

CONDITIONS OF CARRIAGE

LAW AND JURISDICTION CLAUSE

The contract evidenced by or contained in this Bill of Lading is governed by the laws of Switzerland, without regard to the conflict of law provisions thereof. Any claim or dispute whatsoever arising under or in connection with this Bill of Lading shall in any case be determined exclusively by the competent courts of Basel-Stadt, Switzerland, and by no other court.

1. DEFINITIONS

Carrier means the Company stated on the front of this Bill of Lading as being the Carrier and on whose behalf this Bill of Lading has been signed. Carrier is an NVOCC.

Merchant includes the shipper, the consignee, the receiver of the Goods, the holder of this Bill of Lading, any person owning or entitled to the possession of the Goods or this Bill of Lading, any person having a present or future interest in the Goods or any person acting on behalf of any of the above persons.

Container includes any container, trailer, transportable tank, lift van, flat, pallet or any similar article of transport used to consolidate Goods and any equipment thereof or connected thereto.

Goods means the cargo, described on the face hereof and, if the cargo is packed into containers, loaded on pallets or unitized into similar articles of transport or otherwise secured in or on behalf of the Carrier, includes such articles of transport as well.

Package means any preparation for transportation whether or not that preparation conceals the Goods.

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

Port to Port Shipment arises where the Place of Receipt and the Place of Delivery are not indicated on the front of this Bill of Lading or if both the Place of Receipt and the Place of Delivery indicated are ports and the Bill of Lading does not in the nomination of the Place of Receipt or the Place of Delivery on the front hereof specify any place or port within the area of the port so nominated.

Shipping Unit includes (customary) freight unit and the term "unit" as used in the Hague Rules or where the Visby Amendments apply compulsorily, in the Hague-Visby Rules.

Sub-contractor includes owners and operators of any vessels, stevedores, terminal and groupage operators, Underlying Carriers, road and rail transport operators, and any independent contractor employed by the Carrier in performance of the carriage.

Underlying Bill of Lading includes any bill of lading (negotiable or non-negotiable), waybill, cargo receipt or other document pertaining to the transportation of the Goods issued by the Underlying Carrier.

Underlying Carrier includes any water, rail, motor, air or other carrier utilised by the Carrier for any part of the transportation covered by this Bill of Lading.

An endorsement on this Bill of Lading that the Goods are **"On Board"** shall mean that the Goods are loaded on board the ocean vessel named in this Bill of Lading, or loaded on board rail cars, trucks, lorries, feeder ships, barges or other means of transportation and are in the custody of an inland or ocean carrier for Through Transportation in accordance with the terms of this Bill of Lading.

2. CARRIER'S TARIFF

The provisions of the Carrier's applicable Tariff, if any, are incorporated herein. Copies of such provisions are obtainable from the Carrier or its agents upon request or, where applicable, from a government body with whom the Tariff has been filed. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

3. NEGOTIABILITY AND TITLE TO THE GOODS

This Bill of Lading shall not be a negotiable document of title unless consigned 'to order', to the order of a named person, or 'to bearer'. If instead consigned directly to a nominated person, delivery may be made, at the sole discretion of the Carrier, to the nominated person only upon proof of identity, as if this Bill of Lading were a waybill. Such delivery shall constitute due delivery hereunder.

4. WARRANTY

The Merchant warrants that in accepting this Bill of Lading and thereby agreeing to its terms and provisions it is or has the authority of the person owning or entitled to the possession of the Goods and this Bill of Lading.

5. SUB-CONTRACTING

In addition to the liberties given to the Carrier under the other clauses hereof it is agreed that 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 under this Bill of Lading to any person or persons and thereby subjecting the Goods to other agreements, including but not limited to the Underlying Bills of Lading, which may, with the full consent of the Merchant, which the Merchant is deemed to have given by accepting this Bill of Lading, lead, or have led, as the case may be, to third parties acquiring rights, defenses and immunities in regard of the Goods, including but not limited to the right to destroy, unload, store in the open or in a warehouse, retain or lien the Goods, without any recourse or remedy unless set out in this Bill of Lading or the Underlying Bill of Lading.

