# Danzas Corporation Bill of Lading
# Terms and conditions

## 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

**Carrier** means the legal entity stated on the front of this bill of lading on whose behalf this bill of lading has been signed.

**Carrier's Agent** means a person acting on behalf of the Carrier, including any members of the Carrier Group, which arranged the Services and/or issued this bill of lading.

**Carrier Group** means those companies ultimately owned in whole or controlled by Deutsche Post AG.

**Container** includes any container, trailer, transportable tank, flat or pallet, or any similar article used to consolidate the Goods.

**Container Equipment** means any bladders, wooden platforms or equipment fitted in a Container or connected thereto or any hanging rails, frames or bars or equipment in the Container.

**Controlled Item** means any goods, including software and technology, that are subject to prohibitions, license requirements or any other restrictions under any Trade Laws, such as military or dual-use items.

**Denied Party** means any person or entity listed on any applicable Sanctions lists as a denied or restricted party.

**Freight** includes all charges payable to the Carrier or any member of the Carrier Group or Carrier's Agents in accordance with an applicable tariff or this bill of lading.

**Goods** means the whole or any part of the cargo, described on the front of this bill of lading and includes any packaging or Container not supplied by or on behalf of the Carrier.

**Hague Rules** means the provisions of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924.

**Liabilities** include any and all claims, demands, losses, damages, liabilities, fines, penalties, costs.

**Merchant** includes the Shipper, Consignee, holder of this bill of lading, the receiver of the Goods and any person owning, entitled to or claiming the possession of the Goods or of this bill of lading or anyone acting on behalf of such person.

**Non US Carriage** means any element of the Services which is not US Carriage.

**Package** means the number of packages stated on the front of this bill of lading.

**Relevant Authority** means any customs authority, customs inspection stations, port and harbour authorities and any other authorities having legal jurisdiction over any element of the Services and/or the Goods.

**Sanctions** means any sanction, prohibition or restriction imposed by any state, country, supranational or international governmental organisation or other relevant authority.

**SDR** means Special Drawing rights as defined by the International Monetary Fund.

**Services** means the whole or any part of the loading, packing, stuffing, transporting, carriage, unloading, unpacking, de-stuffing, storage, warehousing and handling of the Goods, any value added services and any other operations and services of whatsoever nature undertaken by or performed by or on behalf of the Carrier in relation to the Goods and related documentary, customs and information technology processes (including DHL Ocean Secure).

**SOLAS** means the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the SOLAS Guidelines, as amended from time to time.

**SOLAS Guidelines** means the Guidelines regarding the verified gross mass of a container carrying cargo (MSC.1/Circ.1475) published by the International Maritime Organization.

**Sub-contractor** includes owners, charterers and operators of Vessels (other than the Carrier), stevedores, terminal and/or groupage operators, road, rail and air transport operators, forwarding agents, liner agents, customs brokers, warehousemen, longshoremen, and any independent contractors, servants or agents employed by the Carrier in performance of the Services and any direct or indirect sub-contractors, servants or agents thereof, whether in direct contractual privity with the Carrier or not.

**Trade Laws** means all applicable export control, Sanctions, customs laws and regulations and other applicable regulatory requirements and restrictions subject to controls by customs or competent authorities in conjunction with the import, export, re-export, transfer, transit, transshipment, transportation, supply, routing, end-use, end-user or final destination of the Goods, including software and technology.

**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 a Sub-contractor to govern its carriage obligations.

**US Carriage** means any carriage to, from and/or through the jurisdiction of the U.S.A.

**US COGSA** means the United States Carriage of Goods by Sea Act 16 April 1936.

**Vessel** means any waterborne craft used in the performance of the Services under this bill of lading including but not limited to ocean vessels, feeder vessels, barges and inland water vessels whether named in the bill of lading or substituted vessels.

1.2. A **person** includes a reference to a government, state, state agency, corporation, body corporate, association or partnership.

1.3. Any words following the word **including** shall be interpreted without limitation to the generality of the preceding words.

## 2. ABOUT THIS BILL OF LADING

2.1. This bill of lading is not a negotiable document of title unless consigned "to order", to the order of a named person, or "to bearer".

2.2. Request for substitute bills may only be made by the lawful holder of an original bill of lading who at the material time holds the full set of original bills of lading. The Carrier will only issue substitute bills of lading at its sole discretion and subject to the person making the request providing the Carrier with (i) the full set of the original bills of lading and (ii) a full indemnity issued by a first class bank acceptable to the Carrier for all and any liability and expenses arising out of the request for substitute bills.

