

OCEAN BILL OF LADING TERMS & CONDITIONS

APL LOGISTICS LTD TERMS AND CONDITIONS

1. DEFINITIONS

"Carrier" means APL Logistics Ltd.

"Merchant" includes the Shipper, Consignee, lawful holder of the Bill of Lading under applicable law or statute, and/or any Person with a beneficial interest in the cargo as defined by 46 C.F.R. § 515.2(b), all of whom shall be jointly and severally liable to the Carrier for the payment of all Freight, and for the performance of the obligations of any of them under this Bill of Lading.

"Person" means any natural person, company, firm, body corporate or unincorporated association or body, including any Government or governmental or statutory instrumentality or port authority.

"Sub-Contractor" includes direct and indirect subcontractors, including but not limited to performing parties, owners and operators of vessels, ocean carriers, stevedores, terminal and groupage operators, road carriers and railroads, longshoremen, warehousemen and any independent contractor employed by the Carrier or any subcontractor in performance of the Carriage.

"Indemnify" includes defend, indemnify, and hold harmless.

"Goods" means the cargo received from the Merchant and includes any equipment or Container not supplied by or on behalf of the Carrier.

An endorsement on this Bill of Lading that the Goods have been shipped "on board" means on board the Vessel, or another mode of transport operated by or on behalf of Carrier en route to the Port of Loading for loading aboard the Vessel.

"Container" includes any open or closed container, van, trailer, flatbed, transportable tank, flat, pallet, skid, platform or any similar article used to consolidate Goods and any equipment associated or attached thereto.

"Carriage" means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods covered by this Bill of Lading.

"Combined Transport" arises if the Place of Receipt and/or the Place of Delivery are indicated on the face hereof in the relevant spaces.

"Port to Port Shipment" arises if the Carriage called for by this Bill of Lading is not Combined Transport.

"Vessel" includes the vessel named on the face of this Bill of Lading and any other vessel, lighter or watercraft owned, operated, chartered or employed by or on behalf of the Carrier or any subcontracted, connecting or substituted water carrier performing Carriage under this Bill of Lading.

"Freight" includes all charges payable to the Carrier in accordance with the Applicable Tariff and this Bill of Lading. "SDR" means a special drawing right as defined by the International Monetary Fund.

2. CARRIER'S APPLICABLE TARIFF

The terms of the Carrier's Applicable Tariff and any subcontractor's applicable tariff, circular or directory are incorporated herein. Particular attention is drawn to the terms therein relating to Container and Vehicle demurrage.

Copies of the relevant provisions of the Applicable Tariff are obtainable from the Carrier or its agents upon request. In case of inconsistency between this Bill of Lading and Carrier's Applicable Tariff, this Bill of Lading shall prevail.

3. WARRANTY

The Merchant warrants that in agreeing to the Terms and Conditions hereof, including the Applicable Tariff(s), it is, or has the authority of, the Person owning or entitled to the possession of the Goods and/or Container and this Bill of Lading, and that all prior agreements and Freight arrangements are merged in and superseded by the provisions of this Bill of Lading.

4. SUB-CONTRACTING

- i) The Carrier shall be entitled to sub-contract on any terms

the whole or any part of the Carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by the Carrier in relation to the Goods.

- ii) The Merchant undertakes that no claim or allegation shall be made against any Person whomsoever by whom the Carriage is procured, performed or undertaken, whether directly or indirectly (including any ocean, inland water, road and rail carriers, independent contractors and any other Sub-Contractors of the Carrier and their servants or agents), other than the Carrier that imposes or attempts to impose upon any such Person, or any Vessel owned by any such Person, any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of such Person. If any such claim or allegation should nevertheless be made Merchant shall indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing every such Person shall have the benefit of every right, defense, limitation and liberty of whatsoever nature herein contained or otherwise available to the Carrier as if such provisions were expressly for its benefit and the benefit of every right, defense, limitation and liberty that is available to any Sub-Contractor by law or by contract. 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 and trustee for such Persons.
- iii) The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person other than in accordance with the terms and conditions of this Bill of Lading which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of the Carrier and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

5. CARRIER'S RESPONSIBILITY

A. PORT-TO-PORT SHIPMENT

If the Carriage called for by this Bill of Lading is a Port-to-Port Shipment, the Carrier's liability, if any, shall be restricted to the period when the Goods are loaded on board the Vessel until discharged from or transhipped to another Vessel tackle-to-tackle, to be determined in accordance with the provisions of Clause 6 hereof.

