

CONDITIONS OF CARRIAGE

- 1) (a) Except as otherwise provided herein, this Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States of America, approved April 16, 1936, which shall not be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. The provisions stated in said Act (except as otherwise specifically provided herein) shall govern the loading, stowage, discharge, tally, and the delivery of the Goods and the liability of the Goods are in the custody of the Carrier. If this Bill of Lading is issued or delivered in a locality where there is in force a compulsorily applicable Carriage of Goods by Sea Act, Ordinance or Statute of a nature similar to the International Convention for the Unification of Certain Rules Related to Bills of Lading dated at Brussels August 25, 1924, the Bill of Lading shall be subject to the provisions of said Act, Ordinance or Statute and rules thereto annexed.
(b) The Carrier shall be entitled to the full, benefit of, and right to, all limitations of or exceptions from, liability authorized by any provisions of Sections 4211 to 4288, inclusive, of the Revised Statutes of the United States and the corresponding provisions of any other laws, regulations or provisions of the laws of the United States or of any other country whose laws shall apply.
(c) In this Bill of Lading:
(i) "Carrier" means and includes the Carrier named on the face side hereof, the vessel, her owner, Master, operator, demise charterer, and charterer, the time charterer, and any substitute Carrier whether the owner, operator, charterer or Master shall be acting as carrier or bailee.
(ii) "Vessel" means and includes the ocean vessel on which the Goods are shipped, named on the face hereof, or any substitute vessel, also any feeder ship, ferry, barge, lighter or any other watercraft used by the Carrier in the performance of this contract.
(iii) "Merchant" means and includes the shipper, the consignee, and the receiver, the holder of this Bill of Lading, the owner of the Goods or person entitled to the possession of the Goods and the servants or agents of any of these.
(iv) "Freight" means the freight and all expenses and money obligations incurred and payable by the Merchant.
(v) "Goods" means and includes the cargo received from the shipper and described on the face side hereof and any other Container not supplied by or on behalf of the Carrier.
(vi) "Container" means and includes any container, van, trailer, transportable tank, flat, pallet or any similar article of transport.
(g) "Person" means and includes an individual, corporation, partnership or other entity as the case may be.
(h) "Participating Carrier" means and shall include any other water, land or air carrier performing any stage of the Combined Transport.
(i) It is understood and agreed that other than the said Carrier, no person whatsoever (including the Master, officers and crew of the vessel, all servants, agents, employees, representatives, attendants, stevedores, terminal operators, crane operators, watchmen, carpenters, ship cleaners, surveyors and other independent contractors) shall be deemed to be acting as carrier with respect to the goods as carrier, bailee or otherwise however, in contract or in tort. If, however, it should be a judgment that any other than said carrier is under any responsibility with respect to the Goods, all limitations and exonerations from liability provided by law or by the contract shall nevertheless apply to the said carrier.
- 2) (a) Subject to all rights, privileges and limitations and exonerations from liability granted to the carrier by the Bill of Lading or by any other applicable law, the liability of the participating carriers for losses or damages to the Goods or packages carried hereunder shall be governed by the following:
(a) If loss or damage occurs while the goods or packages are in the custody of the ocean carrier, only the ocean carrier shall be responsible therefore, and any liability of the ocean carrier shall be determined by the terms and conditions of this Bill of Lading and any law compulsorily applicable.
(b) If loss or damage occurs while the Goods or packages are in the custody of a participating domestic or foreign Carrier, only the participating domestic or foreign Carrier(s) shall be responsible for such loss or damage, and any liability of the participating carrier(s) shall be determined, in respective order, by the terms, conditions and provisions of the applicable participating domestic or foreign Carrier's Bill(s) of Lading, whether issued or not, tariffs and the law compulsorily applicable in the circumstances.
(c) Notwithstanding the provisions herein contemplated that the Goods or packages will from time to time be carried in through transportation that will include inland transportation within the United States by Railroad and sea carriage by one or more of the other Carriers above defined (When used on or endorsed on this Bill of Lading the words "on board" shall mean and include on board a rail car operated by the originating carrier and enroute by rail to the port of loading for loading on board the Carrier's or participating Carrier's vessel).
(d) If loss or damage occurs after receipt of the Goods or packages hereunder, and it cannot be determined from the records of the ocean Carrier or participating domestic or foreign Carrier(s) whether such damage or loss occurred during ocean, domestic or foreign carrier, it shall be conclusively presumed that the loss or damage occurred on board the vessel and the liability therefor shall be determined by the applicable Bill of Lading.
(e) At all times when the Goods or packages are in the custody of the above-mentioned participating domestic or foreign Carrier, such Carriers shall be entitled to all the rights, defenses, exceptions from or limitations of liability and immunities of whatsoever nature provided by law or in any applicable tariff or other applicable law, in the combined transport, to the full extent permitted to such domestic and foreign Carrier under this Bill(s) of Lading, tariffs and any other laws applicable or relating thereto, provided however, that nothing contained in this Bill of Lading shall be deemed a surrender by these domestic or foreign Carriers of any of their rights and immunities or an increase of any of their limitations of and exonerations from liability in the combined transport.
