



Terms & Conditions for Ocean Shipments

1. CLAUSE PARAMOUNT:

- a) Insofar as a Bill of Lading between Customer and Carrier covers carriage of Goods by water, it will have effect subject to the provisions of the Hague Rules as amended, including the Hague-Visby Rules.
- b) When no such enactment is in force in the country of shipment or is not otherwise compulsorily applicable, the Hague Rules as enacted in the country of destination shall apply.
- c) When no such act is in force in the country of shipment or the country of destination, or is not otherwise compulsorily applicable, the terms of the Hague Rules as enacted by the convention shall apply.
- d) If the Bill of Lading covers Goods moving to or from ports of the United States in foreign trade, then even such Carriage of Goods shall be subject to the provisions of COGSA, including all limitations of liability, the terms of which are incorporated herein. The provisions of COGSA shall govern throughout the time when the Goods are in the custody of the Carrier and any other carrier. COGSA shall apply for the entire transportation, and through all modes of transit including road or rail transportation incidental to the marine journey where the Goods are moving subject to a through bill of lading.

2. DEFINITIONS

- a) "Vessel" means the vessel named in a Bill of Lading, or any conveyance owned, chartered, or operated by Carrier or used by Carrier for the performance of this contract.
- b) "Carrier" means the company stated on the front of the Bill of Lading as being the carrier and on whose behalf the Bill of Lading has been signed or issued.
- c) "Carriage" means all operations and services undertaken or performed by or on behalf of the Carrier with respect to the Goods.
- d) "Merchant" includes the Shipper, the Receiver, the Consignor, the Consignee, the Holder of the Bill of Lading and any person having a present or future interest in the Goods or any person acting on behalf of any of the above-mentioned persons.
- e) "Container" includes any container, trailer, transportable tank, lift van, flat, pallet, or any similar article of transport used to consolidate Goods.
- f) "Goods" means the cargo supplied by the Merchant and includes any container not supplied by or on behalf of Carrier.
- g) "Hague Rules" means the provisions of the International Convention for Unification of certain rules relating to Bills of Lading signed at Brussels on August 25, 1924.
- h) "Hague-Visby Rules" means the Hague Rules as amended by the Protocol signed at Brussels on February 23, 1968.
- i) "COGSA" means the Carriage of Goods by Sea Act of the United States of America approved on April 16, 1936.
- j) "Subcontractor" includes stevedores, marine terminals, independent contractors, agents, charterers and operators of vessels (other than the Carrier), road and rail transport operators, warehouseman, and any other direct or indirect subcontractors. This applies whether or not such subcontractors are in direct contractual privity or not.

3. SUBCONTRACTING

- a) Carrier shall be entitled to subcontract on any terms whatsoever the whole or any part of the handling, storage, or carriage of the Goods and all duties undertaken by Carrier in relation to the Goods.
- b) Every employee, agent or subcontractor of Carrier shall be entitled to the same rights, exemptions and/or limitations from liability, defenses and immunities to which Carrier is



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entitled. It is expressly intended that all Subcontractors (and Subcontractor's Subcontractors) shall have the benefit of all provisions of the Bill of Lading.

- c) Merchant undertakes that no claim or allegation shall be made against any employee, agent or subcontractor of the Carrier which imposes any liability whatsoever in connection with the Goods or Carriage. In the event that any claim or allegation is made, the Merchant undertakes to indemnify and hold the Carrier harmless against all consequences thereof.

4. MERCHANT'S WARRANTY:

- a) The Merchant warrants that, in agreeing to the terms hereof, he is or is the agent of and has the authority of the person owning or entitled to the possession of the Goods or any person who has a present or future interest in the Goods.

5. NEGOTIABILITY AND TITLE TO THE GOODS:

- a) The Bill of Lading shall be non-negotiable unless made out "to order" in which event it shall be negotiable and shall constitute title to the Goods and the holder shall be entitled to receive or to transfer the Goods herein described.

6. ROUTE OF TRANSPORT:

- a) Carrier is entitled to perform the transport in any reasonable manner and by any reasonable means, methods and routes.
- b) The Vessel shall have the liberty to, at any time, adjust navigational instruments, make trial trips, dry dock, go to repair yards, shift berths, take in fuel or stores, embark or disembark any persons, carry contraband and hazardous Goods, sail with or without pilots and save or attempt to save life or property. Delays resulting from such activities shall not be deemed a deviation.

