

BILL OF LADING FOR PORT TO PORT SHIPMENT OR FOR COMBINED TRANSPORT

DEFINITIONS

"Merchant" means and includes the Shipper, the Consignor, the Holder of this Bill of Lading, the Receiver and the Owner of the Goods.
"Carrier" means the issuer of this Bill of Lading as named on the face of it.
"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.
"Hamburg Rules" means the provisions of the United Nations Convention on the Carriage of Goods by Sea 1978.
"COGSA 1991" means the Carriage of Goods by Sea Act 1991 of Australia dated 1st November 1991.
"COGSA 1971/92" means the Carriage of Goods by Sea Act of the United Kingdom dated 8th April 1971 and also includes the provisions of the Act dated 16th July 1992.
"COGSA 1936" means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936.
"COGWA 1993" means the Carriage of Goods by Water Act of Canada dated May 6th 1993.
"SDRS" means Special Drawing Rights as defined by the International Monetary Fund.
"Container" includes any type of Container, Trailer, Flat or Unit Load Device.
"Person" includes an individual, a firm and a body corporate.

1. APPLICABILITY

The provisions set out and referred to in this document shall apply if the transport as described on the face of the Bill of Lading is Port to Port or Combined Transport.

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 his agents upon request or, where applicable, from a government body with whom the Tariff has been filed. In the event of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

3. WARRANTY

The Carrier warrants that in agreeing to the terms hereof he 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 TO THE GOODS

(1) This Bill of Lading shall be non-negotiable unless made "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 in 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. ISSUANCE OF THIS BILL OF LADING

By issuance of this Bill of Lading the Carrier assumes liability as set out in these Conditions and

(1) For Port to Port or Combined Transport, undertakes to perform and/or in his own name to procure the performance of the entire transport, from the place at which the Goods are taken in charge to the place designated for delivery in this Bill of Lading.

(2) For the purposes and subject to the provisions of this Bill of Lading, the Carrier shall be responsible for the acts and omissions of any person of whose services he makes use for the performance of the Contract evidenced by this Bill of Lading, but see clause 26 below.

(3) When issued on a Port to Port Basis, 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. The Carrier shall not 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 other persons in terms whatsoever including terms less favourable than the terms in this Bill of Lading.

6. DANGEROUS GOODS INDEMNITY

(1) The Merchant shall comply with the rules which are mandatory according to the National Law or by reason of International Convention, relating to the carriage of Goods of a dangerous nature, and shall in any case inform the Carrier in writing of the exact nature of the danger, before Goods of a dangerous nature are taken in charge by the Carrier and indicate to him, if need be, the precautions to be taken.

(2) The Merchant shall provide such information to the Carrier in writing of the dangerous nature of the Goods and the necessary precautions to be taken and if, at the time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation, and the Merchant shall be liable for all loss, damage, delay or expenses arising out of their being taken in charge, or their carriage, or of any services incidental thereto.

(3) If any Goods shipped with the knowledge of the Carrier as to their dangerous nature shall become a danger to the vessel, vehicle or cargo, they may in like manner be unloaded or destroyed or rendered innocuous by the Carrier, without liability on the part of the Carrier, except General Average, if any.

7. DESCRIPTION OF GOODS AND MERCHANT'S PACKING

(1) The Merchant shall be deemed to have guaranteed to the Carrier the accuracy, at the time the Goods were taken in charge by the Carrier, of the description of the Goods, marks, numbers, weight and/or volume as furnished by him, and the Merchant shall defend, indemnify and hold harmless the Carrier against all loss, damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars. The right of the Carrier to such obligation from the Merchant shall in no way limit his responsibility and liability under this Bill of Lading to any person other than the Merchant.

(2) Without prejudice to Clause 8 A (2) (c), the Merchant shall be liable for any loss, damage or injury caused by faulty or insufficient packing of Goods or by faulty loading or packing within containers and trailers and on flats when such loading or packing has been performed by the Merchant or on behalf of the Merchant by a person other than the Carrier, or by the defect or unsuitability of the containers, trailers or flats, when supplied by the Merchant, and shall defend, indemnify and hold harmless the Carrier against any additional expenses so caused.

(3) It is agreed that superficial rust, oxidation or any like condition due to moisture is not a condition of damage but is inherent to the nature of the Goods and acknowledgement of the receipt of the Goods in apparent good order and condition is not a representation that such conditions of rust, oxidation or the like did not exist on receipt.

(4) (a) The Merchant undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Merchant further undertakes that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Merchant before receipt of the Goods by the Carrier. If the said requirements are not complied with the Carrier shall not be liable for any loss of or damage to the Goods by such non-compliance.

(b) The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, derangement, breakdown, stoppage of the temperature controlling machinery, plant insulation or any apparatus of the Containers, provided that the Carrier shall before or at the beginning of the transport exercise due diligence to maintain the temperature controlled Container in an efficient state.

