

1. **Definitions.** "Carrier" means Bermuda Container Line, Ltd. "Contract of Carriage" shall mean all applicable terms contained in the Carrier's tariffs (copies of which are available from the Carrier or its agent) or any service contract or other contract of affreightment, other than this Bill of Lading, between the Carrier and the Merchant. "Goods" means the cargo shipped hereunder and any container in which the cargo is packed if the container is not furnished by the Carrier. "Inland Transporter" means any road, rail or barge transporter utilized by the Carrier to perform any services incident to through transportation. "Merchant" means the consignor, shipper, consignee, receiver, holder of this Bill of Lading, the owner of the Goods, and anyone entitled to possession of the Goods, all of whom shall be jointly and severally liable hereunder. "On Board" means that the Goods have been received by the Carrier and placed on board a truck, rail car, barge, vessel or other means to be used to transport the Goods hereunder. "On Board Vessel" means on board a vessel. "Vessel" means the vessel named herein and any other ship used in the performance of the transportation herein contracted for.
2. **Clause Paramount.**
  - (a) This Bill of Lading shall have effect subject to (1) the U.S. Carriage of Goods by Sea Act, 1936 and 46 U.S.C. 181-88 (inclusive) if the Goods are to be carried to or from a U.S. port, in U.S. foreign trade, (2) otherwise the Marine Liability Act of Canada, S.C. 2001, c.6, or (3) otherwise the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on August 25, 1924, as amended to the extent required by law by the Protocol thereto signed at Brussels on February 23, 1968.
  - (b) Carriage under this Bill of Lading shall also be governed by the Contract of Carriage, which shall prevail over the provisions of this Bill of Lading in the event of a conflict, and any applicable tariff of any terminal operator or Inland Transporter.
  - (c) This Clause shall apply at all times from place or port of receipt to place or port of delivery, except as otherwise required by law, and shall apply to Goods whether carried on or below the Vessel's deck.
3. **Merchant's Responsibilities.**
  - (a) The Merchant warrants to the Carrier that the particulars relating to the Goods set forth on the opposite side of this Bill of Lading or otherwise furnished by the Merchant (including weight, quantity, measurement, contents, marks, numbers, seal number or value) have been checked by the Merchant and are accurate and complete, and that the Goods are in all respects fit for the transport and can be safely carried without injury to people, itself or other property. The Merchant also warrants that the Goods are lawful goods, contain no contraband, and are not defective.
  - (b) If Goods are containerized and the container is described as "said to contain" described packages and goods, the Merchant acknowledges that the Carrier makes no representation as to the accuracy of the description, that the Carrier may not have scales or other means to verify the weight or contents of the container and that it may otherwise be impracticable for the Carrier to determine the accuracy of the Merchant's description.
  - (c) The Merchant warrants that it has the authority of the owner of the Goods (if the Merchant is not the owner) and all others entitled to possession of the Goods to agree to the terms of this Bill of Lading.
  - (d) The Merchant warrants that the Goods can be safely transported in a non-refrigerated container or in a cargo compartment without special protective or climatic control services, unless the Merchant has given the Carrier prior notice otherwise and has set forth on the opposite side of this Bill of Lading specific instructions as to temperature, ventilation, stowage and the like.