7. HINDRANCES AFFECTING PERFORMANCE:

- a) Carrier shall use reasonable endeavors to complete transport and to deliver the Goods at the place designated for delivery.
- b) If at any time in the opinion of Carrier the performance of this contract as evidenced by the Bill of Lading is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind including strike, and if by virtue of the above Carrier has no duty to complete the performance of the contract, Carrier whether or not the transport is commenced may elect to:
 - a) treat the performance of this contract as terminated and place the Goods at Merchant's disposal at any place Carrier shall deem safe and convenient, or
 - b) deliver the Goods at the place of delivery. In any event Carrier shall be entitled to full freight charges for any Goods received for transportation and additional compensation for extra costs resulting from the circumstances referred to above.
- c) Carrier does not undertake that the Goods shall be delivered at any particular time and shall not be liable for any direct or indirect losses caused by any delay.

8. LIABILITY FOR LOSS AND DAMAGE:

- a) In all situations, unless otherwise required by applicable law, Carrier's liability for any loss of or damage to Goods shall in no case exceed the amount of \$500 per package or per customary freight unit, unless the Merchant, with the consent of Carrier, has requested additional insurance for the Goods by declaring an insured value of the Goods, and paid the additional insurance charges to Carrier, in which case such higher declared insurance value shall be the limit of Carrier's liability. Notwithstanding the foregoing, the Carrier's liability for any loss, theft, damage or delay to or of the Goods shall not exceed and shall be limited to the limits of



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liability contained in any applicable carrier's bill of lading or tariff (including inland carriers) if such limits of liability apply to the loss, theft, damage or delay. However, Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to make the claim.

"Customary freight unit" shall mean each physical unit or piece of cargo not shipped in a package, including articles and things of any description except goods shipped in bulk. As to Goods shipped in bulk, the limitation thereto shall be the limitation provided in applicable law, and in no event shall anything herein be construed to be a waiver of a limitation as to Goods shipped in bulk.

- b) In any case where Carrier's liability for compensation may exceed the amounts set forth in clause 8.1 above, compensation shall be calculated by reference to the value of the Goods, according to their current market price, at the time and place they are delivered, or should have been delivered, in accordance with this contract.
- c) If the value of the Goods is less than \$500 per package or per customary freight unit, their value for compensation purposes shall be deemed to be the invoice value, plus freight and insurance, if paid.
- d) Carrier shall not be liable for any loss or damage arising from:
 - a) an act or omission of Merchant or any person acting on behalf of Merchant (other than Carrier);
 - b) compliance with the instructions of any person authorized to give them;
 - c) handling, loading, stowage or unloading of the Goods by or on behalf of Merchant;
 - d) inherent vice of the Goods;
 - e) lack or insufficiency of or defective condition of packing of Goods;
 - f) insufficiency or inadequacy of marks or numbers on the Goods, coverings or unit loads;
 - g) fire, unless caused by actual fault of Carrier;
 - h) any cause or event which Carrier could not avoid and the consequences of which he could not prevent by the exercise of due diligence.
- e) Reliance on Information Furnished.
 - a) Merchant acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, other Government Agencies and/or third parties, and will immediately advise the Carrier of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Merchant's behalf.
 - b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or other required data, the Carrier relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Merchant. Merchant shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Carrier harmless from any and all claims asserted and/or liability or losses suffered by reason of the Merchant's failure to disclose information or any incorrect, incomplete or false statement by the Merchant or its agent, representative or contractor upon which the Carrier reasonably relied. The Merchant agrees that the Merchant has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.