8. EXTENT OF LIABILITY

A. (1) The Carrier shall be liable for loss or damage to the Goods occurring between the time when he takes the Goods into his charge and the time of delivery.

(2) The Carrier shall, however, be relieved of liability for any loss or damage if such loss or damage was caused by

(a) an act or omission of the Merchant, or person other than the Carrier acting on behalf of the Merchant or from whom the Carrier took the Goods in charge;

(b) insufficiency or defective condition of the packaging or marks and/or numbers;

(c) handling, loading, stowage or unloading of the Goods by the Merchant or any person acting on behalf of the Merchant;

(d) inherent vice of the Goods;

(e) strike, lockout, stoppage or restraint of labour, the consequences of which the Carrier could not avoid by the exercise of due diligence;

(f) a nuclear incident if the operator of a nuclear installation or a person acting for him is liable for this damage under an applicable International Convention or National Law governing liability in respect of nuclear energy;

(g) any cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence.

(3) The burden of proving that the loss or damage was due to one or more of the above causes or events shall rest upon the Carrier. When the Carrier establishes that the loss or damage was due to one or more of the causes specified in (b) to (g) above, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of these causes or events.

B. When in accordance with Clause 8 A (1) the Carrier is liable to pay compensation in respect of loss or damage and the stage of transport where loss or damage occurred is known, the liability of the Carrier in respect of such loss or damage shall be:-

(1) determined by the provisions contained in any International Convention or National Law, which provisions

(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 Carrier in respect of the particular stage of transport where the loss or damage

occurred and received as evidence thereof any particular document which must be issued in order to make such International Convention or National Law applicable.

(2) With respect to the transportation in the United States of America or in Canada to the Port of Loading or from the Port of Discharge, the responsibility of the Carrier in respect of the Goods in transit by carriers (one or more) and such transportation shall be subject to the inland carriers' contracts of carriage and tariffs and any law compulsorily applicable. The Carrier guarantees the fulfillment of such inland carriers' obligation under the contracts and tariffs.

9. CONTAINERS

(1) Goods may be stuffed by the Carrier in or on Containers and Goods may be stuffed with other Goods.

(2) The terms of this Bill of Lading shall govern the responsibility of the Carrier in connection with or arising out of the supply of a Container to the Merchant, whether supplied before or after the Goods are received by the Carrier or delivered to the Merchant.

(3) If a Container has been stuffed by or on behalf of the Merchant:

(A) The Carrier shall not be liable for loss or damage to the Goods;

(i) caused by the manner in which the Container has been stuffed;

(ii) caused by the unsuitability of the Goods for carriage in Containers;

(iii) caused by the unsuitability or defective condition of the Container provided that the Carrier has exercised due diligence in the selection of the Container; this paragraph (iii) shall only apply if the unsuitability or defective condition arose (a) without any want of due diligence on the part of the Carrier or (b) would have been apparent on reasonable inspection by the Merchant at or prior to the time when the Container was supplied to or received by the Carrier;

(iv) if the Container is not sealed at the commencement of the Carriage except where the Carrier has agreed to seal the Container.

(B) The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, delay, expense or other liability arising from one or more of the matters covered by (A) above except for (A) (iii) (a).

(4) Where the Carrier is instructed to provide a Container, in the absence of a written request to the contrary, the Carrier is not under an obligation to provide a Container of any particular type or quality.

10. PARAMOUNT CLAUSE

(1) 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 made pursuant to the Rules, and insofar as it relates to carriage by sea in such Rules or applicable legislation shall be deemed incorporated herein. The Hague Rules or COGSA 1936 if this Bill of Lading is subject to U.S. law shall apply to the carriage of Goods by inland waterways and to the extent to inland waterways. The Hague Rules or legislation shall be deemed to include reference to inland waterways. The Hague Rules or Hague-Visby Rules applicable legislation shall apply to all Goods whether carried on deck or under deck. If and to the extent that provisions of the Act of the United States of America, Public Law 858, otherwise compulsorily applicable regulate the Carrier's responsibility for the Goods during any period prior to loading on or after discharge from the vessel, the Carrier's responsibility shall instead be governed by the provisions of Clause 8, but if such provisions are found to be inapplicable, the Carrier shall be deemed to be liable to the extent to limit or deprive such entitlement to the full benefit of, and rights to, all limitations of or exemptions from 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.

(2) Save where the Hague or Hague-Visby Rules apply by reason of (1) above, this Bill of Lading shall be deemed subject to the greater of the law in force at the port of shipment or place of issue of the Bill of Lading or elsewhere making the Hamburg Rules compulsorily applicable to this Bill of Lading in which case this Bill of Lading shall have effect subject to the Hamburg Rules which shall nullify any stipulation derogating therefrom to the detriment of the shipper or consignee.

