

1. DEFINITIONS

"Carrier" means the party on whose behalf this Bill of lading has been signed.
"Goods" means the cargo accepted from the Shipper and includes any Container not supplied by or on behalf of the Carrier.

"Container" includes any container, trailer, transportable tank, flat or pallet.
"Merchant" includes the Shipper, Holder, Consignee, the receiver of the Goods, any person owing or entitled to the possession of the Goods or this Bill of Lading and anyone acting on behalf of such persons.
"Holder" means any person for the time being in possession of this Bill of Lading to whom the property in the Goods has passed or by reason of the consignment of the Goods or the endorsement of this Bill of Lading or otherwise.

References to the internal law of a State shall be deemed to exclude all principles of private international law applied by such State.

2. CARRIER'S TARIFF

The terms of the Carrier's applicable Tariff are incorporated herein. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier upon request. In the case of inconsistency between this Bill of Lading and the applicable Tariff this Bill of Lading shall prevail.

3. WARRANTY

The Merchant warrants that in agreeing to the terms hereof he is or has the authority of the person owning or entitled to the possession of the Goods and this Bill of Lading.

4. SUB-CONTRACTING

(1) 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 or all duties whatsoever undertaken by the Carrier in relation to the Goods.

(2) The Merchant undertakes that no claim or allegation shall be made against any servant, agent or sub-contractor of the Carrier which imposes or attempts to impose upon any of them or any vessel owned by any of them any liability whatsoever in connection with the Goods and if any such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent and sub-contractor shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit and in entering into this contract, the Carrier, to the extent of those provisions, does so not only on its own behalf, but also as agent and trustee for such servants agents and sub-contractors.

(3) The expression "sub-contractor" in this clause shall include direct and indirect sub-contractors and their respective servants and agents.

5. CARRIER'S RESPONSIBILITY

(1) The Carrier shall be liable for loss of or damage to the Goods occurring between the time when he receives the Goods for transportation and the time of delivery.

(2) The Carrier shall, however, be relieved of liability for any loss or damage if such loss or damage arose or resulted from:

- the wrongful act or neglect of the Merchant
- compliance with the instructions of the person entitled to give them;
- the lack of or insufficiency of or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
- handling, loading, stowage or unloading of the Goods by or on behalf of the Merchant;
- inherent vice of the Goods;
- insufficient or inadequacy of marks or numbers on the Goods, coverings or containers;
- strikes or lock-outs or stoppage or restraints of labour from whatever cause whether partial or general;
- any cause or event which the Carrier could not avoid and the consequence whereof he could not prevent by the exercise of reasonable diligence.

(3) Where under sub-clause (2) the Carrier is not under any liability in respect of some of the factors causing the loss or damage, he shall only be liable to the extent that those factors for which he is liable under this clause have contributed to the loss or damage.

(4) The burden of proving that the loss or damage was due to one or more of the causes, or events, specified in (a), (b) and (h) of sub-clause (2) shall rest upon the Carrier. When the Carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the causes, or events, specified in (c) to (g) or sub-clause (2), 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 either wholly or partly by one or more of the causes or events.

6. THE AMOUNT OF COMPENSATION

(1) Where the Carrier is liable for compensation in respect of loss of or damage to the Goods, such compensation shall be calculated by reference to the invoice value of the Goods plus freight charges and insurance if paid.

(2) If there is no invoice value of the Goods, such compensation shall be calculated by reference to the value of such Goods at the place and time they are delivered to the Merchant in accordance with the contract or should have been so delivered. The value of the Goods shall be fixed according to the commodity exchange price or, if there be no such price according to the current market price or, if there be no commodity exchange price or current market price by reference to the normal value of goods market price by reference to the normal value of goods of the same kind and quality.

(3) Compensation shall not however exceed U.S. \$2 per kilo of gross weight of the Goods lost or damaged.

(4) Higher compensation may be claimed only when, with the consent of the Carrier, the value for the Goods declared by the Shipper which exceeds the limits laid down in this clause has been stated in this Bill of Lading in that case amount of the declared value shall be substituted for that limit. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

7. SPECIAL PROVISIONS

(1) Notwithstanding anything provided for in Clauses 5 and 6 or this Bill of Lading and subject to Clause 18 if it can be proved where the loss or damage occurred the Carrier and the Merchant shall, as to the liability of the Carrier, be entitled to required such liability to be determined.

(a) by the provisions contained in any international convention or national law, which provisions:-

- not be departed from by private contract to the detriment of the Merchant, and
- would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

Provided that an international convention or national law may be invoked as aforesaid only if it would have been applicable if the contract referred to in (i) above were governed.