(f) In making any arrangements for transportation by participating domestic or foreign Carrier(s) of the Goods or packages carried hereunder, either before or after ocean carriage, it is understood and agreed that the ocean Carrier acts solely as agent of the Merchant, without assuming any other responsibility whatsoever, and it assumes no responsibility as Carrier for such domestic or foreign transportation.
(g) Notice of loss or damage and claim against the ocean Carrier, where applicable, shall be given to the ocean Carrier, and suit commenced as provided for in Clauses 30 and 31 hereof. In the event of inland carriage, notice of loss or damage and suit, where applicable, shall be filed with the participating domestic or foreign Carrier(s) and suit commenced as provided for in the terms, conditions and provisions of said Carrier(s) Bill(s) of Lading or by law applicable thereto. It is understood by the Merchant that such terms, conditions and provisions, as well as any other applicable law, in the combined transport, shall be read in conjunction with and commencement of suit, contain different requirements than those requirements pertaining to ocean carriage as contained in Clauses 30 and 31 hereof.
- 3) The Goods carried hereunder are subject to all the terms and provisions of the Carrier's applicable Tariff or Tariffs filed with the Federal Maritime Commission, Interstate Commerce Commission or any other regulatory body which governs in particular such carriage, and the terms and provisions of the said Tariff or Tariffs are hereby incorporated herein as part of the Terms and Conditions of this Bill of Lading. Copies of the relevant provisions of the applicable Tariff or Tariffs are available to the Merchant at the Carrier's office. In the event of any conflict between the terms and provisions of such Tariff or Tariffs and the Terms and Conditions of this Bill of Lading, this Bill of Lading shall prevail.
- 4) The Merchant warrants that in agreeing to the Terms and Conditions hereof, he is, or has authority of, the person owning and entitled to the possession of the Goods and this Bill of Lading.
(a) 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 all duties whatsoever which are incident to the carriage of the Goods, and to subcontract the performance thereof.
(b) As to through transportation, the Carrier undertakes to procure such services as necessary and shall have the right at its sole discretion to select any mode of and, sea or air transport and to arrange transportation by other Carriers to accomplish the combined transport from point of receipt to place of delivery. Without prejudice to the foregoing, such transportation accomplished by any land or air carrier or any other water Carrier, each such stage shall be controlled according to any law compulsorily applicable to such stage and according to the contracts, rules and tariffs of each participating Carrier, the same as if such contracts, rules and tariffs were full set forth herein.
(c) The Carrier shall be entitled but under no obligation to open any Container at anytime and to inspect the contents unless applicable law prohibits same. If it is thereupon appears that the contents or any part thereof 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 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 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 unreasonable additional expense so incurred.
(d) Carrier may containerize any Goods or packages. Containers may be stowed on deck or under deck and when so stowed shall be deemed for all purposes to be stowed under deck, including for General Average and U.S. Carriage of Goods by Sea Act, 1936 and similar legislation.
(e) Deck cargo (except goods carried in containers on deck) and live animals are received and carried solely at Merchant's risk (including accident or mortality of animals), and the Carrier shall not in any event be liable for any loss or damage thereto arising or resulting from any mentioned in Section 4, Sub-Section 2 (a) to (p), inclusive, of the United States Carriage of Goods by Sea Act, or from any other cause whatsoever, not due to the fault of the Carrier, any warranty of seaworthiness in the premises being hereby waived, and the burden of proving liability being in all respects upon the Merchant. Except as provided above, such shipments shall be deemed Goods and shall be subject to all terms and provisions of this Bill of Lading relating to Goods.
(f) Special containers with heating or refrigeration units will not be furnished unless contract for expressly in writing at time of booking and, when furnished, may entail an increase freight rate or charge. Shipper shall advise Carrier of desired temperature range when delivering containers to Carrier. The Carrier and Carrier's servants shall not be liable for any loss or damage within a reasonable range while the containers are in its custody or control. The Carrier does not, however, accept any responsibility for the functioning of heated or refrigerated containers not owned or leased by Carrier.
(g) The scope of the voyage herein contracted for shall include usual or customary or advertised practice of call whether named in this contract or not, also ports in or out of the advertised geographical or usual route or order, even though in proceeding thereto the vessel may sail beyond the port of discharge named herein or in a direction contrary thereto, or return to the original port, or depart from the direct or customary route and includes all cables, straits, and other waters. The vessel may call at any port for the purpose of the current voyage or subsequent voyages. The vessel may omit calling at any port whether scheduled or not, and may call at the same port more than once, may discharge the goods during the first or subsequent call at the port of discharge, may for matters occurring before or after loading, and either with or without the consent of the shipper, discharge, re-warehouse, re-pack, or re-warehouse, discharge adjust compasses, drydock with or without cargo on board, stop for repairs, shift berths, make tall or tests, take fuel or stores, remain in port, lie on bottom, ground or at anchor, sail with or without pilots, tow and be towed, and save or attempt to save life or property, and all of the foregoing are included in the contract voyage. The vessel may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and sail armed or unarmed, and with or without convoy. The Carrier's sailing schedules are subject to change without notice, both as to the sail date and date of arrival. If this is a Through Bill of Lading, no cargo discharge from the vessel or the shipper's obligation to load, stow, trim, lash or secure other means of conveyance, in or time for any particular market or otherwise. No Carrier shall be liable for delay and any Carrier shall have the right to forward the goods by substitute Carrier.