2.3. This bill of lading is only *prima facie* evidence of the particulars of the Cargo received which the Carrier had reasonable means of checking.

2.4. In addition to being able to rely on this bill of lading, the Carrier has, absent Compulsory Legislation providing otherwise, the right to avail itself of and invoke any limitation or exclusion of liability, immunity, defence, right, remedy and/or law and jurisdiction clause contained in any Underlying Bill of Lading as if the Carrier were the carrier referred to in the Underlying Bill of Lading (copies of said terms of an Underlying Bill of Lading being available to the Merchant at any office of the Carrier upon request).

## 3. MERCHANT'S WARRANTIES AND RESPONSIBILITIES

3.1. The Merchant warrants that:

3.1.1 in accepting this bill of lading and agreeing to the terms of this bill of lading it is, or is the agent of and has the authority of, the person owning or entitled to the possession of the Goods and this bill of lading or of the person who is or may become interested in the Goods and this bill of lading;

3.1.2 any and all information provided by Merchant to Carrier is true, complete and accurate, including the description and particulars of the Goods, and that the marks, numbers, quantity and weight as set out on the front of this bill of lading (i) have been checked by the Merchant on receipt of this bill of lading and (ii) are full and accurate;

3.1.3 the Goods contain no drugs, prohibited or stolen goods, contraband or other illegal material or substance or stowaways;

3.1.4 the receipt, carriage or the delivery of the Goods will not expose the Carrier to any claim for a violation or infringement of any third party intellectual property rights;

3.1.5 the Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked by or on behalf of the Merchant, and the preparation, packing, stowage, labelling and/or marking are appropriate to the carriage and any operations or transactions that may affect the Goods and are in compliance with all applicable laws;

3.1.6 neither the receipt, carriage, delivery nor the import of the Goods (including any insurance arranged by or on behalf of the Carrier) nor any payment or other transaction relating to the Goods or this bill of lading will or might expose the Carrier, the Carrier's Agent, the Sub-contractors or any of their employees, servants, agents, insurers or reinsurers to any Sanctions (or any risk of sanction, prohibition or penalty) whatsoever imposed by any state, country, international governmental organisation or other relevant authority;

3.1.7 neither Merchant, nor it's holding company, agents, or affiliates, or any other third party directly or indirectly contracted by Merchant, are listed as Denied Party;

3.1.8 the Goods do not include a Prohibited Item, the possession, carriage, importation or exportation of which violates any applicable law, including without limitation, any Trade Laws; and

3.1.9 the Goods will have all permits, licences and other documentation necessary to comply with all applicable laws and all regulations or requirements of any Relevant Authority relating to the Goods.

3.2. The Merchant shall, and shall ensure that any person acting on its behalf, comply with all applicable laws, regulations or requirements of any Relevant Authority relating to the Goods, and the provisions of all licences, permits, consents and directions given by any Relevant Authority in respect of the Goods, including all Trade Laws.

3.3. If Carrier believes, in its sole discretion, that providing the Services will cause a violation of any Trade Laws, Carrier has the right to refuse, without penalty or liability, to provide the Services.

3.4. The Merchant shall be responsible, and reimburse the Carrier, for all duties, taxes, imposts, levies, deposits, fines and outlays of whatever nature levied by any Relevant Authority and/or any expenses incurred in complying with the requirement of any Relevant Authority in relation to the Goods or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods.

3.5. All of the persons who fall within the definition of Merchant in clause 1.1 are jointly and severally liable to the Carrier for all the Merchant's warranties, undertakings, obligations and liabilities under or in connection with this bill of lading.

3.6. Merchant accepts and is responsible to: (i) export classify the goods under the Services provided by Carrier; (ii) notify Carrier if the shipment contains Controlled Items; (iii) provide to Carrier the export control classification and authorization information (e.g. license, permit, exception, etc.) for the Controlled Items, including copies thereof; (iv) ensure the authenticity of any documents provided by Merchant to Carrier and (iv) inform Carrier of any special routing or other conditions for Controlled Items that apply, prior to shipment.