- where the loss or damage occurred between the time that the Goods were received by the Carrier for transportation and the time that the Goods were loaded at the port of loading, by the internal law of the State of the place of receipt, or
- where the loss or damage occurred during carriage by sea, by the internal law of the final port of discharge, or
- where the loss or damage occurred between the time that the Goods were discharged at the final port of discharge and the time that the Goods were delivered to the Merchant, by the internal law of the State of the place of delivery, or

(b) subject to (a)

- by the Hague Rules contained in the international Convention for the Unification of Certain Rules Relating to Bills of Lading dated 25th August 1924, if the loss or damage is proved to have occurred at sea or on inland waterways; for the purposes of this sub-clause the limitation of liability under the Hague Rules shall be deemed to be £100 sterling, lawful money of the United Kingdom per package or unit and references in the Hague Rules to carriage by sea shall be deemed to include references to carriage by inland waterways and the Hague Rules shall be construed accordingly, or
- by Standard Japanese Road Transportation Clauses if the loss or damage is proved to have occurred during carriage by road in Japan, or
- by Japanese Railway Transportation Business Law and Ministerial Ordinance for Railway Transportation if the loss or damage is proved to have occurred during carriage by rail in Japan.

(2) If the whole of the Carriage undertaken by the Carrier is limited to carriage from a Container Yard (CY) or Container Freight Station (CFS) in or immediately adjacent to the sea terminal at the port of loading to a CY or CFS in or immediately adjacent to the sea terminal at the port of discharge, the liability of the Carrier shall be determined by the national law, which shall be applicable to the carriage by sea under paragraph (a) above or failing which by the Hague Rules, referred to in (1) (b) (i) above, irrespective of whether the loss or damage is proved to have occurred during the period of carriage at sea or prior or subsequent thereto.

8. GENERAL

(1) The Carrier does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any, particular market or use and save as provided in Clause 7 the Carrier shall in no circumstances be liable for any direct, indirect or consequential loss or damage caused by delay. The liability of the Carrier for indirect or consequential loss or damage caused by delay shall in no case exceed the freight for the transport covered by this Bill of Lading.

(2) Save as otherwise provided herein, the Carrier shall in no circumstances be liable for direct or indirect or consequential loss or damage arising from any other cause.

(3) 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 to the Merchant whether before or after the Goods are received by the Carrier for transportation or delivered to the Merchant.

9. NOTICE OF LOSS, TIME BAR

(1) Unless notice of loss of or damage to the Goods and the general nature of it is given in writing to the Carrier at the place of delivery before or at the time of the 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 be not apparent within seven consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Carrier of the Goods' as described in this Bill of Lading.

(2) Subject to paragraph (3) below the Carrier shall be discharged of all liability under this Bill of Lading unless suit is brought and written notice thereof given to the Carrier within nine months after delivery of the Goods. In the case of total loss of the Goods the period shall begin to run two months after the Goods have been received for transportation.

(3) Notwithstanding paragraph (2) above, if the whole of the carriage undertaken by the Carrier is limited to the carriage from a CY or CFS in or immediately adjacent to the sea terminal at the port of loading to a CY or CFS in or immediately adjacent to the sea terminal at the port of discharge, the Carrier shall be discharged from all liability whatsoever in respect of the Goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered.

10. DEFENCES AND LIMITS FOR THE CARRIER

The defences and limits of liability provided for in this Bill of Lading shall apply in any action against the

Carrier for loss or damage to the Goods whether the action be founded in contract or in tort.

11. SHIPPER PACKED CONTAINERS

If a Container has not been filled packed stuffed or loaded by the Carrier, the Carrier shall not be liable for loss of or damage to the contents and the Merchant shall indemnify the Carrier against any loss, damage, liability or expense incurred by the Carrier, if such loss, damage, liability or expense has been caused by:

- the manner in which the Container has been filled, packed, stuffed or loaded, or
- the unsuitability of the contents for carriage in Containers, or
- the unsuitability or defective condition of the Container arising without any want of due diligence on the part of the Carrier to make the Container reasonably fit for purpose for which it is required: or
- the unsuitability or defective condition of the Container, which would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was filled, packed stuffed or loaded.

12. INSPECTION OF GOODS

The Carrier shall be entitled, but under no obligation to open any Container at any time and to inspect the contents. If it thereupon appears that the contents or any part hereof cannot safely or properly be carried or carried further either at all or without incurring any additional expense or taking any measures in relation to the Container or its contents or any part thereof the Carrier may abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue the carriage or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any reasonable additional expense so incurred.

13. DESCRIPTION OF GOODS

(1) The Bill of Lading shall be prima facie evidence of the receipt by the Carrier in apparent good order and condition except as otherwise noted of the total number of Containers or other packages or units enumerated overleaf. Proof to the contrary shall not be admissible when this Bill of Lading has been transferred to a third party acting in good faith.

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

14. SHIPPER'S RESPONSIBILITY

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

(2) The Shipper shall indemnify the Carrier against all loss, damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars. The right of the Carrier to such indemnity shall in no way limit his responsibility and liability under this Bill of Lading to any person other than the Shipper.

15. FREIGHT AND CHARGES

(1) Freight and charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-removable in any event.

(2) The Merchant's attention is drawn to the stipulations concerning currency in which the freight and charges are to be paid rate of exchange, devaluation and other contingencies relative to freight and charges in the Carrier's applicable Tariff.

(3) The freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. The Carrier may at any time open any Container or other package or unit in order to reweigh, remeasure or revalue the contents, and if the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged or to double the correct freight less the freight charge, whichever sum is the smaller, shall be payable as liquidated damages to the Carrier.