- (e) The Merchant hereby warrants that (i) the Goods are not and are not liable to become dangerous, flammable, corrosive, noxious, explosive, radioactive, damaging to property or persons, susceptible of causing delay, or otherwise defective or hazardous or (ii) if the Goods are of such a nature, the Merchant has fully disclosed the nature of the Goods, has received the prior written consent of the Carrier to the Merchant's delivering the Goods to the Carrier, and the Goods, the container, any other covering, and the markings thereon shall comply fully with all applicable law.
- (f) With respect to each container not packed by the Carrier, the Merchant shall ensure, prior to delivery to the Carrier, that (1) the container is in satisfactory condition and is suitable for carriage of the Goods, provided that, if the container was supplied by the Carrier, the lack of suitability or unsatisfactory condition could have been apparent upon inspection by the Merchant at or prior to packing the container, (2) the Goods are suitable for carriage in the container, (3) the Goods are properly and safely packed into the container (including proper and safe packaging, stowing and securing of the Goods) in a manner suitable for transportation hereunder, (4) if the Goods are refrigerated, upon their being packed into the container the Goods are at the temperature specified on the opposite side hereof and the controls on the container's refrigeration unit are set at such temperature, and (5) the container is sealed with the Merchant's seal after packing.
- (g) The Merchant shall comply with all regulations or requirements of customs, port and other authorities in connection with the shipment of the Goods, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including freight for any additional carriage undertaken) incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
- (h) If a container is furnished by the Carrier to the Merchant for packing, unpacking or any other purpose, the Merchant shall return the container to the place designated by the Carrier within the time prescribed in the Contract of Carriage or otherwise and shall be responsible for any loss of or damage to the container. After the container is unpacked, the Merchant shall return the container empty, with interior cleaned. The Merchant shall at all times maintain insurance, in an amount commensurate with the risk, covering any claim or liability arising out of the storage, transportation or any other use of any container furnished by the Carrier while such container is in the custody or control of the Merchant, and the Carrier and its Directors, officers and employees shall be named as additional insureds on any such policy.
- (i) If a container packed and sealed by the shipper is delivered by the Carrier with its seal intact, the Carrier shall have no liability for any claimed loss of Goods from such container.
- (j) The Merchant shall indemnify the Carrier and its Directors, officers and employees against any loss, damage, liability, or expense (including damages for personal injury, loss of life, loss of or damage to any property tangible or intangible, delay, dues, duty, tax, government seizure or other action, reasonable attorneys fees, or any other liability or expense) caused by or arising out of any inaccuracy of a warranty of the Merchant or any failure of the Merchant to comply with any of its obligations under this Clause or any other provision of this Bill of Lading, or the storage, transportation or any other use of any container furnished by the Carrier while such container is in the custody or control of the Merchant, or relating to any investigation or litigation relating to the foregoing, and the Carrier shall be free from liability caused by or arising out of any such inaccuracy or failure.

#### **4. Limitation of Liability.**

- (a) The Carrier's liability for loss of or damage to Goods shall be limited to the lesser of (1) the sound value at destination of such Goods or (2) except as provided in Clause 4(b), \$500 per package or, if not shipped in packages, per customary freight unit.

- (b) The Merchant may declare the value of the Goods in writing in the space set aside therefor on the opposite side of this Bill of Lading. Upon the Merchant's making such declaration and actually paying the required additional freight prior to delivering the Goods to the Carrier, the limit of liability set forth in Clause 4(a)(2) shall be changed to the value declared, pro-rated in the case of partial loss or damage. The Merchant acknowledges that, in the absence of such a declaration, the Carrier would have no knowledge of the value of the Cargo and agrees that, in the absence of such declaration and additional freight payment, it has bargained for and accepted the limit specified in Clause 4(a)(ii) in exchange for avoiding payment of the additional freight.
- (c) The Carrier does not undertake that the Goods shall arrive at the port or place of destination at any particular time or shall be suitable for any particular market or use, and the Carrier shall under no circumstances be liable for damages resulting from any delay or unsuitability.
- (d) The Carrier shall under no circumstances be liable for any incidental, consequential or punitive damages in connection with this Bill of Lading or any of the transactions contemplated hereby.

## **5. Routing.**

- (a) The Carrier may, at any time and without notice to the Merchant, (1) use any means of carriage whatsoever, (2) transfer the Goods from one conveyance to another, including but not limited to transshipping or carrying them on another vessel than that named on the face hereof, (3) unpack and remove the Goods which have been packed into a container and forward them in a container or otherwise, (4) proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or port whatsoever, once or more often and in any order, (5) load or unload the Goods at any place or port (whether or not such port is named overleaf as the port of loading or port of discharge) and store the Goods at any such place or port, (6) comply with any 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, or having under the terms of any insurance of any conveyance employed by the Carrier the right to give orders or directions, or (7) permit the Vessel to proceed with or without pilots, to tow or be towed, or to be dry-docked.
- (b) The liberties set out in Clause 5(a) may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the carriage of the Goods, including loading or unloading other goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing any persons, including but not limited to persons involved with the operation or maintenance of the vessel and assisting vessels in all situations. Anything done in accordance with Clause 5(a) or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.
- (c) By tendering the Goods for carriage without any written request for carriage in a specialized container, or for carriage otherwise than in a container, the Merchant accepts that the Carriage may properly be undertaken in a general purpose container.

