

(Face Clause)

RECEIVED by the Carrier, the Goods or units said to contain or constitute the cargo described above/below in apparent external good order and condition unless otherwise indicated in this Bill of Lading, to be transported subject to all of the terms of the Carrier's applicable tariff(s) and the terms of this Bill of Lading from the Place of Receipt or Port of Loading via any port or ports to the Place of Delivery or Port of Discharge, as applicable.

Delivery of the Goods to the Carrier for Carriage hereunder constitutes acceptance by the Merchant (as defined hereinafter) (i) of all the terms and conditions, whether printed, stamped or otherwise incorporated on this side and on the reverse side of this Bill of Lading and the terms and conditions of the Carrier's applicable tariff(s) as if they were all signed by the Merchant, and (ii) that any prior representations and/or agreements for or in connection with Carriage of the Goods are superseded by this Bill of Lading. If this is a negotiable (To Order) Bill of Lading, one original Bill of Lading, duly endorsed must be surrendered by the Merchant to the Carrier (together with all Freight) in exchange for the Goods or a Delivery Order or the pin codes for any applicable Electronic Release System. If this is a non-negotiable (straight) Bill of Lading, or where issued as a Sea Waybill, the Carrier shall deliver the Goods or issue a Delivery Order or the pin codes for any applicable Electronic Release System (after payment of all Freight) to the named consignee against the surrender of one original Bill of Lading, or in the case of a Sea Waybill, on production of such reasonable proof of identify as may be required by the Carrier, or in accordance with the national law at the Port of Discharge or Place of Delivery as applicable.

IN WITNESS whereof the number of original Bills of Lading stated below have been signed, one of which being accomplished, the other(s) to be void.

SEE TERMS OF CARRIAGE AND OTHER TERMS ON REVERSE

REVERSE

## 1. DEFINITIONS AND TARIFF

### 1.1. Definitions

When used in this Bill of Lading ("**BL**"):

"**Bill**" means this document whether issued as a BL or a Sea Waybill and in either paper or electronic form.

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

"**Carrier**" means Kawasaki Kisen Kaisha, Ltd. on whose behalf this Bill has been signed and includes its servants, agents, Master, Vessel, her owner, demise charterer and time charterer.

"**Container**" includes any container (including an open top container), trailer, transportable tank, flat rack or pallet or any similar article used to consolidate or carry Goods and any ancillary equipment.

"**Contract**" means the contract evidenced by or contained in this Bill.

"**Freight**" includes all freight, charges and expenses whatsoever payable to Carrier under this Bill and any applicable charterparty and/or contract of affreightment including storage charges, demurrage and detention.

"**Goods**" means the whole or any part of the cargo described overleaf and any packaging received and includes any Container not supplied by or on behalf of Carrier in/on which cargo is packed/loaded.

"**Hague Rules**" means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 including the amendments by the Protocols signed at Brussels in 1968 and 1979 ("**Visby Amendments**"), but only if Visby Amendments are compulsorily applicable to this Bill. Nothing in this Bill shall be construed as contractually applying Visby Amendments.

“**Holder**” means any person in possession of or entitled to this Bill by reason of consignment of Goods, endorsement of this Bill or otherwise.

“**Merchant**” includes any disclosed or undisclosed shipper, consignor, receiver, consignee, Person owning or entitled to possession of Goods or of this Bill, Holder, and anyone acting on behalf of such Person.

“**Person**” includes an individual, group, company or other entity.

“**Place of Delivery**” means place so named overleaf or any other place where Carrier has contracted to deliver Goods when such place is not Port of Discharge.

“**Place of Receipt**” means place named overleaf or any other place where Carrier has contracted to receive Goods, when such place is not Port of Loading.

“**Port of Discharge**” means the port or place so named overleaf or any other place where Goods are discharged from Vessel.

“**Port of Loading**” means the port or place so named overleaf or any other place where Goods are loaded onto Vessel for Carriage.

“**Sub-Contractor**” includes owners, charterers and operators of Vessel or any other vessel (other than Carrier), sea, water, rail, road, air or other transport operators or carriers, stevedores, terminal operators, warehousemen, and any independent contractors or agents employed by Carrier in performance of Carriage and any sub-contractor or employee thereof.

“**US COGSA**” means the United States Carriage of Goods by Sea Act, 1936.

“**Verified Gross Mass**” means combined mass of a Container’s tare mass and masses of all packages and cargo items including but not limited to pallets, dunnage, other packing and securing materials packed in Container and verified by a method of weighing specified in SOLAS Chapter VI Regulation 2.

“**Vessel**” includes the vessel named herein, any substituted vessel, craft, lighter or other means of conveyance owned, chartered or operated by Carrier or any Sub-Contractor used in the performance of this Contract.

"**Waterborne Carriage**" means carriage by sea or water, including period when Goods are under the Carrier's custody for Carriage at sea/water terminal of Port of Loading or Port of Discharge, whether or not on board Vessel.

## 1.2. Carrier's Tariff

Carrier's current published Tariffs ("**Tariffs**") covering the route of Carriage are incorporated herein as part of the transportation contract. Copies of Tariffs are available on Carrier's web site or upon request. Terms of this Bill shall prevail over any inconsistent Tariff or other contract term absent written provisions to the contrary.