Notwithstanding the foregoing the terms of any Underlying Bill of Lading shall be incorporated herein as if set forth at length (copies of said terms of an Underlying Bill of Lading being available to the Merchant at any office of the Carrier upon request) and the Carrier may avail itself of and invoke any limitation or exclusion of liability, immunity, defence, right or remedy contained in such Underlying Bill of Lading to the extent that the Carrier and the Merchant were the merchant referred to in the Underlying Bill of Lading, save that the Carrier may always in addition thereto in its sole and unfettered discretion and without any prejudice invoke and avail itself of all the provisions of this Bill of Lading and save that the Law and Jurisdiction above shall override any other provisions contained in any Underlying Bill of Lading as to the applicable law and jurisdiction.

Himalaya Clause: The Carrier and its subcontractors and agents are hereby agreed to be bound by the terms and conditions of this Bill of Lading. The Carrier shall be responsible for the acts and omissions of any person of whose services it makes use for the performance of the contract evidenced by this Bill of Lading. The Merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the Carrier, if any claim or allegation should nevertheless be made against any person or vessel other than the Carrier, the Merchant agrees to indemnify and hold harmless the Carrier against all consequences thereof. Without prejudice to the foregoing, all defenses and limitations of the Carrier shall be available to all persons of whose services the Carrier makes use for the performance of this contract. Such persons shall include, but shall not be limited to, the Carrier's servants or agents, the Underlying Carrier, independent contractors, including stevedores, terminal operators, carpenters, lashers, container repairmen, and all other persons of whose services the Carrier makes use to perform this contract. In entering into this Contract, the Carrier, to the extent of these provisions, does not so only release, but also waives or releases for such persons and vessels and such persons and vessels shall to this extent be deemed to be parties of this Contract.

6. METHODS AND ROUTES OF TRANSPORTATION

The Carrier has liberty to deviate for the purpose of saving life or property, to call at any port or ports in or out of the customary or advertised route, in any order whatsoever for the purposes of discharging and loading Goods and/or embarking and disembarking passengers, or taking in fuel or other necessary supplies or for any other purposes whatsoever, to dry-dock with or without Goods on board if thought fit for the purpose of repairs, to sail without pilots, and to tow and assist ships in all situations and circumstances. Any action taken by the Carrier under this clause shall be deemed to be included within the scope of the contractual carriage and such action or delay resulting therefrom shall not be deemed to be a deviation.

The Carrier has the right to carry the Goods under deck or on deck. When the Goods are carried on deck and this is stated on the front page of the Bill of Lading, the Carrier shall be deemed to have agreed to carriage of the Goods on deck. The Carrier shall not be liable in any capacity whatsoever for any non-delivery, mis-delivery, any delay or loss of or damage to the Goods which are carried on deck, whether or not caused by the Carrier's negligence or the vessel's unseaworthiness.

7. DESCRIPTION OF GOODS AND MERCHANT'S PACKING

The Merchant shall be deemed to have guaranteed to the Carrier the accuracy, at the time the Goods were taken in charge by the Carrier, of the description of the Goods, marks, numbers, quantity and weight as furnished by it and the Merchant shall indemnify the Carrier against all loss, damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars.

The Merchant shall be liable for any loss, damage or injury caused by faulty or insufficient packing of Goods or by faulty loading or packing within containers when such loading or packing has been performed by the Merchant or on behalf of the Merchant or by the defect or unsuitability of the containers, when supplied by the Merchant, and shall indemnify the Carrier against any additional expenses so caused.

Containers with Goods packed by the Merchant shall be properly sealed by the Merchant and the seal number shall be communicated in writing by the Merchant to the Carrier.

The term "apparent good order and condition" when used in this Bill of Lading with reference to Goods which require temperature control does not mean when received on deck. The Shipper shall be deemed to have agreed to carriage of the Goods on deck.

The weight of a single piece of package exceeding 1 metric ton gross must be declared by the Merchant in writing before receipt by the Carrier. In case of the Merchant's failure to make such declaration, the Carrier shall not be responsible for any loss of or damage to or in connection with the Goods, and at the same time the Merchant shall be liable for loss of or damage to any property or for personal injury arising out of or resulting from such failure and shall indemnify the Carrier against loss or liability of any kind suffered or incurred by the Carrier as a result of such failure.