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- f. UNLESS OTHERWISE REQUIRED BY LAW, CARRIER SHALL NOT BE LIABLE FOR, AND THE MERCHANT HEREBY WAIVES ANY RIGHT TO CLAIM, ALL SPECIAL, CONSEQUENTIAL, INCIDENTAL AND PUNITIVE DAMAGES OF ANY SORT. The above limitation of liability includes, but isn't limited to, any claims for loss of profits or revenue, loss of customers, loss of use of the Cargo or Goods, cost of substituted Cargo, downtime costs, advertising costs, or labor costs of Merchant or Merchant's customers.
9. DESCRIPTION OF GOODS: Merchant warrants to Carrier that all descriptions of the Goods, including, without limitation, the marks, number, quantity and weight, furnished by Merchant are complete and correct, and Merchant shall indemnify Carrier against all losses, claims, damages or charges arising from any inaccuracy.
10. CARRIER'S CONTAINERS:
- a) If Goods are not received by Carrier already in Containers, Carrier may pack them in any type of Container.
 - b) Merchant shall be liable to Carrier for damage to Carrier's Containers or equipment if such damage occurs while such equipment is in control of Merchant or his agents.
 - c) Merchant shall indemnify Carrier for any damage or injury to persons or property caused by Carrier's Containers during handling by or when in possession or control of Merchant.
 - d) Merchant undertakes to return such Containers to Carrier within the time provided for in Carrier's applicable tariff; otherwise, Merchant shall pay Carrier for the demurrage or detention charges applicable to the Containers.
11. CONTAINER PACKED BY MERCHANT:
- a) If Carrier receives the Goods already packed into containers:
 - a) The Bill of Lading is prima facie evidence of the receipt of the particular number of Containers set forth, and that number only. Carrier accepts no responsibility with respect to the order and condition of the contents of the Containers;
 - b) Merchant warrants that the stowage and seals of the Containers are safe, proper and suitable for handling and carriage;
 - c) Delivery shall be deemed as full and complete performance when the Containers are delivered by Carrier with the seals intact and Carrier shall not be liable for any shortage of Goods discovered at delivery; and
 - d) The Carrier or any person authorized by the Carrier shall be entitled, but under no obligation, to open any container or package at any time and to inspect the Goods.
 - b) The Carrier shall not be liable for loss of or damage to Goods caused by any of the following:
 - a) The manner in which the Container has been stuffed or packed;
 - b) The unsuitability of the Goods for carriage in Containers;
 - c) The unsuitability or defective condition of the Container provided;
 - d) If the Container is not sealed at the commencement of the Carriage except where the Carrier has agreed to seal the Container.
 - c) The Merchant shall defend, indemnify, and hold the Carrier harmless against any loss, damage, claim, liability, or expense arising from one or more of the conditions covered by subparagraphs (a) through (d) above.
 - d) Where the Carrier is instructed to provide a Container in the absence of a written request to the contrary, the Carrier is not under any obligation to provide a Container of particular type or quality.



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12. TEMPERATURE CONTROLLED CARGO:

- a) The Merchant agrees not to tender for transportation any Goods which require temperature control or humidity control without previously giving written notice (and filling in the box on the Bill of Lading) of their nature and particular temperature range, or humidity range, to be maintained. In the case of a temperature-controlled Container stuffed by or on behalf of Merchant, the Merchant further represents and warrants that the Container has been properly pre-cooled, that the Goods have been properly stuffed in the Container, and that its thermostatic controls have been properly set by the Merchant before receipt of the Goods by the Carrier. If these requirements are not complied with, the Carrier shall not be liable for any loss or damage to the Goods caused by such noncompliance.
- b) The Carrier shall not be liable for any loss or damage to the Goods arising from defects, derangement, breakdown, stoppage of the temperature controlling machinery, plant, insulation, or any apparatus of the Container, provided that the Carrier shall use reasonable care to maintain the refrigerated Container in an efficient state.

13. DANGEROUS GOODS:

- a) Merchant may not tender Goods of a dangerous nature, which shall include but not be limited to: Goods considered to be hazardous, flammable, noxious, damaging or radioactive, without first submitting written application to Carrier and Carrier's acceptance of the same. In the application, Merchant must identify the nature and specific contents of the Goods with reasonable specificity as well as the names and addresses of the shippers and consignees. Whenever applicable, Merchant must provide Material Safety Data Sheets ("MSDS") for all Goods of a dangerous or hazardous nature.
- b) Merchant shall distinctly and permanently mark the nature and specific contents of the Goods on the outside of the package and Container and shall submit to Carrier or to the appropriate authorities all necessary documents required by law or by Carrier for the transportation of such Goods.
- c) If the Goods subsequently, in the judgment of Carrier, become a danger to any person or property, Carrier, the Vessel, or other cargo, Carrier may dispose of the Goods without compensation to Merchant, and Merchant shall indemnify Carrier for any loss, damages, claims or expenses arising from such action.