16. LIEN

The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract and for general average contributions to whomsoever due and for the cost of recovering the same, and for that purpose shall be entitled to sell the Goods by public auction or private treaty without notice to the Merchant.

17. OPTIONAL STOWAGE

(1) The Goods may be stowed by the Carrier in Containers or similar articles of transport used to consolidate Goods.

(2) Goods stowed in Containers other than flats or pallets whether by the Carrier or the Merchant, may be carried on or under deck without notice to the Merchant. Such Goods (other than livestock) whether carried on deck or under deck shall participate in general average and shall be deemed to be within the definition of Goods for the purposes of the Hague Rules.

18. DECK CARGO AND LIVESTOCK

Goods (not being Goods stowed in Containers other than flat or pallets) which are stated herein to be carried on deck and livestock whether or not carried on deck are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during carriage by sea whether caused by unseaworthiness or negligence or any other cause whatsoever.

19. METHODS AND ROUTES OF TRANSPORTATION

(1) The Carrier may at any time and without notice to the Merchant —

- use any means of transport or storage whatsoever.
- transfer the Goods from one conveyance to another not using transshipping or carrying the same on another vessel than the vessel named overleaf or on any other means of transport whatsoever
- proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route) and proceed to or stay at any place or port whatsoever once or more often and in order.
- load and unload the Goods at any place or port (whether or not any such port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such place or port.
- comply with any orders or recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority or having under the terms of the insurance on the conveyance employed by the Carrier the right to give the orders or directions.

(2) The liberties set out in sub-clause (1) may be invoked by the Carrier for any purpose whatsoever, including undergoing repairs, towing of being towed, adjusting instruments, dry docking and assisting vessels in all situations, and anything done in accordance with sub-clause (1) or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.

20. MATTERS AFFECTING PERFORMANCE

If at any time the performance of the contract evidenced by this Bill of Lading is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind which cannot be avoided by the exercise of reasonable endeavours, the Carrier (whether or not the transport is commenced) may without notice to the Merchant treat the performance of this contract as terminated and place the Goods or any part of them at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full freight and charges on Goods received for transportation, and the Merchant shall pay any additional costs of carriage to and delivery and storage at such place or port.

21. DANGEROUS GOODS

(1) The Merchant undertakes not to tender for transportation of any Goods, which are of a dangerous, inflammable, radioactive, or damaging nature without previously giving written notice of their nature to the Carrier and marking the Goods and the Container or other covering on the outside as required by any laws or regulations which may be applicable during the carriage.

(2) If the requirements of sub-clause (1) are not complied with, the Merchant shall indemnify the Carrier against all loss, damage or expense arising out of the Goods being tendered for transportation or handled or carried by the Carrier.

(3) Goods which are or at any time become dangerous, inflammable, radio-active or damaging may at any time or place be unloaded, destroyed, or rendered harmless without compensation, and if the Merchant has not given notice of their nature to the Carrier under (1) above, the Carrier shall be under no liability to make any general average contribution in respect of such goods.

22. 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 marking numbering or addressing of the Goods, and indemnify the Carrier in respect thereof.

23. NOTIFICATION AND DELIVERY

(1) Any mention in this Bill of Lading of parties to be notified of the arrival of the Goods is solely for information of the Carrier and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation, hereunder.

(2) The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff.

(3) If the Merchant fails to take delivery of the Goods or part of them in accordance with this Bill of Lading, the Carrier may without notice unstuff the Goods or that part thereof and/or store the Goods or that part thereof ashore, afloat, in the open or under cover. Such storage shall constitute due delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the Goods or that part thereof shall cease.

(4) The Merchant's attention is drawn to the stipulations concerning free storage time and demurrage contained in the Carrier's applicable Tariff, which is incorporated in this Bill of Lading.

24. BOTH-TO-BLAME COLLISION

If the (carrying) ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default in the navigation or the management of the carrying ship, the Merchant undertakes to pay the Carrier, or, where the Carrier is not the owner and in possession of the carrying ship to pay to the Carrier as trustee for the owner and/or demise charterer of the carrying ship, a sum sufficient to indemnify the Carrier and/or the owner and/or the owner and/or demise charterer of the carrying ship against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of or damage to, or any claim whatsoever of the Merchant, paid or payable by the other or non-carrying ship or her owners as part of their claim against the carrying ship or her owner or demise charterer or the Carrier. The foregoing provisions shall also apply 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 in respect to a collision, contact, stranding or other accident.

25. GENERAL AVERAGE

(1) General average shall be adjusted at any port or place in the option of the Carrier in accordance with the York-Antwerp Rules, 1974.

(2) If the Carrier delivers the Goods without obtaining security for general average contributions, the Merchant by taking delivery of the Goods, undertakes personal responsibility to pay such contributions and to provide such cash deposit or other security for the estimated amount of such contributions as the Carrier shall reasonably require.

(3) The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.

26. VARIATION OF THE CONTRACT ETC.

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

27. LAW AND JURISDICTION

The contract contained in or evidenced by this Bill of Lading is governed by Hong Kong law and all claims in relation hereto or arising hereunder shall be subject to the exclusive jurisdiction of the high court in Hong Kong.