**6. Performance.** If at any time the carriage hereunder is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Goods safely or properly to be carried or carried further) and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time this Bill of Lading was entered into or the Goods were received for carriage), the Carrier (whether or not the carriage is commenced) may, without prior notice to the Merchant and at the sole discretion of the Carrier,

- (1) Carry the Goods to the contracted port of discharge or place of delivery, whichever is applicable, by an alternative route to that indicated in this Bill of Lading or that which is usual for Goods consigned to that port of discharge or place of delivery. If the Carrier elects to invoke the terms of this Clause 6(1) then the Carrier shall be entitled to charge such additional Freight as the Carrier may determine,

- (2) Suspend the carriage of the Goods and store them ashore or afloat upon the terms of this Bill of Lading and endeavour to forward them as soon as possible, but the Carrier makes no representation as to the maximum period of suspension. If the Carrier elects to invoke the terms of this Clause 6(2) then the Carrier shall be entitled to charge such additional freight as the Carrier may determine, or
- (3) Abandon the carriage of the Goods and place them at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full freight on the Goods received for carriage, and the Merchant shall pay any additional costs of the carriage to, and delivery and storage at, such place or port. If the Carrier elects to use an alternative route or suspend carriage under this Clause, this shall not prejudice the Carrier's right subsequently to abandon the Carriage.

#### **7. Notification and Delivery.**

- (a) 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.
- (b) The Merchant shall take delivery of the Goods within the time provided for in the Contract of Carriage. If the Merchant fails to do so, the Carrier shall be entitled, without notice, to unpack the Goods if packed in a containers or to store the Goods ashore, afloat, in the open or under cover, at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods stored as aforesaid shall wholly cease, and the costs of such storage (if paid or payable by the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.
- (c) If the Merchant fails to take delivery of the Goods within thirty days of delivery becoming due hereunder, or if in the opinion of Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, without prejudice to any other rights which the Carrier may have against the Merchant, without notice and without any responsibility whatsoever attaching to the Carrier, sell, destroy or dispose of Goods and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.
- (d) Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this Clause or to mitigate any loss or damage thereto shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the carriage thereof.
- (e) In the event of the Carrier agreeing to a request of the Merchant to amend the place of delivery stated herein, the terms and conditions of this Bill of Lading shall continue to apply, only to the extent provided by the Contract of Carriage, until the Goods are delivered by the Carrier to the Merchant at the amended place of delivery. To the extent that this Bill of Lading shall no longer apply to the Goods under the Contract of Carriage, the Carrier shall act as agent only of the Merchant in arranging for delivery of the Goods to the amended place of delivery but shall thereafter be under no liability whatsoever for loss, damage or delay to the Goods, however arising.

#### **8. Freight.**

- (a) All freight, additional freight and charges due hereunder or under the Contract of Carriage are earned and payable in full without discount, offset or deduction upon delivery of the Goods to the Carrier, whether or not the Vessel or Goods are lost or not lost, damaged or delayed, or the transport is suspended or abandoned.