## 4. THE GOODS

4.1. **Dangerous goods** - The Merchant will not tender Goods which are or may become dangerous, hazardous, noxious (including radioactive materials), inflammable, explosive, or which do or may present a risk of damage to any property or person whatsoever (**Dangerous Goods**) unless the Merchant, or someone acting on its behalf, gives the Carrier written notice of the nature of the Dangerous Goods prior to the Carrier's receipt of the Goods and the Carrier expressly accepts in writing to deal with the Dangerous Goods. The Merchant's notice will include all information necessary for the Carrier to perform its obligation in connection with the Dangerous Goods in accordance with all applicable laws, regulations or requirements (or any combination of the foregoing), including without limitation information about the characteristics of the Dangerous Goods, the appropriate manner and method of storage, handling and transportation of the Dangerous Goods. The Dangerous Goods must be distinctly marked on the outside so as to indicate the nature and characteristics of the Dangerous Goods and so as to comply with all applicable laws, regulations and requirements. Additional charges may apply to the handling of Dangerous Goods. If any Dangerous Goods are tendered in breach of any of the provisions of this clause, they may at any time or place be unloaded, destroyed, disposed or, abandoned or rendered harmless, as circumstances may require, at the Merchant's cost and without compensation to the Merchant and without prejudice to the Carrier's right to the Freight.

4.2. **Goods requiring temperature/environmental control** - The Merchant will not tender Goods which require temperature, ventilation or any other kind of environmental control (**Special Control**) unless the Merchant, or someone acting on its behalf, gives the Carrier notice of the Special Control requirement prior to the Carrier's receipt of the Goods and the Carrier expressly accepts in writing to deal with such Goods. The Merchant's notice will include the nature of the Goods, the particular temperature range, ventilation or other special controls to be maintained. The Merchant undertakes that any Container loaded by or on behalf of the Merchant has, where appropriate, been properly pre-cooled or ventilated and its thermostatic or other controls have been properly set before receipt of the Container of Goods by the Carrier. If the above requirements are not complied with the Carrier shall not be liable for any loss or deterioration of or damage to the Goods caused by the Goods not being at the required temperature or properly ventilated or in the required environment. The Carrier shall not be liable for any loss of or damage to the Goods arising from defects in or failure, breakdown, stoppage of the temperature controlling, ventilating or any other specialised machinery, plant, installation or any apparatus of any Container or Vessel, provided that when the Container is supplied by the Carrier, the Carrier has exercised reasonable care to maintain the Container. The Merchant's attention is drawn to the fact that refrigerated Containers are not designed to freeze down or cool down Goods which have not been presented for stuffing at or below their designated carrying temperature, nor are they designed to control humidity levels. The term "apparent good order and condition" when used in this bill of lading with reference to Goods which require Special Control does not mean that the Goods when received were verified by the Carrier as being at the designated carrying temperature, or properly ventilated or in the required environment.

4.3. **Deck cargo** - The Carrier has the right to carry the Goods, whether packed in Containers or not, under deck or on deck without notice to the Merchant. If the Goods are carried on deck, the Carrier shall not be required to note, mark or stamp on the bill of lading any statement of such on deck carriage. All Goods whether carried on deck or under deck shall participate in General Average. Goods carried on deck and which are not stated on the front of this bill of lading to be carried on deck shall be subject to the same liability regime for loss or damage or delay as Goods shipped under deck. Goods which are stated on the front of this bill of lading to be carried on deck, and which are actually carried on deck, are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during carriage of Goods by sea or inland waterway howsoever caused, whether caused by negligence or any other cause whatsoever.

4.4. **Inspection of Goods and provision of information** - The Carrier or any person authorised by the Carrier shall be entitled, but under no obligation, to open any Container or package at any time and to inspect the Goods, and the Carrier is entitled to access any data or information about the Goods contained in any electronic storage medium. The Carrier shall not be responsible for any delay or damage caused as a result of that inspection. Where data or information is protected by a password, details of that password shall be provided to Carrier by the Merchant on request. The Merchant agrees to provide the Carrier immediately on request with full information about the nature of the Goods and their intended use, as well as the identities of all parties which have any legal, financial or commercial interest in the Goods.

## 5. CONTAINERS

5.1. Supply of Containers and Container Equipment by or on behalf of Carrier

5.1.1 The terms of this bill of lading shall govern the responsibility of the Carrier in connection with or arising out of the supply of a Container and/or any Container Equipment to the Merchant.

5.1.2 The Merchant, or a person acting on its behalf, shall inspect Containers and any Container Equipment before it is stuffed, packed, filled or loaded, and the use of Containers and any Container Equipment shall be prima facie evidence of the Containers and any Container Equipment being sound and suitable for use.