14. DECK CARGO (AND LIVESTOCK):

- a) Carrier has the right to carry the Goods in any Container under deck or on deck.
- b) Carrier is not required to note "on deck stowage" on the face of the Bill of Lading and Goods so carried shall constitute under deck stowage for all purposes including the General Average.
- c) Except as otherwise provided by any law applicable to this contract, if the Bill of Lading states that the cargo is livestock, or any other cargo which is to be stowed on deck, then Carrier shall not be liable for any non-delivery, delay or loss to Goods carried on deck, or livestock cargo, whether or not caused by Carrier's negligence or the Vessel's unseaworthiness.

15. RUST, ETC.: It is agreed that superficial rust, oxidation, or any like condition due to moisture, is not a condition of damage but is inherent to the nature of the Goods and acknowledgment of the receipt of the Goods in apparent good order and condition is not a representation that such condition of rust, oxidation, or the like did not exist on receipt.

16. HEAVY LIFT:



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- a) Single packages with a weight exceeding 2,240 pounds gross that are not presented to Carrier in enclosed Containers must be declared in writing by Merchant before receipt of the packages by Carrier. The weight of such packages must be clearly and durably marked on the outside of the package in letters and figures not less than two inches high.
- b) Carrier shall not be responsible for damage or loss caused to precious metals and valuable goods, which may include but shall not be limited to the following: jewelry, precious metals, gems or stones, securities, stocks, currency, heirlooms, other unique documents or any other valuable goods. Carrier shall be relieved of any and all liability with respect to such goods unless Merchant has declared the true nature and value of the goods prior to tendering same to Carrier, has paid the supplementary insurance charge pursuant to 8.1 of the Bill of Lading, and Carrier has agreed to undertake the transportation of the goods.
- c) If Merchant fails to comply with the above provisions, Carrier shall not be liable for any loss of or damage to the Goods, and Merchant shall be liable for any loss of or damage to persons or property resulting from such failure, and Merchant shall indemnify Carrier against any loss, damages, claims or expenses suffered or incurred by Carrier as a result of such failure.

17. DELIVERY:

- a) Carrier shall have the right to deliver the Goods at any time or at any place designated by Carrier within the commercial or geographic limits of the port of discharge or place of delivery shown in the Bill of Lading.
- b) Carrier's responsibility shall cease when delivery has been made to Merchant, any person authorized by Merchant to receive the Goods, or in any manner or to any other person in accordance with the custom and usage of the port of discharge.
- c) If Goods should remain in Carrier's custody after discharge from the Vessel and possession is not taken by Merchant, after notice, within the time allowed in Carrier's applicable tariff, the Goods may be considered to have been delivered to Merchant, and, at Carrier's option, may be stored at Merchant's expense.

18. NOTICE OF CLAIM: Written notice of claims for loss of or damage to Goods occurring or presumed to have occurred while in the custody of Carrier must be given to Carrier at the port of discharge before or at the time of removal of the Goods by any person entitled to delivery. If such notice is not provided, removal shall be prima facie evidence of delivery by Carrier. If such loss or damage is not apparent, Carrier must be given written notice within three days of the delivery or all claims of loss or damage are waived.

19. FREIGHT AND CHARGES:

- a) Freight may be calculated on the basis of the particulars of the Goods furnished by Merchant. Carrier and Merchant agree that it might be difficult or impossible to assess damages if freight is incorrectly declared. Therefore, in case of incorrect declaration of the Goods, Merchant shall pay as liquidated damages a sum equal to three times the difference between the correct weight and the freight charged is -notwithstanding any other sum having been stated herein as freight payable. Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by Carrier to Merchant are for informational purposes only and are subject to change without notice and shall not under any circumstances be binding upon Carrier.
- b) Freight charges shall be deemed earned on receipt of Goods by Carrier, whether the freight charges are intended to be prepaid or collected at destination. Payment shall be in full and in



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cash or by wire transfer to Carrier's receiving bank, in the currency named in the Bill of Lading or another currency at Carrier's option. Interest at the lesser of 18% per annum or the legal maximum shall apply from the date when freight charges are due. If the services of a freight forwarder are used for this transportation, those services shall be deemed to be performed as agent of Merchant and payment of freight charges to the freight forwarder is not payment to Carrier. Full freight charges shall be paid on damaged or unsound Goods. In any referral for collection or action against the Merchant for monies due to Carrier, upon recovery by the Carrier, the Merchant shall pay the expenses of collection and/or litigation, including reasonable attorneys' fees, regardless of whether or not litigation was filed.

