

## CONDITIONS

### 1. APPLICATIONS AND DEFINITIONS

- 1.1 Notwithstanding the heading 'Combined Transport Bill of Lading' (on the face of this Bill of Lading) the provisions set out and referred to in this document shall also apply when the transport as described on the face of the Bill of Lading is performed by one mode of transport only.
- 1.2 Pickup delivery and transshipment operations carried out in the performance of one mode transport and incident to such transport do not constitute a different mode of transport for the purposes of this Bill of Lading.
- 1.3 'Combined Transport Operator' (CTO) is the person by whom or for whom this Bill of Lading is signed. The term 'Merchant' includes the shipper, the person named in this Bill of Lading as shipper, the person for whose account the goods are handed over to the CTO, the consignee, the holder of this Bill of Lading, the owner or the receiver of the goods and the person who is entitled to receive the goods, and any one or more of them, and their agents, servants and subcontractors.
- The term 'vessel' and/or 'ship' shall include the vessel named in this Bill of Lading or any substituted vessel.
- A 'port to port shipment' arises only in case of carriage by water if both the place of receipt and the intended place of delivery are ports and the Bill of Lading does not in the nomination of the place of receipt or the intended place of delivery on the face here of specify any place or spot within the area of the port so nominated.

### 2. SCOPE OF CONTRACT

- 2.1 By the issue of this Bill of Lading the CTO undertakes to perform or procure the performance of the entire transport from the place at which the goods are taken in charge (place of receipt) to the place designated for delivery in this Bill of Lading and assumes liability as set out in these conditions.
- 2.2 The CTO is entitled to subcontract on any terms the whole or any part of the carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by him in relation to the goods.
- 2.3.1 The CTO may at any time and without notice to the Merchant
- carry the goods by any means of transport and by any route and in any direction whatsoever, whether within or out of the most direct or advertised or customary route and proceed beyond the port and/or place of discharge or in a direction contrary thereto or return to the original place and/or port of departure.
  - load and unload the goods at any place, land or store them either on shore or afloat, transfer, transship, reshuffle or forward them at any place or port, drydock a vessel with or without cargo on board.
- 2.3.2 The rights set out under 2.3.1 may be invoked by the CTO for any purpose whatsoever including repairs, towing or being towed, adjusting instruments, drydocking, and assisting vessels in all situations. Anything done in accordance with clause
- 2.3.3 or any delay arising therefrom is within the contractual carriage and not in deviation.

### 3. NEGOTIABILITY AND TITLE TO THE GOODS

- 3.1 This Bill of Lading shall be negotiable unless marked 'non-negotiable'.
- 3.2 By accepting the Bill of Lading the Merchant and his transferees agree with the CTO that, unless it is marked 'non-negotiable', it shall constitute title to the goods, and only the holder by endorsement of this Bill of Lading shall be entitled to receive or to transfer the goods herein mentioned and to claim hereunder for damage to or loss of the goods.
- 3.3 This Bill of Lading shall be prima-facie evidence of the receipt of the goods by the CTO as herein described. However, proof to the contrary shall not be admissible if this Bill of Lading is negotiable and has been transferred to a third party acting in good faith.

### 4. CTO'S LIABILITY

- 4.1 Combined transport - general
- 4.1.1 The CTO shall be liable for loss of and damage to the goods occurring from the time when the goods are accepted for transportation until the time when the goods are delivered.
- 4.1.2 The CTO shall, however, not be liable for loss or damage arising or resulting from
- any wrongful act or neglect of the Merchant,
  - compliance with the instructions given to the CTO, the Merchant or any other person by a person entitled to give them,
  - the lack or insufficiency or the defective condition of packing in respect of goods which by their nature are liable to wastage or to being damaged when not or not properly packed, unless the packing had been carried out by the CTO,
  - handling, loading, unloading or stowage of the goods by the Merchants or any person on his behalf,
  - inherent vice of the goods,
  - insufficiency or inadequacy of marks or numbers on the goods, coverings, or unit loads, except where they are required to be affixed by the CTO,
  - strikes or lockouts or stoppage or restraint of labour from whatsoever cause, whether partial or general,
  - any act, neglect or default in the navigation of a ship occurring during carriage by water,
  - fire, unless the fire was caused by the actual fault or privity of the CTO or the water carrier or by lack of exercise of due diligence to make the vessel seaworthy, properly to man, equip and supply the vessel or to make her fit and safe for the reception, carriage and preservation of the goods,
  - 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,
  - hostilities or war like operations whether there be a declaration of war or not, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or piracy,
  - any other cause of event which the CTO could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence.
  - any event during the period before loading and after discharge from the vessel.