5.1.3 If Containers supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the Containers, including any Container Equipment, empty, with interiors brushed and clean, odour free and undamaged to the point or place designated by the Carrier, his servants or agents, within the time prescribed by the Carrier. Should a Container and/or the Container Equipment not be returned within the time so prescribed, the Merchant shall be liable for any detention, loss or expenses (as set out in the agreement between the Carrier and the Merchant if any, or where there is no such agreement, the detention, loss or expenses payable under this clause will be as charged to the Carrier by the relevant Sub-contractor) which may arise from such non-return.

5.1.4 The Merchant shall be responsible for any loss of, damage to, contamination or soiling of any Container and/or any Container Equipment supplied by or on behalf of the Carrier.

5.2. Merchant packed Containers

5.2.1 If a Container has not been stuffed, packed, filled or loaded by the Carrier (**Merchant Packed Container**), the Carrier shall not be liable for loss or damage to the Goods caused by (a) the manner in which the Container has been stuffed, packed, filled or loaded; (b) the unsuitability of the Goods for carriage in the Container used; or (c) the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of Carrier, this clause 5.2.1 shall only apply if the unsuitability or defective condition would have been apparent upon reasonable inspection by the Merchant before or when the Container was stuffed, packed, filled or loaded.

5.2.2 The Merchant shall ensure that all Merchant Packed Containers are properly sealed by the Merchant and the seal number shall be communicated in writing by the Merchant to the Carrier. If a Merchant Packed Container is delivered by the Carrier with an original seal intact, the Carrier shall not be liable for any shortage of Goods ascertained at delivery.

5.3. SOLAS verified gross mass requirements

5.3.1 Merchant shall provide Carrier with the total gross mass established using calibrated and certified equipment of each packed Container (FCL) or each package of Goods (LCL) carried pursuant to this bill of lading in accordance with SOLAS and the deadlines established by Carrier. Merchant acknowledges and agrees that Carrier will rely on the accuracy and timeliness of such gross mass information and will use this to comply with its obligations to Sub-contractors in accordance with SOLAS.

5.3.2 In the event of any non-compliance by Merchant with clause 5.3.1 or where Carrier reasonably believes the verified gross mass information provided by or on behalf of Merchant is inaccurate or incomplete, Carrier may, at its discretion and without notice to the Merchant, elect to:

(a) establish the total gross mass at Merchant's cost and risk, and as the Merchant's agent, using calibrated and certified equipment of each packed Container (FCL) or each package of Goods (LCL) carried pursuant to this bill of lading in accordance with SOLAS and the deadlines established by Carrier shall apply or

(b) without liability to Merchant refuse to load the Goods (if the Goods are not yet loaded) or, if the Goods are loaded, arrange at Merchant's cost and risk for the Goods to be landed and stored, and such landing and storage shall be deemed to constitute due delivery of the Goods under this bill of lading.

## 6. PERFORMANCE OF THE SERVICES

6.1. Liberties

6.1.1 The Carrier may at any time and without notice to the Merchant:

(a) use any means of transport or storage whatsoever in the performance of Services;

(b) transfer the Goods from one conveyance to another, including transshipping or carrying them on a Vessel other than that named on the front of this bill of lading;

(c) 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;

(d) 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 temporarily at any place or port whatsoever, once or more often and in any order;

(e) comply with any orders or recommendations given by any government or Relevant Authority, or any person acting or purporting to act as or on behalf of such government or Relevant Authority.

6.1.2 The liberties set out in clause 6.1.1 may be invoked by the Carrier for any purpose whatsoever and whether or not connected with the Services, included loading or unloading other goods, undergoing repairs, towing or being towed, adjusting instruments, drydocking and assisting vessels in all situations. Any action taken by the Carrier under clause 6.1 shall be deemed to be included within the scope of the Services and such action or delay resulting therefrom shall not be deemed to be a deviation.

6.2. Consolidation

6.2.1 Carrier may stuff, pack, fill or load Goods in or on Containers and consolidate Goods owned by different persons.

6.2.2 Goods stuffed, packed, filled or loaded into one Container and consigned to one person will only be delivered in a Container to the Merchant if all bills of lading in respect to the contents of the Container have been surrendered authorising delivery to a single Merchant at a single place of delivery. The Carrier may at its option unpack the Container and in respect of Goods for which bills of lading have been surrendered, deliver them to the Merchant on a less than container load (LCL) basis against payment by the Merchant of Freight relating to the LCL Goods together with all costs incurred for any additional services rendered. Such delivery shall constitute full delivery hereunder.