8. DANGEROUS GOODS AND CONTRABAND

The Merchant shall comply with rules which are mandatory according to the national law or by reason of international Convention, relating to the carriage of Goods of a dangerous nature, and shall in any case inform the Carrier in writing of the exact nature of the danger, before Goods of a dangerous nature are taken in charge by the Carrier and indicate, if need be, the precautions to be taken.

The Merchant shall be deemed to have agreed to the necessary and reasonable precautions to be taken if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation, and the Merchant shall be liable for all loss, damage, delay or expenses arising out of their being taken in charge, or their carriage, or of any service incidental thereto. The burden of proving that the Carrier knew the exact nature of the danger constituted by the carriage of the said Goods shall rest upon the person entitled to the Goods.

If any Goods shipped with the knowledge of the Carrier as to their dangerous nature shall become a danger to the vehicle or cargo, they may in like manner be unloaded or landed at any place or destroyed or rendered innocuous by the Carrier, without liability on the part of the Carrier, except to General Average, if any.

Whenever the Goods are to be transported or prohibited by any laws or regulations of the port of lading, discharge or call or any place or waters during the carriage, the Carrier shall be entitled to have such Goods rendered innocuous, thrown overboard or discharged or otherwise disposed of at the Carrier's discretion, without compensation and the Merchant shall be liable for and indemnify the Carrier against any kind of loss, damage or liability including loss of freight, and any expenses directly or indirectly arising out of or resulting from such shipment.

9. INSPECTION OF GOODS

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.

10. REGULATIONS RELATING TO GOODS

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 incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods and indemnify the Carrier in respect thereof.

11. PARAMOUNT CLAUSE

The Hague Rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading, dated Brussels, 25th August 1924, or, but only if compulsorily applicable the Hague Visby Rules contained in the Protocol of Brussels, dated February 23rd, 1968, respectively as enacted in Switzerland, or, if the law of a different country is found to be compulsorily applicable, as enacted or applicable in that country shall apply to all carriage of Goods by sea and where no mandatory international or national law applicable to the carriage of Goods by sea, the provisions of the said Convention shall apply to all carriage of Goods whether carried on deck (without prejudice to clause 6.2 above) or under deck including the time following receipt prior to loading and following discharge prior to delivery.

In the case of carriage of goods where the contract evidenced by this Bill of Lading is governed by the Carriage of Goods by Sea Act of the United States approved and amended in 1936 (COGSA), the port of loading or the port of discharge (as is in the case of the Water Carriage of Goods Act of Canada approved August 1st, 1936 (COGWA) (if the port of loading or the port of discharge is in Canada), then the provisions stated in these acts shall apply, respectively, and the Carrier shall have the benefit of any and all rights and defenses and limitations to which it is entitled under COGSA or COGWA, as the case may be, for the time the Goods are in the possession of the Carrier or its subcontractors, including the time following receipt prior to loading and following discharge prior to delivery whether carried on deck (without prejudice to clause 6.2 above) or under deck.

12. CARRIER'S LIABILITY

Port to Port Shipment
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12.2 Combined Transport

Save as otherwise provided in this Bill of Lading, the Carrier shall be liable for loss of or damage to the Goods occurring between the time it takes the Goods into its charge and the time it delivers the Goods for its charge.

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a) an act or omission of the Merchant or person other than the Carrier acting on behalf of the Merchant or from whom the Carrier took the Goods in its charge;

b) insufficiency or defective conditions of the packing or marks and/or numbers;

c) handling, loading, stowage or unloading of the Goods by the Merchant or any person acting on behalf of the Merchant;

d) inherent vice of the Goods;

e) strike, lockout, stoppage or restraint of labour;

f) a nuclear incident if the operator of a nuclear installing or a person acting for it is liable for this damage under an applicable international Convention or national law governing liability in respect of nuclear energy;

g) any cause or event which the Carrier could not avoid or the consequences thereof it could not prevent by the exercise of reasonable diligence.

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