- 4.1.3 Where under 4.1.2 the CTO is not liable in respect of some of the factors causing the loss or damage, he shall only be liable to the extent as those factors for which he is liable have contributed to the loss or damage.
- 4.1.4 The burden of proving that the loss or damage was due to one or more of the causes or events specified in 4.1.2 shall rest upon the CTO. When the CTO establishes that in the circumstances of the case the loss or damage could be attributed to one or more of the causes or events specified in 4.1.2, it shall be presumed that it was so caused. The Merchant shall however be entitled to prove that the loss or damage was not, in fact, attributable either, wholly or partly to one or more of these causes or events.

### 4.2 Amount of compensation - general

- 4.2.1 When the CTO is liable for compensation in respect of loss of or damage to the goods, such compensation shall be calculated by reference to the invoice value of the goods plus freight charges and insurance if paid.
- 4.2.2 If there be no invoice value of the goods, the compensation shall be calculated by reference to the value of such goods at the place and time they are delivered to the Merchant in accordance with the contract or should have been so delivered. The value of the goods shall be fixed according to the commodity exchange price or if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- 4.2.3 Compensation shall not exceed US \$2 per kilogram of gross weight of the goods lost or damaged.
- 4.2.4 Higher compensation may be claimed only when, with the consent of the CTO, the value of the goods declared by the Merchants as the sound landed value has been stated in this Bill of Lading, in that case the amount of the declared value shall be substituted for the limits laid down in this clause.

### 4.3.1 Special provisions

- If it can be proved that the loss or damage occurred solely during the course of one particular stage of the transport, the CTO and the Merchant shall as to their respective liabilities be entitled to require such liabilities to be 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 Merchant and
  - B would have applied if the Merchant had made a separate and direct contract with the CTO 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 if such international convention of national law shall apply.

- B. the provisions contained in any contract entered into between the CTO and any sub-contractor in accordance with clause 2.2 (including the provisions contained in any international convention or national law incorporated therein by reference) provided that no international convention or national law is applicable under paragraph (A).

- 4.3.2 Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated on the face of this Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purposes of any limit of liability per package or unit provided in an international convention or national law relating to the carriage of goods by sea which is applicable in consequence of clause 4.3.1 as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

- 4.3.3 If the provisions of sub-clause 4.3.1 and 4.3.2 do not apply, the liability of the CTO in cases of loss and/or damage shall be determined by the provisions of 4.1 and 4.2.

- 4.4. Port to Port Shipment
- If the whole carriage is a port to port shipment, the liability of the CTO shall be determined by the national law which shall be applicable to the carriage by water under 4.3.1 or failing which by the Hague Rules. The carrier or his agent shall not be liable for loss of or damage to the goods during the period before loading and after discharge from the vessel, however, such loss or damage arises.

### 5. DECK CARGO, OPEN VEHICLE CARGO AND LIVESTOCK

- The CTO reserves the liberty to determine whether the goods and livestock shall be carried on deck, on an open lorry, or on an open trailer and/or an open railway wagon. Goods (not being goods stowed in containers other than flats or pallets) which are stated herein to be carried on deck and/or open vehicles/wagon and livestock may be carried on deck, on an open lorry, on an open trailer and/or an open railway wagon, and if carried so, are carried without responsibility on the part of the CTO for loss or damages of whatsoever nature, whether caused by unseaworthiness or negligence or any other cause whatsoever.