- b) Merchant shall be liable for all dues, duties, fines, taxes and charges, including consular fees, levied on the Goods. Merchant shall be liable for return freight and storage or other charges on the Goods if they are refused export or import by any government.
- c) All persons encompassed within the definition of "Merchant" as provided in Section 2 of the Bill of Lading shall be jointly and severally liable to Carrier for the payment of all freight and charges, including advances.
- d) All persons encompassed within the definition of "Merchant" as provided in Section 2 of the Bill of Lading shall jointly and severally indemnify the Carrier for all claims, fines, penalties, damages, costs and other amounts which may be incurred or imposed upon the Carrier by reason of any breach of the Merchant of any of the provisions of the Bill of Lading or of any statutory or regulatory requirements.

20. LIEN: The Carrier shall have a general lien on any and all property (and documents relating thereto) of the Merchant, including but not limited to the Goods and all property in its possession, custody or control or enroute, for all amounts owed to the Carrier in connection with any shipments of any Merchant. If such claim remains unsatisfied for thirty (30) days after demand for its payment is made, the Carrier may sell the Goods at public auction or private sale, or so much as necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of the amount due to Carrier. Any surplus from such sale shall be transmitted to the Merchant, and the Merchant shall be liable for any deficiency in the sale.
21. TIME BAR: The Carrier shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the Carrier within nine (9) 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 contrary to any convention or law, the shortest period prescribed by such convention or law shall then apply, but in that circumstance only.
22. CHOICE OF LAW/VENUE/JURISDICTION: These terms and conditions, and any act or contract to which they apply, shall be governed and interpreted by the laws of the State of Illinois, United States of America, without reference to its conflict of law provisions. The Merchant agrees that any and all legal actions regarding or relating to the Carriage which is the subject of the Bill of Lading shall be exclusively brought in the State or Federal Courts in Cook County, Illinois, United States of America. The Merchant hereby irrevocably agrees that said courts are an appropriate and convenient forum for the resolution of all claims arising in connection with the Bill of Lading or any part of the Carriage which is the subject of the Bill of Lading. The Merchant hereby irrevocably consents to the personal and subject matter jurisdiction of the State and Federal Courts located in Cook County, Illinois, United States of America.



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23. GENERAL AVERAGE:

- a) General Average shall be adjusted at New York, or any other port at Carrier's option, according to the York-Antwerp Rules of 1974. The General Average statement shall be prepared by adjusters appointed by Carrier.
- b) In the event of accident, damage, danger or disaster after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for the consequence of which Carrier is not responsible by statute, contract or otherwise, Merchant shall contribute with Carrier in General Average to the payment of any sacrifice, loss or expense of a General Average nature that may be made or incurred, and shall pay salvage or special charges incurred with respect to the Goods. If a salvaging vessel is owned or operated by Carrier, salvage shall be paid for as fully as if the salvaging vessel or vessels belonged to any non-party.

24. BOTH-TO-BLAME COLLISION CLAUSE: If the Vessel comes into collision with another vessel as a result of negligence of the other vessel and any negligence or fault on the part of Carrier or its servants or subcontractors, Merchant shall indemnify Carrier against all loss or liability to the other or non-carrying vessel or her owners, insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of Merchant paid or payable by the other or non-carrying vessel of her owners to Merchant and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying ship or her owner. This provision shall apply as well 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 with respect to a collision or contact.

25. CARRIER'S TARIFFS: The provisions of the Carrier's applicable tariff, if any, are incorporated herein. Copies of such provisions are obtainable from Carrier or his agents upon request or, where applicable, from a government body with whom the tariff has been filed. In the case of inconsistency between the Bill of Lading, the applicable tariff, and these Terms and Conditions, the Terms and Conditions will prevail.

26. SEVERABILITY: The terms of the Bill of Lading, or these Terms and Conditions, shall be severable, and, if any part or term hereof shall be held invalid, such holding shall not affect the validity or enforceability of any other part or term hereof.

27. HEADINGS NOT BINDING: The use of headings in the Bill of Lading or in these Terms and Conditions are for ease of reference only. Headings shall have no effect and are not considered to be part of or a term of the Bill of Lading.

28. VARIATION OF THE CONTRACT: No employee or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such variation is in writing and is specifically authorized or ratified in writing by an officer of the Carrier.