6.3. Notification and delivery

6.3.1 Any mention herein of parties to be notified of the arrival of the Goods is solely for the benefit of the Carrier, and failure to give such notification shall not result in the Carrier incurring any liability nor shall it relieve the Merchant of any obligation under this bill of lading.

6.3.2 The Goods may be discharged, without notice, as soon as the Vessel is ready to unload, continuously day and night, Sundays and holidays included. If the Merchant fails to take delivery of the Goods immediately after the Vessel is ready to discharge them, the Carrier shall be at liberty to store the Goods, in a warehouse or in the open, at the risk and expense of the Merchant.

6.3.3 If the Goods are unclaimed within 7 days from discharge of the Goods from the Vessel, or whenever in the Carrier's judgment the Goods will deteriorate, decay, be damaged or incur charges, the Carrier may, at its discretion without further notice to the Merchant and without any responsibility attaching to it, sell, abandon or otherwise dispose of the Goods solely at the risk and expense of the Merchant and apply any proceeds of sale in reduction of the sums due to the Carrier by the Merchant.

6.4. Matters affecting the performance of the Services

6.4.1 If at any time the performance of the Services is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind (including the condition of the Goods or an Underlying Carrier becoming insolvent) which cannot be avoided by the exercise of reasonable effort, the Carrier may, without notice to the Merchant and whether or not the Services have commenced, elect to either:

(a) treat the performance of the Services as terminated and place the Goods at the Merchant's disposal at any place which the Carrier shall deem safe and convenient, whereupon delivery shall be deemed to have been made and the responsibility of the Carrier in respect of such Goods shall cease; or

(b) without prejudice to the Carrier's continuing right to abandon the Services under clause 6.4.1(a) continue with the carriage of the Goods to the place designated for delivery.

In any event the Carrier shall be entitled to full Freight for Goods received for Services and additional compensation for any extra costs resulting from the circumstances referred to above in clause 6.4.1.

## 7. CARRIER'S AGENT AND SUB-CONTRACTING

7.1. By accepting this bill of lading, the Merchant confirms and agrees that any Carrier's Agent acts as an agent only.

7.2. In addition to the liberties given to the Carrier under the other provisions of this bill of lading, it is agreed that the Carrier shall be entitled to sub-contract the whole or any part of the Services on any terms whatsoever.

7.3. The Merchant undertakes that no claim or allegation in respect of the Goods and/or Services whether arising in contract, bailment, tort or otherwise shall be made against any Carrier's Agent or Sub-contractor. If any claim or allegation should nevertheless be made against any Carrier's Agent or Sub-contractor, the Merchant agrees to indemnify and hold harmless the Carrier against all consequences thereof.

7.4. Without prejudice to the generality of clause 7.3, and other any rights, duties and defences hereunder, all Carrier's Agents and Sub-contractors, for whom Carrier contracts as agent and/or trustee to the extent of these provisions, shall be entitled to all defences, exemptions, immunities, limitations, liberties and rights of the Carrier, including the right to enforce any law and jurisdiction clause.

7.5. The Merchant further undertakes that no claim or allegation in respect of the Goods and/or Services shall be made against the Carrier by any person other than in accordance with the provisions of this bill of lading.

## 8. CARRIER'S LIABILITY

8.1. The Carrier's liability in respect of any loss of or damage to the Goods or delay in the performance of the Services shall be determined and limited in accordance with the provisions of this clause 8 unless:

8.1.1 in the case of US Carriage, an international convention or national law (including US COGSA) compulsory applies (**US Compulsory Legislation**), in which case the liability of the Carrier will be determined and limited in accordance with the provisions of such US Compulsory Legislation;

8.1.2 in the case of Non US Carriage an international convention or national law applies compulsory to any element of the Services (**Non US Compulsory Legislation**), in which case the liability of the Carrier in relation to that element of the Services will be determined and limited in accordance with the provisions of such Non US Compulsory Legislation;

8.1.3 and US Compulsory Legislation and Non US Compulsory Legislation are hereinafter referred to as **Compulsory Legislation**.