11. LIMITATION AMOUNT

(1) When the Carrier is liable for compensation in respect of loss or damage to the Goods, such compensation shall be calculated by reference to the value of such Goods as they were valued at when they were delivered to the Consignee in accordance with the contract or should have been so delivered.

(2) The value of the Goods shall be fixed according to the current commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no such price, according to the greater of the current market price, by reference to the normal value of Goods of the same kind and quality.

(3) Except where otherwise provided in this Bill of Lading, compensation shall not exceed 2 SDRs per kilo of the gross weight, or 666.67 SDRs per package or unit, whichever is the greater, and nothing in this Bill of Lading shall be deemed to do so at the date when settlement is agreed or judgment made. However, the Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to the claim.

(4) Where the Hague Rules, Hague-Visby Rules or COGSA 1991 or COGSA 1936 or Hamburg Rules apply, the Carrier shall not, unless a declared value has been noted in accordance with paragraph 5 of this Clause, 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 the applicable Rules and, in any case, the greater of the amounts per package or shipping unit applicable to this Bill of Lading. Such limitation amount, according to COGSA 1971/92 and COGSA 1991 and COGWA 1993 is a sum of 2 SDRs per kilo of the gross weight, or 666.67 SDRs per package or shipping unit, of the Goods lost or damaged, whichever is the greater, and the greater of the amounts per package or shipping unit, of the Goods lost or damaged, whichever shall be the greater, and nothing in this Bill of Lading shall be deemed to do so at the date when settlement is agreed or judgment made. However, the Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to the claim.

(5) Where the Hague Rules, Hague-Visby Rules or COGSA 1991 or COGSA 1936 or Hamburg Rules apply, the Carrier shall not, unless a declared value has been noted in accordance with paragraph 5 of this Clause, 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 the applicable Rules and, in any case, the greater of the amounts per package or shipping unit applicable to this Bill of Lading. Such limitation amount, according to COGSA 1971/92 and COGSA 1991 and COGWA 1993 is a sum of 2 SDRs per kilo of the gross weight, or 666.67 SDRs per package or shipping unit, of the Goods lost or damaged, whichever is the greater, and the greater of the amounts per package or shipping unit, of the Goods lost or damaged, whichever shall be the greater, and nothing in this Bill of Lading shall be deemed to do so at the date when settlement is agreed or judgment made. However, the Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to the claim.

(6) 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 or Water. Except as aforesaid the Container shall be considered the package, or shipping unit. The words "shipping unit" shall mean each physical unit of articles of cargo not shipped in a package, including articles or things of any description whatsoever, except Goods shipped in bulk, and irrespective of the weight or measurement unit employed in calculating freight charges. As to Goods shipped in bulk, the limitation applicable thereto shall be the limitation provided in this Clause which may be applied to such Goods as if they were shipped in anything herein be construed to be a waiver of limitation as to Goods shipped in bulk.

(7) The liability of the Carrier in respect of the Goods shall be limited to the amount of the weight or measurement unit employed in calculating freight charges. As to Goods shipped in bulk, the limitation applicable thereto shall be the limitation provided in this Clause which may be applied to such Goods as if they were shipped in anything herein be construed to be a waiver of limitation as to Goods shipped in bulk.

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(50) The liability of the Carrier in respect of the Goods shall be limited to the amount of the weight or measurement unit employed in calculating freight charges. As to Goods shipped in bulk, the limitation applicable thereto shall be the limitation provided in this Clause which may be applied to such Goods as if they were shipped in anything herein be construed to be a waiver of limitation as to Goods shipped in bulk.

(51) The liability of the Carrier in respect of the Goods shall be limited to the amount of the weight or measurement unit employed in calculating freight charges. As to Goods shipped in bulk, the limitation applicable thereto shall be the limitation provided in this Clause which may be applied to such Goods as if they were shipped in anything herein be construed to be a waiver of limitation as to Goods shipped in bulk.

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including transhipping or carrying the same on a vessel other than that named on the front hereof or by any other means of transport whatsoever; at any place unstack or remove Goods which have been stuffed in or on a Container and forward the same in any manner whatsoever; proceed at any speed and 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 whatsoever once or more often and in any order; load or unload the Goods from any conveyance at any place; 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 under the terms of the insurance on the 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 be dry-docked; permit the vessel to carry livestock, Goods of all kinds and/or otherwise, contraband, explosives, munitions or warlike stores and sail armed or unarmed.

(2) The liberties set out in paragraph (1) of this Clause may be invoked by the Carrier for any purposes whatsoever whether or not connected with the Carriage of the Goods. Anything done in accordance with paragraph (1) of this Clause or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation of whatsoever nature or degree.

16. DELIVERY

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 thereon, the Carrier shall be entitled to store the Goods or any part thereof at the sole risk of the Merchant, where upon the liability of the Carrier in respect of the Goods or that part thereof stored as aforesaid