B. COMBINED TRANSPORT

- i) If the Carriage called for by this Bill of Lading is a Combined Transport Shipment, the Carrier undertakes to perform and/or procure in its own name, performance of the Carriage from the Place of Receipt or the Port of Loading to the Port of Discharge or the Place of Delivery, whichever is applicable, and the Carrier's liability, if any, shall be determined in accordance with the provisions of Clause 6 hereof.
- ii) During the period prior to loading onto the Vessel and after discharge from the Vessel, the Carrier shall be entitled as against the Merchant to all rights, defenses, immunities, exemptions, limitations of or exonerations from liability, liberties and benefits contained or incorporated in the contract between the Carrier and any Person whomsoever by whom the Carriage is procured, performed or undertaken, whether directly or indirectly (and including such Persons mentioned in Clause 4 ii) hereof) and who would have been liable to the Merchant if the Merchant had contracted directly with such Person or contained in any compulsory legislation applicable to such Person. However, in no event shall the Carrier's liability exceed that determined in accordance with the provisions of Clause 6 hereof.
- iii) If it cannot be proven where or when or at what stage of

the Carriage the Goods or Containers or other packages were lost or damaged the Carrier's liability, if any, shall be determined in accordance with the provisions of Clause 6 hereof.

C. GENERAL PROVISIONS (APPLICABLE TO BOTH PORT-TO-PORT AND COMBINED TRANSPORT SHIPMENTS)

- i) The Carrier does not undertake that the Goods or Containers or other packages shall arrive at the Port of Discharge or Place of Delivery at any particular time or to meet any particular market or use, and the Carrier shall in no circumstances be liable for any direct, indirect or consequential loss or damage caused by delay or any other cause.
- ii) The terms of this Bill of Lading shall govern all responsibilities of the Carrier 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 Carrier for transportation or delivered to the Merchant.
- iii) When a Container is supplied by the Merchant, the Merchant enters into this Bill of Lading contract for itself and as agent of the owner or lessee (if other than the Merchant) of the Container, and the owner or lessee, as the case may be, is bound by the Terms and Conditions of this Bill of Lading as a result.

The rights, defenses, immunities, exemptions, limitations of and exonerations from liability, liberties and benefits shall apply in any action or proceeding whatsoever brought against the Carrier and/or any Person encompassed in Clause 4 ii) hereof, whether in contract, or equity or other theory of recovery.

6. PARAMOUNT CLAUSE

- i) From loading of the Goods onto the Vessel until discharge of the Goods from the Vessel, the Carrier's responsibility shall be subject to the provisions of any legislation compulsorily applicable to this Bill of Lading: a) which gives effect to the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated at Brussels, August 25, 1924, ("the Hague Rules") including adaptations thereof, such as the Carriage of Goods by Sea Act of the United States, 1936 ("U.S. COGSA"), the provisions of which shall apply on all shipments to or from the United States whether compulsorily applicable or not, or b) which gives effect to said Rules as amended by the Protocols to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, dated at Brussels, February 23, 1968 (the "Hague-Visby Rules") and December 21, 1979 (the "SDR Protocol"), but where the Hague-Visby Rules or SDR Protocol are not compulsorily applicable, they shall not be given effect.
- ii) Where the Hague Rules, adaptations thereof or the Hague-Visby Rules are not compulsorily applicable, except as to shipments to or from the United States, as provided in Clause 6 i) a), this Bill of Lading shall be governed by the Hague Rules, except that the limitation of liability per package, per shipping unit or per kilogram, as the case may be, shall be as stated in Clause 7, and without prejudice to the Carrier's right to rely upon the Terms and Conditions of this Bill of Lading, notwithstanding the fact that they may confer wider or more beneficial rights, defenses, immunities, exemptions, limitations, exonerations, liberties or benefits upon the Carrier and third-party beneficiaries than those afforded by the aforesaid conventions or legislation.
- iii) The applicable conventions or legislation shall apply to the Carriage by inland waterways and reference to Carriage by sea in such conventions or legislation shall be deemed to include inland waterways.
- iv) The Carrier, notwithstanding which convention or legislation is applicable, shall be entitled to the benefit of Sections 4281 through 4287 of the Revised Statutes of the