## 2. **TERMS AND CONDITIONS ("T&C")**

- 2.1. The T&C in this Bill shall apply in any action by or against Carrier for any loss or damage whatsoever and howsoever occurring (except for additional limits on Carrier liability), whether sounding in contract, bailment or tort, and whether a BL is issued or not.
- 2.2. The T&C of this Bill are separable. If any term or condition is held invalid, null and void, or unenforceable, that shall not affect the validity or enforceability of any other term or condition.
- 2.3. When Goods are delivered to Carrier, this Bill shall be deemed accepted by Merchant. Where a non-vessel owning common carrier ("**NVOCC**") has made other contracts of carriage covering the Goods, the NVOCC:
  - (a) undertakes that no claim in respect of Goods shall be made against Carrier or Sub-Contractor by any Person, other than in accordance with the T&C hereof, which imposes or attempts to impose any liability in connection with Goods, whether or not arising out of negligence on part of Carrier or Sub-Contractors. If any such claim

should be made, the NVOCC shall indemnify Carrier and Sub-Contractors against all costs, expenses and consequences thereof, including damages; and

(b) warrants that all contracts of carriage in respect of Goods shall effectively incorporate and bind its counterparties to the terms of this Bill including the law and jurisdiction clause, and shall indemnify Carrier and Sub-Contractors against all costs, expenses and consequences, including damages, of its failing to do so.

2.4. Carrier shall never be liable for any direct or indirect loss of profit or any consequential loss whatsoever.

2.5. Where Carrier is claimed against for loss or damage, Carrier shall be liable only for the portion of loss or damage proved by Merchant to have resulted from a cause for which Carrier is liable. Merchant shall indemnify Carrier for all loss or damages exceeding such portion.

2.6. Carrier does not undertake that Goods shall arrive at Port of Discharge or Place of Delivery on/at any particular date or time or to meet any particular market or use, and shall under no circumstances be liable for claimed delay or for any indirect or consequential loss or damage whatsoever incurred by or to any Person, including Merchant.

### 3. **CARRIER'S RESPONSIBILITY**

3.1. Carrier shall only be liable for loss or damage to Goods occurring between receipt and delivery of Goods and only to the extent set out below.

3.2. Except for shipment of Goods to, from or through the USA, its districts, territories and possessions, (which shall be governed by Clause 24), liability of Carrier shall be determined by:

(a) the Hague Rules, Articles 1-8 inclusive, but excluding Article 1(e) if loss or damage is proved to have occurred during Waterborne Carriage;

(b) the provisions contained in any international convention or national law if the loss or damage is proved not to have occurred during Waterborne Carriage, which provisions:

- (i) cannot be departed from by private contract to the detriment of the Merchant; and
- (ii) would have applied if Goods had moved under a separate, direct contract with Carrier in the stage of carriage during which loss or damage occurred and had received as evidence thereof any document which must be issued in order to make such international convention or national law applicable.

3.3. Except for shipment of Goods to, from or through the USA, its districts, territories and possessions, (which shall be governed by Clause 24), if neither Clause 3.2(a) nor 3.2(b) applies, Carrier is relieved of liability for any loss or damage if caused by:

- (i) act of God, War or public enemies;
- (ii) arrest or restraint of princes, rulers or people or seizure under legal process;
- (iii) quarantine restrictions;
- (iv) act or omission of Merchant, or its sub-contractor;
- (v) compliance with instructions of any Person entitled to give them;
- (vi) insufficiency of or defective packing or marking;
- (vii) handling, loading, stowage or unloading of Goods by or on behalf of Merchant;
- (viii) inherent vice of Goods;
- (ix) latent defects not discoverable by due diligence;
- (x) a nuclear incident;

- (xi) fire, unless caused by actual fault or privity of Carrier;
  - (xii) any (partial or general) strike, lock-out, stoppage or restraint of labour;
  - (xiii) riots and civil commotions; or
  - (xiv) any cause or event and any consequences thereof which Carrier could not avoid or prevent by exercise of reasonable diligence.
- 3.4. If Carrier establishes that loss or damage could be attributed to one or more of the causes or events specified in Clause 3.3 other than (iv), (v), (vi), (vii), (viii) or (xiv), it shall be presumed that it was so caused.
- 3.5. If Merchant requests Carrier to procure carriage by an inland carrier beyond Place of Delivery (or Port of Discharge if no Place of Delivery is named), Carrier shall procure such carriage as agent only for Merchant and Carrier shall have no liability whatsoever for such carriage or acts or omissions of such inland carrier.
- 3.6. Where this Bill is issued as a Sea Waybill, it shall have effect subject to the CMI Uniform Rules for Sea Waybills deemed incorporated herein; save that if any provision of such Rules is inconsistent with this Bill, the latter shall prevail.
- 3.7. Goods shall not be shipped, stowed or delivered to Carrier inside vehicles or other cargo unless agreed in writing and extra Freight is paid. Carrier to only be responsible for such additional goods if Carrier agrees in writing to carry them.
- 3.8. Goods liable to be affected by temperature or weather conditions, and perishable Goods are received and carried at risk of Merchant, but Freight is payable on sound or unsound Goods. If any such Goods become decayed, liable to injure other cargo or Vessel, or if destruction of Goods is ordered by any authority, Goods may be destroyed or disposed of, without notice to Merchant and Carrier shall not be liable therefor.

