, indemnify and hold harmless the Carrier against any claims by the Merchant against such wharfinger which such wharfinger sets-off, recoups or recovers from the Carrier and the Merchant shall provide such security as may be required.