United States and amendments thereto, as if the same were expressly set out herein, including but not limited to the Fire Statute.

- v) Prior to loading onto the Vessel and after discharge from the Vessel or if the stage of Carriage during which the loss of or damage to Goods occurred cannot be proved, the Carrier shall be entitled to rely upon all the rights, defenses, immunities, exemptions, and exonerations under the Hague Rules and the limitation of liability shall be as stated in Clause 7 hereof. For the purpose of this Clause 6 iv), the Hague Rules shall be extended to the periods before loading and subsequent to discharge and to the entire period of the Carrier's responsibility.
- vi) Notwithstanding Clause 6 iv), if the provisions of any contract between Carrier and any contractor or the provisions of any international convention or national law applicable to any such mode of Carriage employed at the time of such loss, damage, misdelivery, conversion or delay would result in liability to the modal carrier, and such liability is less than Carrier's liability determined in Clause 6 iv), then Carrier's liability shall not exceed such lesser amount.
- vii) It is hereby agreed by the Merchant that the Carrier qualifies and shall be regarded as a Person entitled to limit liability under the relevant Convention on the Limitation of Liability for Maritime Claims or similar legislation; except to the extent that mandatory law of the country applies in the appropriate jurisdiction (in which case such law shall apply), the size of the fund to which the Carrier may limit liability shall be calculated by multiplying the limitation fund of the carrying Vessel at the relevant time by the number of Twenty Foot Equivalent Units ("TEUs") aboard at that time for which the Carrier is the contracting Carrier and dividing that total by the total number of TEUs aboard at that time.
- viii) Regarding any cargo losses or damages, APL shall not be liable to Customer for any net claims of US\$250.00 or less. A net claim is calculated as APL's final liability for a claim after applying all pertinent legal limitations of liability pursuant to the term of this Section 7). All cargo losses and damages must still be reported to APL to ensure all incidents are tracked and evaluated.
- ix) Nothing herein contained, expressed, implied or incorporated by reference, shall be deemed to waive or operate to deprive the Carrier of or lessen any of its rights, defenses, immunities, exemptions, limitations, exonerations, liberties or benefits afforded by applicable legislation or by the Terms and Conditions hereof.

7. PACKAGE AND WEIGHT LIMITATION

- i) For shipments to and from the United States (including all stages of inland carriage, if any), the Carrier shall not in any event become liable for any loss of or damage to or in connection with the Carriage of Goods in an amount exceeding US\$500 per package (which is the package or shipping unit limitation under U.S. COGSA) or in the case of Goods not shipped in packages per customary freight unit.
- ii) In all other trades the Carrier's maximum liability shall be 2 SDRs per kilogram of the gross weight of the Goods lost, damaged or in respect of which the claim arises.
- iii) Notwithstanding Clause 7 i) and ii), where the nature and value of Goods have been declared by the Shipper in writing to the Carrier before shipment and inserted in this Bill of Lading and the Shipper has paid additional Freight on such declared values, the Carrier's liability if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro-rata on the basis of such declared value.
- iv) Shipping unit in this Clause 7 includes customary freight unit and the term "unit" as used in the Hague Rules and Hague Visby Rules.