8.2. Liability for Goods lost or damaged where no Compulsory Legislation applies

8.2.1 The provisions of (i) Article 4(1) of the Hague Rules for Non US Carriage, and (ii) 28 USC 1304(1) of US COGSA for US Carriage, will apply to the carriage of Goods by sea or inland waterways.

8.2.2 The Carrier shall not be responsible for loss or damage arising or resulting from:

(a) subject to clause 8.2.4, any of the perils listed in (i) Article 4(2) of the Hague Rules for Non US Carriage and (ii) 28 USC 1304(2) of US COGSA for US Carriage;

(b) breach of any of the provisions of this bill of lading by the Merchant;

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

(d) a nuclear incident if the operator of a nuclear installation 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.

8.2.3 When the Carrier establishes that the loss or damage could be attributed to one or more of the causes or events specified in clause 8.2.2(a) to 8.2.2(d), it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of these causes or events.

8.2.4 The perils listed in (i) Articles 4.2(a), (c) and (l) of the Hague Rules for Non US Carriage and (ii) 28 USC 1304 (2)(a)(c)(l) of US COGSA for US Carriage will only apply to the carriage of Goods by sea or inland waterways.

8.2.5 **Non US Carriage** – For carriage which is between the Port of loading and the Port of discharge only, the Carrier shall have no responsibility for loss or damage to the Goods until they are loaded on board the Vessel and it shall cease to have any responsibility for any loss or damage to the Goods once they have been discharged from the Vessel.

8.3. Amount of compensation

If the Carrier is liable for loss of or damage to the Goods the liability of the Carrier shall be limited to the lesser of:

8.3.1 the arrived sound market value of only those Goods damaged or lost (excluding insurance); and

8.3.2 for Non US Carriage to which Compulsory Legislation applies, the amount set out in such Compulsory Legislation;

8.3.3 for Non US Carriage to which no Compulsory Legislation applies, 2SDRs per kilo;

8.3.4 for US Carriage, US$500 per Package or per the freight unit billed for Goods not packaged.

8.4. Ad valorem

Where the Shipper has declared a value for the Goods and the Carrier has stated such value on the front of this bill of lading as a "declared value", and provided the Shipper has paid the extra freight, the amount of the declared value shall be substituted for the limits laid down in this bill of lading. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

8.5. Cargo insurance

Where the Merchant has requested insurance for the Goods and the Carrier has agreed in writing to provide such insurance, the Carrier agrees to effect such insurance as agent for the Shipper and such insurance shall be subject to the exceptions and conditions of the policies of the insurers or underwriters taking the risk, copies of which are available on request. Subject to any Compulsory Legislation, the Carrier shall have no liability for loss or damage to the Goods where insurance has been effected under this clause.

8.6. Liability for delay

Arrival times are not guaranteed by the Carrier and the Carrier shall, under no circumstances, have any liability whatsoever for any loss or damage caused by delay. Without prejudice to the foregoing, if the Carrier is nevertheless found liable for loss or damage caused by delay, the Carrier's liability in respect of the same shall be subject to the limit of liability contained in clause 8.7.3.

8.7. General liability provisions

8.7.1 Statutory protection

Nothing in this bill of lading shall operate to limit or deprive the Carrier of any statutory protection, defence, exception or limitation of liability authorised by any applicable laws, statutes or regulations of any country. The Carrier shall have the full benefit of the all laws, statutes or regulations as if it were the owner of any carrying Vessel.

8.7.2 Exclusion of certain losses

Subject to any Compulsory Legislation, the Carrier shall have no liability whatsoever for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation or third party claims (in each case whether direct or indirect) or for any indirect or consequential loss.

8.7.3 Overall liability cap

Subject to any Compulsory Legislation, the Carrier's maximum aggregate liability for all events which occur under this bill of lading (other than loss or damage to Goods) will be limited to an amount equal to the Freight paid.

8.7.4 Notification of claims and time bar provisions

8.7.5 Subject to any Compulsory Legislation:

(a) the Carrier shall be deemed prima facie to have delivered the Goods undamaged and in full unless notice of loss of or damage to the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier or to its representative at the place of delivery before or 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;

(b) in any event the Carrier shall be discharged of all liability under this bill of lading unless suit is brought within 9 months after the delivery of the Goods or the date when the Goods should have been delivered.