### 6. DELAY, CONSEQUENTIAL LOSS ETC.

- The CTO does not undertake that the goods shall arrive at any place at any particular time. The CTO shall in no circumstances be liable for any direct, indirect, or consequential loss or damage caused by delay whether caused by unseaworthiness or negligence of any other cause whatsoever. If the CTO is held liable for direct or indirect or consequential loss or damage caused by delay, such liability shall in no case exceed the freight for the transport covered by this Bill of Lading.

### 7. GENERAL EXEMPTION FROM LIABILITY

- Save as otherwise provided herein, the CTO shall in no circumstances be liable for direct or consequential loss or damage arising from any cause.

### 8. Notice of loss, time bar

- 8.1 Unless notice of loss or damage to the goods and the general nature of it is given in writing to the CTO or the person acting on his behalf at the place of delivery before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof, or, if the loss or damage is not apparent, within three consecutive days thereafter, such removal shall be prima-facie evidence of the delivery by the CTO as described in this Bill of Lading, and the CTO shall be discharged from all liability in respect of loss or damage to the goods.

- 8.2.1 The CTO shall be discharged of all liability under the Bill of Lading unless suit is written notice thereof given to the CTO within nine months, after delivery of the goods. In the case of total loss of the goods the period shall begin to run two months after the goods have been received for transport.
- 8.2.2 The period provided for under 8.2.1 may be extended if the parties so agree after the cause of action has arisen.

### 9. Defences and limits for the CTO and other persons

- 9.1 The defences and limits of liability provided for in this Bill of Lading shall apply in any action against the CTO for loss of or damage to the goods, whether such action is founded in contract or in tort.
- 9.2 The CTO himself shall not be entitled to the benefit of limitation or liability provided for in clause 4.2.3 if it is proved that the loss or damage resulted from an act or omission of the CTO himself done with intent to cause damage or recklessly or with knowledge that damage would probably result.
- 9.3.1 The Merchant undertakes that no claim shall be made against any person acting on behalf of the CTO mentioned under 2.2 the ship and/or vessels owner or operator, which imposes or attempts to impose upon any of them any liability whatsoever in connection with the goods, and, if any such claim should nevertheless be made, to indemnify the CTO against all consequences thereof.
- 9.3.2 Without prejudice to the foregoing, every such person shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit, in entering into this contract the CTO, to the extent of those provisions, does so not only on his behalf but also as agent and trustee for such persons.

- However, if it is proved that a loss or damage resulted from an act or omission of forementioned persons, done with intent to cause damage or recklessly or with knowledge that damage would probably result, such persons shall not be entitled to the benefits of limitation of liability provided for in this Bill of Lading.

### 10. Containers and other packed goods

- 10.1 The term 'container' shall include any trailer, van or closed cargo box.
- 10.2 The terms of the Bill of Lading shall govern the responsibility of the CTO in connection with or arising out of the supply of a container to the Merchant whether before or after the goods are received by the CTO for transport or delivery to the Merchant.

- 10.3.1 The goods may be stowed by the CTO in containers or similar articles of transport used to consolidate goods.
- 10.3.2 Goods stowed in closed containers other than flats or pallets, whether by the CTO or the Merchant, may be carried on deck, on an open lorry, on an open trailer and/or an open railway wagon without notice to the merchant. Such goods, whether or not carried so, shall participate in general average and shall be deemed to be within the definition of goods for the purpose of the Hague or Hague-Visby Rules.

- 10.4 If a container other than flat or pallet has been filled not packed nor stuffed nor loaded by the CTO, the CTO shall not be liable for loss of damage to the contents, and the Merchant shall indemnify the CTO against any loss, damage, liability or expense incurred by the CTO if such loss, damage, liability or expense has been caused by

- the manner in which the container has been filled, packed, stuffed or loaded, or
- the unsuitability of the contents for carriage in containers, unless the CTO has checked the suitability, or
- the unsuitability or defective condition of the container arising without any want of due diligence on the part of the CTO during the filling, packing, stuffing or loading to make the container reasonably fit for the purpose for which it is used, or
- the unsuitability or defective condition of the container, which would have been apparent upon reasonable inspection by the Merchant.