This clause applies in addition to and shall not be construed as derogating from any defense or exclusion, restriction or limitation of liability available to the Carrier under the terms of this Bill of Lading or otherwise.

8. NOTICE OF LOSS, TIME BAR

- i) The Carrier shall be deemed prima facie to have delivered the Goods as described in the Bill of Lading unless notice of loss or damage to the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier at the time of removal of the Goods into the custody of the Person entitled to delivery thereof under this

Bill of Lading or, if the loss or damage is not apparent, within three consecutive days thereafter.

- ii) The Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods, unless suit is brought in the proper forum and written notice thereof received by the Carrier within nine months after delivery of the Goods or the date when the Goods should have been delivered. In the event that such time period shall be found to be contrary to any law compulsorily applicable, the period prescribed by such law shall then apply but in that circumstance only.

9. SHIPPER-PACKED CONTAINERS

- i) If a Container has not been filled, packed, stuffed or loaded by the Carrier, the Carrier shall not be liable for loss of or damage to the Goods and the Merchant shall indemnify the Carrier against any loss, damage, liability or expense incurred by the Carrier, if such loss, damage, liability or expense has been caused by: a) the manner in which the Container has been filled, packed, stuffed or loaded; or b) the unsuitability of the Goods for Carriage in Container; or c) the unsuitability or defective condition of the Container arising without any want of due diligence on the part of the Carrier to make the Container reasonably fit for the purpose for which it is intended; or d) the unsuitability or defective condition of the Container supplied by the Shipper.
- ii) The Shipper shall inspect Containers before stuffing them and its use of the Containers shall be prima facie evidence of their being suitable and not in a defective condition.

10. CARRIER'S CONTAINERS

- i) Each Merchant shall assume full responsibility and indemnify the Carrier for any loss of or damage howsoever caused to any Container or other equipment furnished by or on behalf of the Carrier which occurs while such Container or equipment is in the possession of any Merchant or any servant or agent of or contractor engaged by or on behalf of any Merchant.
- ii) The Carrier shall not in any event be liable for and each Merchant shall be severally liable to indemnify and hold the Carrier harmless from and against any loss of or damage to property of other Persons or injuries to other Persons caused by Container(s) furnished by or on behalf of the Carrier or contents thereof while in the use or possession of any Merchant or any servant or agent of or contractor engaged by or on behalf of any Merchant.

11. INSPECTION OF GOODS

- i) The Carrier shall be entitled, but under no obligation, to open any package or Container at any time and to inspect the contents.
- ii) If by order of the authorities at any place, a Container has to be opened for the Goods to be inspected, the Carrier will not be liable for any loss or damage incurred as a result of any opening, unpacking, inspection or repacking. The Carrier shall be entitled to recover the cost of such opening, unpacking, inspection and repacking from the Merchant.

12. DESCRIPTION OF GOODS

- i) No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods, and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars furnished or made by or on behalf of the Shipper.
- ii) If any particulars of any Letter of Credit and/or Import License and/or Sale Contract and/or Invoice or Order number and/or details or any contract to which the Carrier is not a party are shown on the face of this Bill of Lading, such particulars are included solely at the request of the Merchant for its convenience. The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way affects the Carrier's liability under this Bill of Lading. The Merchant further agrees to indemnify the Carrier against all consequences of including such particulars in this Bill of Lading.
- iii) The Merchant acknowledges that, except when the provisions of Clause 7 iii) apply, the value of the Goods is unknown to the Carrier.

13. SHIPPER'S/MERCHANT'S RESPONSIBILITY

- i) The Shipper warrants to the Carrier that the particulars

relating to the Goods as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on behalf of the Shipper are correct.