3.9. Carrier shall not be responsible for any accident, disease, mortality, loss of or damage to live animals, birds, reptiles, fish or plants arising or resulting from any cause whatsoever including Carrier's negligence or Vessel's unseaworthiness.

#### 4. **LIMITATION OF LIABILITY**

4.1. Nothing in this Bill shall limit or deprive Carrier of any statutory protection, exemption or limitation of liability authorised by any applicable laws, statutes or regulations of any country.

4.2. Merchant agrees that Carrier is entitled to limit liability under any applicable convention for Limitation of Liability for Maritime Claims notwithstanding that Carrier may have secured space on board the relevant vessel by means of a contract of carriage or charter. Subject to any law compulsorily applicable to the Carriage to the contrary, and save to that extent, Carrier may limit its liability in respect of all claims arising out of an incident to that part/proportion of the limitation fund applicable to Carrier's claims against actual carrier.

4.3. If Hague Rules are applicable by national law, liability of Carrier shall not exceed the limit provided in national law. If Hague Rules are applicable other than by national law, liability of Carrier shall not exceed 100 pounds sterling per package or unit.

4.4. If Clause 3.3 operates, total Carrier liability shall never exceed 2 SDRs (as defined by the International Monetary Fund) per kilo of gross weight of Goods lost/damaged.

4.5. Merchant agrees that Carrier has no knowledge of value of Goods. A higher liability limit than provided for in this Bill may be claimed only when, with Carrier's consent, (i) for multimodal shipments to/from USA where U.S. inland carriage is undertaken, Merchant elects to avoid any liability limitation provided herein by prepaying extra Freight and opting for full liability by complying with terms in Carrier's Tariff(s); and (ii) in all other cases, when Merchant declares the value of Goods, requests Carrier to insert



declared value of Goods in box marked "Declared Value" overleaf, and pays extra Freight. In that case, declared value shall be substituted for limits established in this Bill. Partial loss or damage shall be adjusted pro rata based on declared value.

**5. SUB-CONTRACTING AND HIMALAYA CLAUSE**

- 5.1. Carrier is entitled to sub-contract all or any part of Carriage on any terms whatsoever.
- 5.2. Merchant undertakes that no claim/allegation/suit, whether arising in contract/bailment/tort, shall be made against any servant, agent or Sub-Contractor of Carrier, which imposes or attempts to impose any liability whatsoever in connection with Goods or Carriage, whether or not arising out of negligence on the part of any such Person, and, if any such claim/allegation/suit should nevertheless be made, to indemnify Carrier against all costs, expenses, damages and consequences thereof.
- 5.3. Notwithstanding Clause 5.2, any such Person shall have the benefit of every right, exemption from liability, defence and immunity of whatsoever nature available to Carrier or to which Carrier may be entitled herein. Consideration for Carrier entering into this Contract includes the benefit for itself of these provisions on its own behalf and as agent and trustee for any such Person.
- 5.4. Clause 5, including but not limited to the undertakings of Merchant herein, extends to claims/allegations/suits of whatsoever nature against other Persons chartering space on all or part of the Vessel.

**6. MODES, ROUTE OF TRANSPORT**

- 6.1. Vessel shall always have liberty to dry dock, go to repair yards, shift berths, shift or re-stow Goods, and take in fuel or stores for any purpose whatsoever and anything done in accordance with this Clause or any delay arising therefrom shall not be a breach by Carrier of this Contract or a deviation.

- 6.2. Carrier may at any time and without notice to Merchant: use any means of transport or storage whatsoever; transfer Goods from one conveyance to another including transshipping or carrying same on another vessel; proceed by any route whatsoever in its discretion and proceed to and/or stay at and/or load and/or unload and/or store Goods at any place or port whatsoever once or more often, and in any order.
- 6.3. Carrier may, at its sole discretion and without notice, deem Goods delivered under this BL, and forward Goods before or after loading at any place whatsoever by any vessel(s) or other means of transportation by water, land or air, whether operated by Carrier or not and whether departing/arriving or scheduled to depart/arrive before or after Vessel or other transportation expected to be used for the transportation of Goods. In arranging any transshipping/forwarding vessel/transportation not operated by Carrier, Carrier shall be solely the forwarding agent of Merchant and without any other responsibility whatsoever.
- 6.4. In such circumstances, the arranged carriage shall be subject to terms of the BL, freight note, or other shipping document published by such alternative carrier, whether issued for Goods or not, even though such terms may be less favourable to Merchant than the terms of this Bill, contain more stringent requirements as to notice of claim or commencement of suit, and exempt on-carrier from liability for negligence.
- 6.5. Merchant authorises Carrier to arrange with any transshipping or forwarding carrier that the lowest valuation of Goods/limitation of liability contained in the BL /shipping document of such carrier shall apply, even if lower than the valuation/limitation herein, provided that the Merchant shall not be compelled to pay a rate higher than that applicable to the valuation contained in such BL. Pending or during transshipment Goods may be stored ashore or afloat at Merchant's risk and expense and Carrier shall not be liable for detention. Lighterage after discharge from Vessel is payable by Merchant.