8.7.6 Application of defences, limits and exclusions of liability

The defences, limits and exclusions of liability provided for in this bill of lading shall apply in any action against the Carrier arising out in connection with this bill of lading (including loss or damage to Goods and delay) and whether the action be founded in contract, bailment, tort, breach of express or implied warranty or otherwise and even if the loss, damage or delay arose as a result of unseaworthiness, negligence, wilful misconduct or fundamental breach of contract.

8.7.7 Entire liability

Save as set out in clause 8 the Carrier shall not be liable for loss of or damage to any Goods or delay howsoever arising (whether caused by negligence or otherwise).

## 9. INDEMNITY

9.1. The Merchant shall promptly indemnify the Carrier, the Sub-contractors, the Carrier's Agents or any member of the Carrier Group, their respective employees, servants, agents, insurers or reinsurers against all costs (including the costs of investigating and defending any claims), expenses, claims, losses, liabilities, orders, awards, fines, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered as a result of or in connection with any of the following:

9.1.1 any breach by the Merchant of any of the warranties or undertakings given or obligations undertaken by the Merchant under this bill of lading;

9.1.2 any breach by the Merchant of any of the provisions of clauses 4 or 5.2.2;

9.1.3 any cause arising from or with respect to the Goods for which the Carrier is not responsible for;

9.1.4 the Carrier becoming liable to any other party (including to a Relevant Authority) and/or incurring additional costs by reason of the Carrier carrying out the Merchant's instructions;

9.1.5 the Carrier incurring liability in excess of its liability under the provisions of this bill of lading regardless of whether such liability arises from, or in connection with a breach of contract, negligence or breach of duty by the Carrier, its agents, servants or Sub-contractors.;

9.1.6 delayed, inaccurate or incomplete verified gross mass information provided by or on behalf of the Merchant under clause 5.3.1 on which the Carrier relies.

## 10. GENERAL AVERAGE

10.1. The Carrier may declare General Average which shall be adjustable at any place at the option of the Carrier, in respect of all Goods, whether carried on or under deck. The New Jason Clause as approved by BIMCO current as of the date of the bill of lading is incorporated herein.

10.2. Notwithstanding clause 10.1 above, the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claim (and any expense arising therefrom) of General Average nature which may be made on the Carrier and shall provide such security as may be required by the vessel owner or the Carrier to cover the estimated contribution of the Goods and any salvage and special or particular charges thereon. Such security shall if required be submitted to the vessel owner prior to delivery of the Goods.

10.3. The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

## 11. BOTH-TO-BLAME COLLISION

If a Vessel on which the Goods are being carried collides with another ship as the result of (i) the negligence of that other ship, and (ii) any act, neglect or default of the master, mariner, pilot of the Vessel (or other servant of the owner or operator of the Vessel) in the navigation or management of the Vessel, and the Merchant recovers payment for loss of or damage to the Goods from the other ship, and the other ship obtains from the Carrier (or its Sub-contractor) a contribution towards the payment it made to the Merchant, then the Merchant will reimburse the Carrier in respect of that contribution and shall indemnify the Carrier for any other loss, liability or expenses incurred by the Carrier (or the Sub-contractor) to the other ship whatsoever arising out of the other ship's claim for contribution.

## 12. FREIGHT AND CHARGES

12.1. Freight shall be deemed earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event, ship lost or not.

12.2. The Freight has been calculated on the basis of particulars furnished by or on behalf of the Merchant. If the particulars furnished by or on behalf of the Merchant are incorrect, it is agreed that a sum equal either to (i) five times the difference between the correct Freight and the Freight charged or (ii) double the correct freight less the freight charged, whichever sum is the smaller, shall be payable as liquidated damages to the Carrier notwithstanding any other sum having been stated on this bill of lading as the Freight payable.

12.3. The Merchant shall reimburse the Carrier in proportion to the amount of freight for any costs for deviation or delay or any other increase of costs of whatever nature caused by war, warlike operations, epidemics, strikes, government directions or any event beyond the control of the Carrier.

12.4. All sums payable to the Carrier are due on demand. All Freight shall be paid by the Merchant to the Carrier or any member of the Carrier Group or Carrier's Agents without any set-off, counterclaim (unless the counterclaim is not in dispute or confirmed by final court decision), deduction or stay of execution at the latest before delivery of the Goods, unless expressly agreed otherwise in writing.

12.5. If the Merchant fails to pay the Freight when due, the Merchant shall pay to the Carrier interest on such sum at 8% over the Bank of England's official Bank Rate from time to time from the due date until payment (whether before or after judgment), such interest to accrue on a daily basis provided that this right shall not prejudice any other right or remedy in respect of any such sum.