- ii) The Merchant shall indemnify the Carrier against all loss, damage, liability and expenses arising or resulting from inaccuracies in or inadequacy of such particulars.
- iii) The Merchant 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 (including, without prejudice to the generality of the foregoing, the full return Freight for the Goods if returned, or if on-carried, the full Freight from the Port of Discharge or the Place of Delivery nominated herein to the amended Port of Discharge or the amended Place of Delivery) 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, and shall indemnify the Carrier in respect of any such failure to comply or by reason of any such marking, numbering or addressing of the Goods.
- iv) Merchant acknowledges it is required to provide verified weights obtained on calibrated, certified equipment of all cargo that is to be tendered to container ship lines. Shipper agrees that Carrier is entitled to rely on the accuracy of such weights and to counter-sign or endorse it as Carrier's own certified weight to the container ship line carrying the cargo. The Merchant agrees that it shall indemnify and hold the Carrier harmless from any and all claims, losses, penalties or other costs resulting from any incorrect or questionable verification of the weight provided by Merchant or its agent or contractor on which the Carrier relies.

14. FREIGHT, INCLUDING CHARGES

- i) Freight including charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.
- ii) The Freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. The Carrier may at any time open any Container or other package or unit in order to reweigh, remeasure or revalue the contents, and if the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that a sum equal to either five times the difference between the correct Freight and the Freight charged or to double the correct Freight less the Freight charged, whichever sum is the smaller, and the expenses incurred in determining the correct particulars, shall be payable as liquidated damages to the Carrier.
- iii) Full Freight hereunder shall be due and payable at the place where this Bill of Lading is issued by the Merchant without deduction on receipt of the Goods or part thereof by the Carrier for shipment. All charges due hereunder together with Freight (if not paid at the Port of Loading as aforesaid) shall be due from and payable on demand by the Merchant (who shall be jointly and severally liable to the Carrier therefore) at such port or place as the Carrier may require, Vessel or cargo lost or not lost from any cause whatsoever.
- iv) All other charges shall be paid to the Carrier before delivery of the Goods in full without offset, counterclaim or deduction, in the currency specified in the Carrier's Applicable Tariff, or, if no currency is so specified, in the lawful currency of the United States.
- v) The Merchant shall remain responsible for all Freight regardless whether the Bill of Lading be marked, in words or symbols, "Prepaid," "To be Prepaid" or "Collect."

15. LIEN

The Carrier shall have a lien on all Goods, Containers and any documents relating thereto for all sums due under this contract or any other contract of undertaking to which the

Merchant was party or otherwise involved, which lien shall also extend to general average contributions, salvage and the cost of recovering such sums, inclusive of attorney fees, and shall survive delivery. Such lien may be enforced by the Carrier by public auction or private treaty, without notice to the Merchant.

16. OPTIONAL STOWAGE AND DECK CARGO

- i) By tendering 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 or similar article of transport used to consolidate Goods.

- ii) Goods may be stowed by the Carrier in Containers, and Containers whether stowed by the Carrier or received fully stowed, may be carried on or under deck without notice unless on the face hereof it is specifically stipulated that the Containers or Goods will be carried under deck. The Merchant expressly agrees that cargo stowed in Container and carried on deck is considered for all legal purposes to be cargo stowed under deck. Goods stowed in Containers on deck shall be subject to the legislation referred to in Clause 6 hereof and will contribute to General Average and receive compensation in General Average, as the case may be.
- iii) Goods (not being Goods stowed in Containers other than flats, pallets, or similar units) which are stated herein to be carried on deck and which are so carried, are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during Carriage by sea whether caused by unseaworthiness or negligence or any other cause whatsoever.