- (b) The Carrier shall have a lien on the Goods and all subfreights for all freight, deadfreight, demurrage, additional freight, charges and all other amounts due hereunder, and the Carrier may enforce this lien by public or private sale upon reasonable notice to any party identified in the Bill of Lading. This lien shall survive delivery of the Goods and payment for the sums constituting the lien may be enforced jointly and severally against the Goods, the Merchant and any other property of the Merchant in the possession of the Carrier.
- (c) Any freight forwarder employed by the Merchant shall be deemed an agent of the Merchant and not the Carrier and no payment to a freight forwarder shall extinguish the Merchant's obligation except to the extent that funds are actually received by the Carrier.
- (d) The Merchant shall supply the necessary information on which to calculate the freight and other charges, but the Carrier may, at its option and at any time, open the container and examine, weigh, measure or value all or any part of the Goods. If the Carrier determines that the Merchant's description of the Goods is erroneous in any respect, the Carrier may recalculate the total freight and charges.
9. **Subcontractors and Affiliates.** The Carrier may engage one or more stevedores, longshoremen, terminal operators, Inland Transporters or other agents or independent contractors (including any of its affiliates) to perform any of the Carrier's duties. Every such agent or contractor, the Vessel, each of its owners, operators and officers, each affiliate of the Carrier, and each director and officer thereof shall be entitled to all exemptions, limitations, conditions, defenses, limitations of liability and liberties to which the Carrier is entitled under this Bill of Lading or under law. Under no circumstances shall the Merchant have the benefit of the rights and obligations arising under a contract between the Carrier and any of its agents or independent contractors, and neither the Carrier nor any other person referred to in this Clause shall be liable to the Merchant for a breach of any such contract. The aggregate amount recoverable from the Carrier or any other such person shall in no case exceed the limits provided in this Bill of Lading.
10. **General Average.** General average will be adjusted and payable in New York or elsewhere at the option of the Carrier according to the York-Antwerp Rules 1994 and, as to matters not therein provided, according to the laws and usages at the place of adjustment. In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Carrier is not responsible by statute, contract or otherwise, the Merchant shall contribute with the Carrier in general average to the payment of any sacrifice, losses or expenses of a general average nature that may be made if incurred, and shall pay salvage and special charges incurred in respect of the Goods. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers. Such deposit as the Carrier may deem sufficient to cover the estimated contribution of the Goods, and any salvage and special charges thereon, shall, if required, be paid to the Carrier prior to delivery into a special account in accordance with the provisions of the said Rules.
11. **Force Majeure.** The Carrier shall not be responsible for any loss, damage or delay directly or indirectly resulting from any event beyond the reasonable control of the Carrier, including any strike, lockout, labor disturbance, trade dispute, or anything done in contemplation or furtherance thereof, whether the Carrier be party thereto or not or any fire, unless such fire shall have been caused by the actual fault or privity of the Carrier.

- 12. Both to Blame Collision Clause.** If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or fault of the master, mariner, pilot or servant of the Carrier in the navigation or in the management of the Vessel, the Merchant will indemnify the Carrier against all loss of liability to the other or non-carrying ship or her owners insofar as such loss or liability represent loss of, or damage to, or any claim whatsoever of the Merchant paid or payable by the other or non-carrying ship or her owners as part of their claim against the Vessel or the Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contract.
- 13. Claims.** Any action against the Carrier for loss or damage to Goods shall be brought within one year after delivery of the Goods or the date when the Goods should have been delivered. Any claim or action against the Carrier for loss or damage to Goods occurring while they are in the custody of the Inland Transporter shall be brought within the time specified in the Contract of Carriage or any applicable law or tariff of the Inland Transporter. The United States District Court for the Southern District of New York shall be the exclusive forum for adjudication of any claim against the Carrier arising out of or relating to this Bill of Lading. Any claim against the Merchant arising out of or relating to this Bill of Lading may be brought in a Federal or state court in New York City or, where appropriate, at the Federal Maritime Commission. The Carrier and Merchant hereby consent to the jurisdiction, venue and forum conveniens of each court in which a claim against it may be brought under this Clause.
- 14. Miscellaneous.** If any provision of this Bill of Lading, or any interpretation of any such provision, shall be found invalid, illegal or unenforceable under any applicable law, the validity, legality and enforceability of every other provision or interpretation shall not in any way be affected or impaired and this Bill of Lading shall continue in full force and effect except to the extent of such invalidity, illegality or unenforceability. None of the provisions of this Bill of Lading expressly limiting the liability of the Carrier or any of its affiliates, servants or agents shall be deemed to reduce the scope of any other limitation of liability afforded by law or contract. The headings herein are for convenience only and shall not affect the interpretation of any provision hereof.