- 6.6. Carrier may at any time and without notice to Merchant comply with customs or practices of any port/place, regarding Goods, whether legal, factual or commercial, whether prevailing locally, nationally, or internationally, and whether Merchant knows of custom or practice. Without limiting the foregoing, Carrier shall be entitled to give delivery of Goods without surrender of an original BL where such practice is recognised by custom or law. Compliance with such custom or practice shall constitute proper delivery and full performance of this Contract.
- 6.7. Carrier may at any time and without notice to Merchant permit Vessel to sail with or without pilots or to tow or be towed.

**7. MATTERS AFFECTING PERFORMANCE (LIBERTY)**

- 7.1. If at any time in Carrier's opinion, Carriage is or is likely to be affected by any risk, delay, difficulty or disadvantage of any kind whatsoever and howsoever arising (even if circumstances giving rise thereto existed when this Contract was entered into or Goods were received for Carriage, and whether or not Carriage is commenced), Carrier may, without prior notice to Merchant, at its sole discretion:
- (a) Carry Goods to named Place of Delivery via an alternative route to that in this Bill or that which is usual for Goods consigned to Place of Delivery. If Carrier elects to invoke the terms of this Clause 7.1(a) then notwithstanding Clause 6, it may charge such additional Freight as it determines; or
  - (b) Suspend Carriage of Goods, store them ashore or afloat for as long as it deems necessary upon terms of this Bill and endeavour to forward them as soon as possible. If Carrier invokes the terms of this Clause 7.1(b) it may charge such additional Freight and/or storage charges and/or legal fees and expenses as it determines; or
  - (c) Abandon Carriage of Goods and place them at Merchant's disposal at any place which Carrier at its sole discretion deems safe and convenient, whereupon all Carrier's contractual or other

responsibility in respect of such Goods shall cease. Carrier shall be entitled to Freight on Goods received for Carriage, and Merchant shall pay any additional costs of Carriage to, and delivery and storage at, such place or port. If Carrier uses an alternative route under 7.1(a) or suspends Carriage under 7.1(b), this shall not prejudice its right subsequently to abandon Carriage under 7.1(c).

7.2. Without limiting the foregoing, in case of existing, threatened or impending adverse port congestion, weather or ice conditions or St. Lawrence or any other Seaway closing earlier than announced, Carrier has sole discretion to decide whether Vessel shall proceed to or enter Port of Discharge, or, if Vessel has entered Port of Discharge, whether Vessel shall commence or continue discharging, and/or whether Vessel shall in any of these events proceed to nearest open and convenient port and there discharge or complete discharging. All extra expenses and/or risk whatsoever of forwarding and any consequences thereof shall be borne by Merchant.

**8. GOVERNMENT DIRECTIONS, WAR, EPIDEMICS, ICE, STRIKES, ETC**

8.1. Carrier has liberty to comply with any orders, directions or recommendations connected to Carriage given by any Government or Authority, anyone with actual or apparent authority to act on its behalf or having under terms of insurance on Vessel the right to give such orders, directions or recommendations.

8.2. Should it appear to Carrier at any stage of voyage, whether or not existing or anticipated before commencement or during voyage, that performance of voyage would expose Vessel or Goods to risk of seizure or damage or delay, from war, war like operations, blockade, riots, civil commotions or piracy, ice or other obstacles in navigation, epidemics and/or quarantines, or expose any person onboard to risk of loss of life or freedom, or that any such risk has increased, Carrier may discharge Goods (or such part thereof

affected) at Port of Loading, Place of Receipt or any other reasonable place at Carrier's sole discretion.

- 8.3. Carrier shall not be responsible for any consequences, damages or losses caused directly or indirectly by existing or threatened war, declared or undeclared hostilities, warlike operations, civil war and civil commotions, revolutions, epidemics or quarantines, or operations of international law, whether caused by neutrals or belligerents. Any resultant charges whatsoever shall be collected from Merchant, in addition to charges provided for herein.
- 8.4. Discharge under this Clause 8 of any Goods shall be deemed complete fulfilment of this Contract evidenced by this Bill. If any extra expenses are incurred under this Clause 8, they shall be paid by Merchant in addition to Freight, with return Freight if any and compensation for any extra services rendered to Goods.
- 8.5. Carrier is entitled to withhold delivery of, reship to, deposit or discharge Goods at any place whatsoever, fumigate, surrender or dispose of Goods in accordance with any direction or agreement imposed on or exacted from Carrier by any Government or Authority, or anyone with actual or apparent authority to act on its behalf. In such circumstances, actions taken by Carrier in respect of Goods are done solely at the risk and expense of Merchant, and Carrier has a lien on Goods for all such expenses, which shall survive delivery.
- 8.6. If any situation referred to in this Clause is anticipated, or if for any such reason Vessel cannot safely and without delay reach or enter Port of Loading, or terminal or must undergo repairs, Carrier may cancel this Contract whether or not a BL has been issued.
- 8.7. If any situation referred to in this Clause arises, Merchant shall be informed as soon as reasonably possible.