17. METHODS AND ROUTES OF TRANSPORTATION

- i) The Carrier may at any time and without notice to the Merchant:
 - a. use any means of transport or storage whatsoever;
 - b. transfer the Goods from one conveyance to another;
 - c. tranship the Goods;
 - d. undertake the Carriage of the Goods on a Vessel or Vessels in addition to and/or other than that named on the face hereof;
 - e. unpack and remove Goods which have been packed into Container and forward the same in a Container or otherwise;
 - f. proceed by any route in its 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;
 - g. 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;
 - h. 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;
 - i. permit the Vessel to proceed with or without pilots, to tow or be towed, or to be dry-docked;
- ii) The liberties set out in Clause 17 i) 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 Persons involved with the operation or maintenance of the Vessel in all situations. Anything done in accordance with Clause 17 i) or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation.

18. MATTERS AFFECTING PERFORMANCE

- i) 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 by the condition of the Goods) whensoever and howsoever arising whether or not prior to the commencement of the Carriage or the making of the contract of Carriage, the Carrier may without notice to the Merchant: a) abandon the Carriage of the Goods or any part of them 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, whereupon the responsibility of the Carrier in respect of such Goods shall cease; or b) suspend Carriage of the Goods or any part of them and store them ashore or afloat upon the terms of the Bill of Lading and use reasonable endeavors to forward the Goods as soon as possible after the cause of the hindrance, risk, delay, difficulty or disadvantage has been removed, but the Carrier makes no representations as to the maximum period between such removal and the forwarding of the Goods to the Port of Discharge or Place of Delivery, whichever is applicable,

named in this Bill of Lading.

- ii) In any event the Carrier shall be entitled to full Freight on Goods received for Carriage and the Merchant shall pay any additional cost resulting from the circumstances mentioned in Clause 18 i).
- iii) If the Carrier elects to suspend the Carriage under Clause 18 i) b), this shall not prejudice the Carrier's rights subsequently to abandon Carriage under Clause 18 i) a).

19. DANGEROUS, HAZARDOUS OR NOXIOUS GOODS

- i) No Goods which are or may become inflammable, explosive, corrosive, noxious, hazardous, dangerous or damaging (including radioactive materials), or which are or may become liable to damage any property whatsoever, shall be tendered to the Carrier for Carriage without its express consent in writing and without the Container or other covering in which the Goods are to be carried as well as the Goods themselves being distinctly marked on the outside so as to indicate the nature and character of any such Goods and so as to comply with any applicable laws, regulations or requirements.
If any such Goods are delivered to the Carrier without such written consent and marking, or if in the opinion of the Carrier the Goods are or are liable to become of a dangerous or noxious nature, the same may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Freight (and the Merchant hereby authorizes, without obliging the Carrier, to do any of the aforesaid) and the Carrier shall be under no liability to make any general average contribution in respect of such Goods.
- ii) The Merchant undertakes that such Goods are packed in a manner adequate to withstand the risk of Carriage having regard to their nature and in compliance with all laws or regulations which may be applicable during Carriage and handling.
- iii) Whether or not the Merchant was aware of the nature of the Goods, the Merchant shall indemnify the Carrier against all claims, losses, damages, liabilities or expenses arising in consequence of the Carriage of such Goods.

Nothing contained in this Clause shall deprive the Carrier of any of its rights provided for elsewhere in this Bill of Lading.

20. TEMPERATURE CONTROLLED CARGO

- i) Goods will not be provided temperature controlled, insulated, or naturally ventilated stowage unless the Carrier has undertaken such special stowage in advance of the Carrier's receipt of the Goods, and in the absence of such agreement, the Merchant warrants that the Goods do not require such protection. The Carrier does not provide mechanically ventilated stowage and does not furnish or maintain preservative gases in connection with temperature controlled stowage, and the Carrier assumes no responsibility for loss of or damage to Goods arising in whole or in part from any lack of such stowage.
- ii) The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, breakdown or stoppage of the refrigerating machinery, plant, insulation, or of any apparatus of the Container, Vessel, conveyance or other facilities, unless the Carrier shall, before or at the beginning of the carriage, have failed to exercise due diligence to maintain any such equipment (other than Shipper-provided equipment) in an efficient state. If the Goods have been packed into a refrigerated Container, by or on behalf of the Shipper, it is the obligation of the Shipper to stow the contents properly and set the thermostatic controls exactly; and the Carrier shall not be liable for any loss of or damage to the Goods arising out of or resulting from the Shipper's failure in such obligations. If the Carrier has packed the Goods into a refrigerated Container, and a temperature or temperature range has been disclosed to the Carrier by the Shipper or its authorized representative, Carrier will set the thermostatic control accordingly.
- iii) With respect to both Carrier-and Shipper-packed Containers, where Carrier has undertaken, by special agreement, to carry the Goods at a particular temperature or temperature range, the Carrier undertakes only that the refrigeration equipment shall perform within the operating specifications of the equipment and makes no warranty or agreement with respect to the actual temperature of any