### 10.5 Container Clauses

- Where containers owned or leased by the carrier are unpacked at the receivers premises, the receivers are jointly and severally responsible for returning the empty containers at their risk and expense with interiors brushed clean to the port or place of discharge or to the point or place designated by the carrier his servants or agents within the time prescribed by them. Should a container not be returned within the prescribed time, the consignee or receiver shall be liable for any demurrage, loss or expense which may arise from such non or delayed return.
- The prescribed period is ten consecutive days commencing on the following day after the lapse of the prescribed period demurrage charges have to be paid at the rate of US dollars 20 per day per 20ft and 40ft unit when consignees or receivers are not able by any reason to pay the demurrage charges as prescribed the shipper in the port of loading shall be liable for those charges and is the carrier entitled to collect the charges from the shipper.
- The contents of the container described hereon have been packed within the container and a list of the contents has been prepared by the shipper, his servants or agents.
- The carrier his servants and agents accept no responsibility, whatsoever for damages arising from the way in which such packing has been performed or for the correctness of any list and/or other statement of the contents or for concealed damage to articles or for any discrepancy in outturn of the contents of the container.

### 11. Inspection of goods

- The CTO shall be entitled but under no obligation to open any container at any time and to inspect the contents. If it appears that the contents or any part thereof cannot safely or properly be carried or carried further either at all or without incurring any additional expense or taking any measures in relation to the container or its contents or any part thereof, the CTO may abandon the transport thereof and/or take any measures and/or incur any reasonable additional expense and/or liabilities to carry or to continue the carriage or to store the same under cover or in the open at any place, which storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the CTO against any reasonable additional expense and against all liability, loss or damage arising therefrom.

### 12. Description of the goods

- 12.1 The Merchant guarantees to the CTO the accuracy of the description of the goods, especially as to weight, content, measure, quantity, quality, condition, marks, numbers, and value as furnished by him and set out in this Bill of Lading, and he shall indemnify the CTO against all loss, damage, and expenses and/or liability arising or resulting from inaccuracy, or inadequacy of such particulars. The right of the CTO to such indemnity shall in no way limit his responsibility and liability under this Bill of Lading to any person other than the Merchant.

- 12.2 The freight has been calculated on the basis of particulars furnished by or on behalf of the Merchant. The CTO may at any time open any container or other package or unit in order to re-weigh, re-measure or re-value the contents. If the particulars furnished by or on behalf of the Merchants are incorrect it is agreed that a sum equal either to ten times the difference between the correct freight and the freight charged or to three times the correct freight less the freight charged whichever sum is the smaller, shall be payable as liquidated damages to the CTO.

- 12.3 No representation is made by the CTO as to the particulars mentioned under 12.1 and the CTO shall be under no responsibility whatsoever in respect of such particulars.

### 13. Dangerous Goods

- The Merchant undertakes not to tender for transport any goods which are of a dangerous, inflammable, radio-active or damaging nature without previously giving written notice of their nature and the receiver's name and address to the CTO and marking the goods and the container or other covering on the outside and indicating, if need be, the precautions to be taken, all as required by any laws or regulations which may be applicable during the carriage.

- The Merchant shall indemnify the CTO against all loss, damage or expense or liability arising out of such goods being tendered for transport or handled or carried by the CTO or out of any services being incidental thereto.

- 13.1 Goods which are or at any time become dangerous, inflammable, radio-active or damaged may, at any time or place, be unloaded, destroyed or rendered harmless without compensation, and if the Merchant has not given notice of their nature to the CTO, the CTO shall be under no liability to make any general average contribution in respect of such goods.