## **9. STOWAGE**

- 9.1. Goods may be stowed or carried in any space suitable for carriage of Goods, by means of containers, trailers, transportable tanks, flats, pallets, or other articles of transport used to consolidate or carry Goods.
- 9.2. Goods may be carried on or under deck without notice to Merchant.
- 9.3. Goods stowed in any covered-in space, or in a Container (wherever placed), shall be deemed to be stowed under deck for all purposes including general average.
- 9.4. Regarding Goods carried on deck, all risk of loss/damage by perils inherent in such carriage shall be borne by Merchant. In all other respects custody and carriage of such Goods shall be governed by the terms of this Bill and such Goods shall be deemed within the Hague Rules' definition of "goods" for purposes of Clause 3.2 only.

## **10. INSPECTION OF GOODS**

- 10.1. Carrier shall be entitled, but not obliged, to open and/or scan any Container or package at any time and to inspect, reweigh, remeasure, revalue or repack Goods without notice to Merchant.
- 10.2. If pursuant to any of Carrier's rights under this Bill or by order of authorities at any place, a Container or package has to be opened and/or seal broken, Carrier will not be liable for any loss/damage incurred as a result of opening, unpacking, inspecting, reweighing, remeasuring, revaluing, or repacking. Merchant shall indemnify Carrier for cost of all measures taken as above.

## **11. DESCRIPTION OF GOODS**

- 11.1. No representation is made by Carrier as to weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of Goods and Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

- 11.2. The term “apparent external good order and condition” stated overleaf with reference to any Vehicle and other unpacked goods does not mean that such Goods, when received, were free of any dent, scratch, hole, cut, bends, rust, moisture or any other damage or condition that was not apparent upon routine observation (“**non-patent damage**”), and Carrier shall not be liable for any such non-patent damage.
- 11.3. Merchant shall be liable for, and indemnify Carrier in respect of, any injury, loss or damage arising from inaccuracies or omissions in leading marks, number, quantity, weight, gauge, measurement, contents, nature, quality or value of Goods, if declared by Merchant, including partial loss of any Goods, where Merchant has failed to state the value, or any amount in excess of the pro rata portion of agreed value (see Clause 4).
- 11.4. Merchant warrants that (a) all packages and pieces shall be clearly and durably stamped or marked before loading in letters and numbers at least two inches high, together with name of Port of Discharge, (b) such markings shall correspond to markings and numbers inserted in this Bill and (c) such markings shall be adequate and correct. Merchant is liable for all expense of mending, reconditioning or repackaging Goods or packages, gathering loose contents of packages, any payment, expense, fine, duty, tax, loss or detention sustained/incurred by/levied upon Carrier in connection with Goods, howsoever caused, including by action of any government or governmental authority, seizure/attempted seizure under legal process, incorrect/insufficient marking, numbering/addressing of packages or description of the contents, failure of Merchant to procure any certificates to accompany Goods or to comply with any laws or regulations imposed with respect to Goods by authorities at any place, or any act or omission of Merchant.
- 11.5. If any particulars/details of any letter of credit and/or import licence and/or invoice or order number and/or contract to which Carrier is not a party are shown overleaf, such are included solely at request of Merchant for its benefit. Merchant acknowledges that, except when Clause 4.5(ii)

applies, the value of Goods is unknown to Carrier, and inclusion of such particulars shall not be regarded as a declaration of value and in no way increases Carrier's liability under this Bill or shifts Merchant's burden of proving value. Merchant shall indemnify Carrier against all consequences whatsoever of including such particulars in this Bill.

**12. GOODS IN CONTAINER PACKED BY MERCHANT OR OTHERWISE PREPARED BY MERCHANT**

12.1. If Goods are received by Carrier in Container(s) packed by or on behalf of Merchant:

- (a) This Bill is prima facie evidence of receipt only of the number of Container(s) shown herein; and
- (b) Merchant warrants that particulars relating to Goods set out overleaf have been checked by Merchant and all such particulars are accurate. Merchant also warrants that Goods are lawful and contain no contraband, drugs or other illegal substances or stowaways, are adequately packed and prepared for shipment, will not cause loss, damage or expenses to Carrier, Vessel or any other cargo and that Goods and Container(s) are suitable for Carriage in accordance with Carrier's Tariff(s) and best practice. For Goods being transported inland in the USA, Merchant shall properly load, block and brace Goods in accordance with the Association of American Railroad ("AAR") Intermodal Loading Guide for Products in Closed Trailers and Containers and notify and require all parties involved in loading of Goods in Container(s) to comply with these requirements. AAR Intermodal Loading Guide can be obtained from Carrier or AAR (<https://www.aar.org>). If not in closed trailers or containers, best practices for preparing and securing Goods for Carriage involved shall be followed. Burden of proving compliance with the warranties and other obligations imposed by this Clause 12.1(b) rests with Merchant.