commodity, fruit, vegetable, meat, fish or any perishable Goods within the Container.

21. DELIVERY

- i) 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 notwithstanding any custom or agreement to the contrary.
- ii) If no Place of Delivery is named on the face hereof, the Carrier shall be at liberty to discharge the Goods at the Port of Discharge, without notice at or onto any wharf, craft or place, on any day and at any time, whereupon the liability of the Carrier (if any) in respect of the Goods discharged as aforesaid shall wholly cease, notwithstanding any charges, dues or other expenses that may be or become payable, unless and to the extent that any applicable compulsory law provides to the contrary (in which case the terms and conditions of this Bill of Lading shall continue during such additional compulsory period of responsibility). The Merchant shall take delivery of the Goods upon discharge.
- iii) If a Place of Delivery is named on the face hereof, the Merchant shall take delivery of the Goods within the time provided for in the Carrier's Applicable Tariff (see Clause 2).
- iv) If the delivery of the Goods is not taken by the Merchant when and where the Carrier is entitled to call upon the Merchant to take delivery thereof, the Carrier shall be entitled (but not obliged to), without notice, to unpack the Goods if packed in Container and/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 or any agent or Sub-Contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.

- v) If the Merchant fails to take delivery of the Goods within thirty days of delivery becoming due under Clause 21 ii) or iii), or if in the opinion of the 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 (but shall not be obliged to), without prejudice to any other rights which it may have against the Merchant, without notice and without any responsibility whatsoever attaching to him and at the sole risk and expense of the Merchant, sell, destroy or dispose of the Goods and apply any proceeds of sale first in reimbursement of the cost of such sale, destruction or disposal of the Goods and then in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.
- vi) If, at the place where the Carrier is entitled to call upon the Merchant to take delivery of the Goods under Clause 21 ii) or iii), the Carrier is obliged to hand over the Goods into the custody of any customs, port or other authority, such hand-over shall constitute due delivery to the Merchant under this Bill of Lading.
- vii) Failure by the Merchant to take delivery of the Goods in accordance with the terms of this Clause, notwithstanding his having been notified of the availability of the Goods for delivery, shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.
- viii) In the event of the Carrier agreeing, at the request of the Merchant, to any change of destination, the terms of this Bill of Lading shall continue to apply until the Goods are delivered by the Carrier to the Merchant at the amended Port of Discharge or Place of Delivery, whichever is applicable, unless the Carrier specifically agrees in writing to the contrary.
- ix) The Merchant's attention is drawn to the stipulations concerning free storage time and demurrage contained in the Applicable Tariff
- x) In the event that the consignee/receivers of the cargo require the Carrier to deliver the cargo at a port or place beyond the place of delivery originally designated in this Bill of Lading and the Carrier in its absolute discretion agrees to such further carriage, such further carriage will be undertaken on the basis that the Bill of Lading terms and conditions are to apply to such carriage irrespective of

whether this Bill of Lading has been surrendered by the consignees/receivers or not, as if the ultimate destination agreed with the consignees/receivers had been entered on the front of this Bill of Lading as the place of delivery and is thereby considered to be the place of delivery for the purposes of the clauses on the reverse side of this Bill of Lading.