### 14. Regulations relating to the goods and packing

- The Merchants shall comply with all regulations or requirements of customs, port and other authorities and shall bear and pay all duties, taxes, fines imposts, expenses or losses incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient packing, marking, numbering or addressing of the goods and indemnify the CTO in respect thereof.

### 15. Matters affecting performance

- 15.1 The CTO may at any time comply with the 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 of the conveyance employed by the CTO the right to give orders or directions. Delivery or other disposition of the goods in accordance with such orders, directions or recommendations shall be due performance of this contract.

- 15.2 If at any time the performance of the contract evidenced by this Bill of Lading in the judgement of the CTO or the persons mentioned under 2.2 is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind, which cannot be avoided by the exercise of reasonable endeavours, the CTO and/or the persons acting on his behalf, whether or not a transport is commenced, may without notice to the Merchant treat the performance of this contract as terminated and place the goods or any part of them at the Merchants disposal at any place which the CTO may deem safe and convenient, whereupon the responsibility of the CTO in respect of the goods shall cease. The CTO shall nevertheless be entitled to the full freight and charges on goods received for transport. The Merchant shall pay any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by the CTO.

### 16. Notification and Delivery

- 16.1 Any mention in this Bill of Lading of parties to be notified of the arrival of the goods is solely for information of the CTO, and failure to give such notification shall not involve the CTO in any liability nor relieve the Merchant of any obligation hereunder.

- 16.2 The Merchant shall take delivery of the goods within the time provided for in the CTO's applicable tariff.

- 16.3 If the Merchant fails to take delivery of the goods or part of them in accordance with this Bill of Lading, the CTO may without notice unload the goods or that part thereof and store the goods or that part thereof at such a place as will be required by the nature of the goods, all at the sole risk and expense of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon all liability whatsoever of the CTO in respect of the goods or that part thereof shall cease.

- 16.4 The Merchant's attention is drawn to the stipulations concerning free storage time and demurrage contained in CTO's applicable tariff, which is incorporated in this Bill of Lading.

### 17. Freight and Charges

- 17.1 Freight and charges on the goods are calculated according to the stipulations of the CTO's applicable tariff-in force at the time of acceptance for transport.

- 17.2 Freight and charges shall be deemed fully earned on receipt of the goods by the CTO and shall be paid in cash without any deduction in the currency stipulated in the Bill of Lading or, at the CTO's option, in the currency of the country of discharge or destination at the highest rate of exchange for banker's sight bills and shall be non-returnable in any event.

- 17.3 All duties, taxes and charges or other expenses in connection with the goods shall be paid by the Merchant.

- 17.4 The Merchant shall remain liable to the CTO for the payment of all costs due.

### 18. Lien

- The CTO shall have a lien on the goods and any documents relating thereto for all unsatisfied debts whatsoever due to the CTO and for general average contributions to whomsoever due and for the cost of recovering the same and for that purpose shall have the right but no obligation to sell the goods by public auction or by private treaty without legal authority, advertisement of notice to the Merchant and without any liability towards the Merchant.

### 19. Both-to-Blame Collision Clause

- The Both-to-Blame Collision Clause as adopted by BIMCO to be considered incorporated herein.

### 20. General Average

- 20.1 General Average to be adjusted at any port or place at the CTO's option, and to be settled according to the York-Antwerp Rules 1974, this covering all goods, whether carried on or under deck. The Amended Jason Clause approved by BIMCO to be considered as incorporated herein.

- 20.2 Such security including a cash deposit as the CTO may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon, shall, if required, be submitted to the CTO prior to delivery of the goods.

### 21. Partial invalidity

- Should any clause or part thereof of this Bill of Lading be found to be invalid, the validity of the remaining part of the effective clause shall not be impaired. The invalid clause or part thereof shall be replaced by an effective clause or part thereof apt at serving the purposes of the CTO and the Merchant.

### 22. Law and Jurisdiction

- 22.1 This Bill of Lading contract is governed by the Dutch Law.
- 22.2 Any claim or dispute arising, hereunder or in connection herewith shall be determined by the Dutch Courts and by no other Court.