If Merchant breaches any of said warranties or obligations, Carrier shall not be responsible for any loss of or damage to or in connection with Goods or Carriage resulting in whole or in part from said breach and Merchant shall be liable for loss of or damage to any property, personal injury or death or consequences of any other accidents/events whatsoever and shall defend, hold harmless and indemnify Carrier in respect thereof; and

- (c) Merchant shall inspect Container(s) when furnished by or on behalf of Carrier, and they shall be deemed to have been accepted by Merchant in sound/suitable condition for Carriage, unless it gives notice to the contrary in writing to Carrier before loading; and
- (d) if Container(s) are delivered with seals intact, such delivery shall be deemed as full and complete performance of Carrier's obligation and Carrier shall not be liable for any loss of or damage to contents of Container(s); and
- (e) Merchant's obligations under Clause 12.1(b) for containerised Goods shall apply, as relevant, to any Goods packed, covered or secured by Merchant in any fashion before delivery to Carrier.

### **13. DANGEROUS GOODS, CONTRABAND**

13.1. Carrier shall only carry Goods of an explosive, inflammable, radioactive, corrosive, damaging, noxious, hazardous, poisonous, injurious or other dangerous nature if (at its sole discretion) it chooses to accept a prior written application by Merchant for Carriage of such Goods, which must accurately state the precise nature, name, label and classification of those Goods as well as method of rendering them innocuous, with full contact details of Merchant.

13.2. Merchant undertakes that the nature of Goods referred to in Clause 13.1 is distinctly and permanently marked on the outside of package(s) and Container(s) and undertakes to submit all documents or certificates

required by any applicable statutes or regulations at any stage of Carriage, or by Carrier.

13.3. Merchant warrants that such Goods are packed so as to withstand risks of Carriage considering their nature, and in compliance with all laws, regulations or requirements applicable to Carriage.

13.4. Whenever Goods are perceived or found to (a) pose a threat to Vessel, any other means of transport, cargoes, properties or persons, or (b) not to comply with 13.1 or 13.2 above, or (c) be contraband or prohibited by any laws or regulations of any place applicable to Carriage, Carrier may have such Goods rendered innocuous, thrown overboard or discharged and left to Merchant at any stage and place Carrier chooses, or disposed of at Carrier's discretion without compensation. Merchant shall be liable for and indemnify Carrier against all loss, damage, expense or liability whatsoever directly or indirectly arising out of or resulting from such Goods and all resulting actions taken by Carrier, and shall post any bonds or financial guarantees as may be required.

13.5. Goods comprising single pieces or packages exceeding 4,000 lbs. shall be declared in writing by Merchant on shipment and the accurate weight clearly and durably marked on the outside of the piece or package. Merchant is liable for and shall indemnify Carrier for any injury, loss or damage howsoever arising from Merchant's failure to accurately declare and mark the weight of any such piece or package.

#### 14. **VALUABLE GOODS**

14.1. Carrier shall not be liable for any loss of or damage to or in connection with platinum, gold, silver, precious metals, jewellery, precious stones, radioisotopes, precious chemicals, currency, negotiable instruments, securities, writings, documents, pictures, embroideries, works of art, curios, heirlooms, collections or any other valuable goods whatsoever including goods having value only for Merchant, unless the true nature and value thereof has been declared in writing by Merchant before Carriage, inserted

in this Bill and ad valorem Freight has been agreed and fully prepaid in respect of such Goods.

## 15. SANCTION

15.1. For the purposes of this Clause;

**“Sanctioned Activity”** means any activity, service, carriage, trade or voyage subject to sanctions imposed by a Sanctioning Authority.

**“Sanctioned Party”** means any persons, entities, bodies or vessels so designated by a Sanctioning Authority.

**“Sanctioning Authority”** means the UN, EU, UK, USA or any other applicable competent authority or government.

15.2. Merchant warrants that at the date of this Bill and throughout Carriage it and any other party to this Contract is not (a) a Sanctioned Party, (b) owned, or controlled (individually/in aggregate, directly/indirectly), and/or (c) acting for or on behalf of, any Sanctioned Party.

15.3. If at any time Merchant is in breach of Clause 15.2, Carrier may terminate and/or claim damages resulting from the breach.

15.4. If performance of Carriage involves a Sanctioned Party or a Sanctioned Activity, without prejudice to any other rights available in Clause 15.3, Carrier may:

- (i) if loading has not commenced, cancel this Contract; or
- (ii) if loading has commenced, refuse to proceed and discharge Goods loaded at any safe port or place of its choice (including Port of Loading or Place of Receipt) in complete fulfilment of this Contract,

provided always that if this Contract allows loading and/or discharging to take place within a range of ports or places that do not involve a Sanctioned Party or a Sanctioned Activity, Carrier must first request Merchant to nominate an alternative place and may cancel this Contract or refuse to perform Carriage only if such nomination is not made within forty-eight

(48) hours after request.

15.5. If in compliance with Clause 15.4 anything is done or not done, such shall not be deemed a deviation, but shall be considered due fulfilment of this Contract.