12.6. Despite the acceptance by the Carrier of instructions to collect Freight, duties, fees, demurrage, detention and costs and expenses from the shipper, consignee or any other person, then in the absence of any evidence of payment for whatever reason by such shipper, consignee or person when due, the Merchant shall remain responsible for the payment of such duties, fees, demurrage, detention and costs and expenses.

## 13. LIEN

13.1. The Carrier shall have a general lien on the Goods and any documents relating thereto, funds held and any other goods in respect of which the Carrier is providing services to the Merchant (Other Goods) and any documents relating thereto for all sums whatsoever due at any time to the Carrier under this bill of lading, or otherwise, and for General Average contributions to whomsoever due.

13.2. The Carrier shall also have a general lien against the Merchant on the Goods and any documents relating thereto, funds held and Other Goods and any documents relating thereto for all sums due from the Merchant to the Carrier's Agents and/or any member of the Carrier Group under any other contract.

13.3. The Carrier may exercise its lien at any time and at any place in its sole discretion, whether the Services are completed or not with or without further notice. In any event any lien shall (a) survive the delivery of the Goods and/or the Other Goods and (b) extend to cover the cost of enforcing its lien and recovering any sums due.

13.4. To enforce and satisfy the Carrier's lien, the Carrier shall have the right, at the Merchant's expense, to sell the aforementioned Goods, Other Goods and documents by public auction or private treaty, without notice to the Merchant and without any liability towards the Merchant.

## 14. LAW AND JURISDICTION

14.1. **Non US Carriage** - The contract evidenced by or contained in this bill of lading or otherwise arising from the Services or in relation to the Goods shall be governed by and construed in accordance with the laws of England. Any claim against the Carrier under this bill of lading or otherwise arising from the Services or in relation to the Goods shall be determined exclusively by the courts of England to which jurisdiction the Merchant hereby irrevocably submits. The Merchant agrees that it shall not institute legal proceedings in any other court and shall indemnify the Carrier for all legal costs and expenses incurred by the Carrier to stay or remove a suit files in another forum. The Carrier shall be entitled to bring any legal proceedings against Merchant in the courts of England or in any other jurisdiction (including jurisdiction(s) where Merchant has a place of business or assets) and legal proceedings by the Carrier in any one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether concurrent or not.

14.2. **US Carriage** - The contract evidenced by or contained in this bill of lading or otherwise arising from the Carriage or in relation to the Goods shall be governed by and construed in accordance with the laws of the United States of America and particularly 28 USC Section 1300 et seq. of US COGSA. Any claim against the Carrier under this bill of lading or otherwise arising from or in relation to the Services or the Goods shall be determined exclusively by the United States District Court for the Southern District of New York to whose jurisdiction the Merchant irrevocably submits. The Merchant agrees that it shall not institute legal proceedings in any other court and shall indemnify the Carrier for all legal costs and expenses incurred by the Carrier to transfer or to remove a suit filed in another forum.

## 15. CONFLICT AND ENFORCEABILITY

Except where expressly agreed otherwise in writing, this bill of lading shall, in so far as it is inconsistent with the terms of any contractual arrangement the Carrier, or any member of the Carrier Group, and the Merchant may have entered into, be paramount and govern the Services. If any provision of this bill of lading is held unenforceable, that provision shall, to the extent required, be deemed not to form part of this bill of lading and shall not affect the enforceability of all other terms hereof which shall be enforced to their fullest extent to the limits imposed by law.

## 16. VARIATION OF THE CONTRACT AND PARTIAL INVALIDITY

16.1. No servant or agent of the Carrier shall have 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.

16.2. If any provision in this bill of lading is held to be invalid or unenforceable such invalidity or unenforceability shall attach only to such provision. The validity of the remaining provisions shall not be affected thereby and this bill of lading contract shall be carried out as if such invalid or unenforceable provision were not contained herein.

## 17. THIRD PARTY ACT

Where clause 14.1 applies, the Sub-contractors shall have the benefit of clause 2.4 and all the liability provisions, warranties, indemnities, limitations and exclusions of liability contained in this bill of lading and which benefit the Carrier and shall have the right to enforce the provisions of this bill of lading in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this clause, any person who is not either the Carrier or the Merchant may not enforce, or otherwise have the benefit of, any provision of this bill of lading.