22. TRANSHIPMENT BILLS OF LADING

If the Goods are to be transhipped via a connecting carrier to a destination point beyond the place of delivery stated on the face hereof, Carrier may, on behalf of the Merchant and acting solely as their agent, arrange for such beyond Carriage consistent with instructions received from the Merchant at their risk and expense. In such event, the Carrier may deliver the Goods to the connecting carrier without surrender of the Carrier's original, properly endorsed Bill of Lading and upon request by the Merchant, shall obtain the connecting carrier's acknowledgment that delivery of the Goods shall be made only upon surrender of the Carrier's original, properly endorsed Bill of Lading.

23. BOTH-TO-BLAME COLLISION

The Both-to-Blame Collision Clause published by the Baltic and International Maritime Council and obtainable from the Carrier or its agents upon request is hereby incorporated into this Bill of Lading.

24. GENERAL AVERAGE & SALVAGE

- i) General average shall be adjusted at any port or place at the option of the Carrier and subject to Clause 16 ii) in accordance with the York Antwerp Rules 1994, provided that where an adjustment is made in accordance with the law and practice of the United States of America or of any other country having the same or similar law or practice the following clause shall apply: New Jason Clause
 - a. in the event of accident, damage, peril or disaster, before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or the consequence of which, the Carrier is not responsible, by statute, contract, or otherwise, the Goods and the Merchant shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Goods.
 - b. if a salving Vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving Vessel belonged to strangers.
- ii) If the Carrier delivers the Goods without obtaining security for general average contributions, the Merchant by taking delivery of the Goods, undertakes personal responsibility to pay such contributions and to provide such cash deposit or other security for the estimated amount of such contributions as the Carrier shall reasonably require.
- iii) The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.
- iv) In the event of the Master in his sole discretion or in consultation with owners considering that salvage services are needed, the merchant agrees that the Master may act as his agent to procure such services to Goods and that the Carrier may act as his agent to settle salvage remuneration, without any prior consultation with the Merchant.

25. WAR RISKS; GOVERNMENTAL ORDERS

The Carrier shall have liberty to carry Goods declared by any belligerent to be contraband and persons belonging to or intending to join the armed forces or governmental service of any belligerent; to sail armed or unarmed and with or without convoy; and to comply with any orders, requests or directions as to loading, departure, arrival, routes, ports of call, stoppage, discharge, destination, delivery or otherwise, howsoever given by the government of any nation or department thereof or any Person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or Person having, under the terms of the war risk insurance on the Vessel, the right to give such orders, requests or directions.

Delivery or other disposition of the Goods in accordance with such orders, requests or directions shall constitute performance of the Carrier's delivery obligations under the terms of this Bill of Lading, and all responsibility of the Carrier, in whatever capacity, shall terminate upon such delivery or other disposition.

26. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have the power to waive or vary any term of this Bill of Lading unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

27. VALIDITY

In the event that anything herein contained is inconsistent with any applicable international conventional or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of each inconsistency but no further be null and void.

28. LAW AND JURISDICTION

- i) Governing Law Insofar as anything has not been dealt with by the terms and conditions of this Bill of Lading, Singapore law shall apply. Singapore law shall in any event apply in interpreting the terms and conditions hereof.
- ii) Jurisdiction All disputes relating to this Bill of Lading shall be determined by the Courts of Singapore to the exclusion of the jurisdiction of the courts of any other country provided always that the Carrier may in its absolute and sole discretion invoke or voluntarily submit to the jurisdiction of the Courts of any other country which, but for the terms of this Bill of Lading, could properly assume jurisdiction to hear and determine such disputes, but shall not constitute a waiver of the terms of this provision in any other instance.
- iii) Notwithstanding Clause 28 i) and ii), if Carriage includes Carriage to, from or through a port in the United States of America, the Merchant may refer any claim or dispute to the United States District Court for the Southern District of New York in accordance with the laws of the United States of America.