## 16. **MERCHANT'S RESPONSIBILITY**

16.1. All Persons defined as Merchant in Clause 1 shall be jointly and severally liable to Carrier for the fulfilment of all warranties and obligations of Merchant in this Bill and bear the burden of proving such fulfilment.

16.2. Merchant shall comply with all regulations or requirements of customs, port and any other authorities and shall pay all duties, taxes, fines, penalties, expenses or losses incurred or suffered due to any failure to so comply, or due to any illegal, incorrect or insufficient marking, numbering or addressing of Goods, and shall indemnify Carrier in respect thereof.

16.3. Merchant shall indemnify, defend, and hold Carrier harmless from all consequences whatsoever (including loss of profit and indirect losses) of any:

(a) failure by Merchant to comply with any provision of this Bill, Carrier's applicable Tariff(s) and/or any applicable circulars, contracts, laws or regulations; and/or

(b) breach of any of Merchant's representations, warranties, obligations or undertakings herein.

16.4. Merchant's obligation in Clause 16.3 shall not be defeated or reduced by any negligence on the part of or attributable to Carrier.

## 17. **NOTIFICATION AND DELIVERY**

17.1. Notwithstanding any custom to the contrary, Carrier may commence discharge immediately on arrival at Port of Discharge or Place of Delivery, without notice, and may discharge continuously. All extra expense occasioned by discharging after hours/ on weekends/holidays to be for Merchant.

17.2. Goods shall be received by Merchant as soon and as fast as Vessel or other transportation is ready to discharge and is able to deliver them. In default thereof, Goods shall be at risk and expense of Merchant; delivery shall be considered complete and Carrier will have the option, (subject to Carrier's liens), of:

(a) sending Goods to store, warehouse, putting them on lighters or other craft or in possession of authorities, dumping, permitting to lie where landed or otherwise disposing of them, always at risk and expense of Merchant; or

(b) ordering Vessel or other transportation to proceed to and discharge Goods at any near, safe or accessible place at Carrier's option.

Upon any such action by Carrier, this Contract shall be considered fully performed with Carrier having complied with all its obligations. Freight from original Port of Discharge or Place of Delivery is for Merchant. Goods are deemed delivered and are entirely at risk and expense of Merchant when they leave Vessel's tackle or ramp or are discharged from any other transportation. Merchant shall indemnify Carrier for any loss, damage, fine or expense whatsoever suffered in dealing with or disposing of Goods by reason of Merchant's failure or delay in taking delivery.

17.3. Where customary or necessary for Vessel to discharge into any other vessel, launch, lighter or craft, other than for on-carriage under Carriers BL, Carrier acts solely as a forwarding agent of Merchant (even where such further carriage is at Carrier's expense) and does not undertake any responsibility or obligation as to character, condition or seaworthiness of any such vessel, launch, lighter or craft, nor as to custody, care or delivery of Goods after discharge from Vessel.

17.4. Where Port of Discharge or Place of Delivery operates an Electronic Release System ("ERS"), delivery of Goods under this Bill shall be effected by Carrier providing to Merchant pin codes for such ERS. If Carrier is obliged

to discharge Goods to any customs, port or other authority, such discharge shall constitute due delivery of Goods to Merchant under this Bill.

17.5. Carrier is not required to give any notification whatsoever of arrival, discharge or any action taken with respect to Goods, even where Goods are consigned to order with notice to a named person. Any reference in this Bill to notify parties is only for the information of Carrier and does not confer any responsibility on Carrier to give any such notification.

17.6. Vessel's tally shall be conclusive unless Merchant's tally clerks check Goods in cooperation with Vessel's checkers.

#### **18. NOTICE OF CLAIM AND TIME FOR SUIT**

18.1. Unless notice of loss or damage and general nature thereof is given in writing to Carrier at Place of Delivery (or Port of Discharge if no Place of Delivery is named ) before or at time of delivery of Goods or, if loss or damage is not apparent, within three days after delivery, Goods shall be deemed to have been delivered as described in this Bill free of damage.

18.2. Where Goods have/may have been lost or damaged during custody of Sub-Contractors, Carrier shall be discharged from all liability whatsoever in respect of such Goods unless Merchant gives Carrier notice of loss and of claim in time for Carrier to comply with the Sub-Contractors' terms. Merchant is obliged to inquire as to those requirements. Carrier is not obligated to volunteer that information.

18.3. In any event, subject to Clause 18.2, Carrier shall be discharged from all liability whatsoever in respect of Goods unless suit is brought within one year after delivery of Goods or date when they should have been delivered.

#### **19. FREIGHT AND CHARGES**

19.1. Freight is payable on actual gross intake weight or measurement or, at Carrier's option, on actual gross discharged weight or measurement. Freight may be calculated based on the particulars of Goods furnished by Merchant but Carrier may at any time examine, weigh, measure and value

Goods. If Merchant's particulars are erroneous and resulted in payment or calculation of Freight at less than prescribed by Carrier's Tariff, Merchant shall be liable to pay Carrier twice the deficiency in such Freight, plus expense incurred in examining, weighing, measuring and valuing Goods, and any attorney's fees incurred by Carrier in collecting.

19.2. Freight shall be paid on damaged or unsound Goods. Freight to the Port of Discharge and/or Place of Delivery shall be considered completely earned when Goods are taken into charge by Carrier whether Freight is stated or intended to be prepaid or to be collected at destination; and Carrier shall be entitled to Freight due hereunder in all circumstances whatsoever, whether or not Vessel and / or Goods are lost or damaged or the voyage and/or Carriage is broken up or abandoned. If there is interruption or abandonment of the voyage at any place whatsoever, any forwarding of Goods shall be at risk and expense of Merchant.

19.3. All unpaid Freight shall be paid in full by Merchant, and without any offset, counter-claim or deduction, in USA currency.

19.4. If Goods are not available when Vessel or other transportation is ready to load, Carrier is relieved of any obligation to load such Goods. In case of Waterborne Carriage, Vessel may leave port without notice and dead freight shall be paid by Merchant.

19.5. Merchant shall be liable for return Freight on Goods refused exportation or importation by any government or public authorities.

## 20. LIEN

20.1. Carrier shall have a lien on Goods and any related documents, which shall survive delivery, for all sums payable to Carrier under this Contract, cost of recovering same and for general average ("GA") contributions. Carrier also has a lien against Merchant on Goods and any related documents for all sums due to it from Merchant under any other contract. Carrier has the right to sell Goods by public auction or private sale, without notice to Merchant, and Carrier's lien shall extend to cover cost of recovering any sums due.

**21. GENERAL AVERAGE**

21.1. GA shall be adjusted, stated and settled at any place at Carrier's option according to the York-Antwerp Rules, 1994, and as to matters not provided for by these Rules, according to the laws and usages of place of adjustment, in the currency selected by Carrier. Goods carried on deck shall participate in GA.

21.2. The GA statement shall be prepared by adjusters appointed by Carrier. An average agreement or bond and such cash deposit as Carrier deems sufficient to cover the estimated contribution of Goods, salvage, special charges thereon and additional securities as Carrier may require shall be furnished by Merchant before delivery of Goods.

**22. BOTH-TO-BLAME COLLISION CLAUSE AND NEW JASON CLAUSE**

22.1. Both-to-Blame Collision Clause and New Jason Clause published by BIMCO (copies available on request), are incorporated into this Bill.

**23. GOVERNING LAW AND JURISDICTION**

23.1. This Contract shall be governed by Japanese law except as otherwise provided for herein. Unless otherwise agreed by Carrier, any action against Carrier hereunder must be brought before Tokyo District Court in Japan. Any action by Carrier to enforce any provision of this Bill may be brought before any court of competent jurisdiction at Carrier's option.

23.2. For shipments to or from USA (including its districts, territories and possessions), this Contract shall be governed by U.S law.

23.3. Where Goods are subject to adverse or competing claims, Carrier may place Goods in custody of a court of competent jurisdiction for determination of ownership and/or right to possession at expense of Merchant, including Carrier's legal fees and disbursements. Carrier shall have no liability to Merchant from such placement and Merchant consents to the exclusive jurisdiction of such court.



## 24. US CLAUSE PARAMOUNT

24.1. If Carriage covered by this Bill includes Carriage to or from a place in USA, including its districts, territories and possessions, this Bill shall be subject to US COGSA, the terms of which are incorporated herein and US COGSA shall govern the entire Carriage set forth in this Bill whether or not loss or damage to Goods occurs at sea from receipt to delivery of Goods. If US COGSA so applies, then with respect to Goods carried on deck and stated overleaf to be so carried, and in all other respects, Carrier shall have benefit of the provisions of US COGSA, notwithstanding Section 1(c) thereof. Neither Clause 3.2(a), (b), the Hamburg Rules nor the Visby Amendments shall apply to Carriage to or from USA.

24.2. For limitation purposes under US COGSA, "package" shall mean any assemblage of cartons which has been palletised and/or unitised for convenience of Merchant, regardless of whether said pallet or unit is disclosed overleaf. If US COGSA applies, neither Carrier nor Vessel shall, in any event, be liable for any loss or damage to or in connection with Goods in an amount exceeding US\$500 per package, or, in case of Goods not shipped in packages, per customary freight unit, unless the nature and value of Goods have been declared by Merchant before shipment and inserted in this Bill.

## 25. HAMBURG RULES

25.1. If, notwithstanding Clause 23, proceedings are brought before courts of a Contracting State to the UN Convention on the Carriage of Goods by Sea, 1978 (the "**Hamburg Rules**") or courts of any State whose national legislation makes the Hamburg Rules effective and such courts adjudge the Hamburg Rules or such national legislation to be compulsorily applicable to this Bill, only then shall this Bill take effect subject to the Hamburg Rules or such national legislation and any term of this Bill derogating therefrom to the detriment of Merchant shall be void to that extent but no further.

25.2. In any event, Carrier shall be entitled to contest enforcement of any judgment made in a Contracting State to the Hamburg Rules in any proceedings before courts in a Non-Contracting State.