(h) 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 endeavors, the Carrier (whether or not the transport is commenced) may without notice to the Merchant treat the performance of this contract as terminated and discharge the goods or any parts thereof at the warehouse or deposit 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.
(i) If the Carrier makes a special agreement, whether by stamp hereon or otherwise, to deliver the Goods at a specified dock or place, it is mutually agreed that such agreement shall be construed to mean that the Carrier is to make such delivery only if, in the sole judgment of the Carrier, the vessel can get to, lie at, and leave said dock or place, always safely afloat, and only if such dock or place is available for immediate receipt of the Goods and that otherwise the Goods shall be discharged as otherwise provided in this Bill of Lading - whereupon all responsibility of Carrier shall cease.
(j) The Merchant authorizes the Carrier to make a general order for discharging immediately upon arrival of the vessel and the Carrier, without giving notice either of arrival or discharge, may, immediately upon arrival of the vessel at the designated destination, discharge the goods continuously, Sundays and Holidays included at all such hours by day or by night as the Carrier may deem proper. The vessel or other craft, whether or not cargo of the port may be. The Carrier shall not be liable in any respect whatsoever if such heat or refrigeration or special cooling facilities shall not be furnished during loading or any part of the time that the Goods are upon the wharf, craft or other loading or discharging place.
(k) Landing and delivery of the Goods shall be at the risk of the shipper. The responsibility of the Merchant shall be terminated by the expiration of the time specified in the freight hereon provided for. If the Goods are not taken away by the expiration of the next working day after the Goods are at his disposal, the Goods may, at Carrier's option and subject to Carrier's lien, be sent to store or warehouse or be permitted to lie where landed, but always at the expense and risk of the shipper. The responsibility of the Carrier and its capacity shall altogether cease and the Goods shall be considered as delivered and their own risk and expense in every respect when taken into the custody of Customs or other Authorities, or into that of any municipal or governmental consigner or depository. The Carrier shall not be required to give any notification of disposition of the Goods, except as a fulfillment of the contract. Any expense incurred in connection with the exercise of the Carrier's lien under this clause shall be paid by the Merchant in addition to freight and charges.
(l) Whenever the Carrier or Master may deem it advisable, or in any case where goods are damaged or lost or where the vessel is damaged or where participating carriers are involved, the Carrier may, without notice, forward the whole or any part of the shipment, before or after loading at the original port of shipment, or at any other place even though outside the scope of the voyage or the route to or beyond the port of discharge or the destination of the Goods, by water, by land or by air, or by any other mode of transport. The Merchant, by accepting or not, and others and whether departing or arriving or scheduled to depart or arrive before or after the ship expected to be used for the transportation of the shipment. The Carrier may delay forwarding awaiting a vessel or conveyance in its own service or with which it has established connections. In all cases where the shipment is delivered to another Carrier or to a lighter, Port, Authority, warehouse or other place, the responsibility of the Merchant shall cease and shall absolutely cease when the Goods are out of its exclusive possession and shall not resume, until the Goods again come into its exclusive possession, and the responsibility of this Carrier during any such period shall be that of an agent of the Merchant and this Carrier shall be without any liability for loss or damage to the Goods. The Merchant shall indemnify the Carrier and all transshipment or forwarding shall be subject to all the terms whatsoever in the regular form of Bill of Lading, consignment note, contract or other shipping document used at the time by the Carrier performing such transshipment or forwarding.
(m) In any situation where the Merchant is liable for loss or damage to existing or anticipated before commencement of or during the combined transport, which in the judgment of the Carrier or the Master is likely to give rise to risk of capture seizure, detention, damage, delay or disadvantage or loss to the Carrier or any part of the Goods, to make it unsafe, imprudent or unlawful for any reason to receive, keep, load, or carry the goods or conveyance or proceed to or from, or to enter or discharge at, or to enter or discharge at, or to enter or discharge at, the port of discharge, or the usual or agreed or intended place of discharge or delivery, or to give rise to delay or difficulty in proceeding by the usual or intended route, the Carrier or the Master may decline to receive, keep, load or carry the Goods or may deviate to other(s) consignees or receivers or may deliver the Goods to a consignee or receiver or to a port of receipt of another point in the combined transport and upon failure to do so, may warehouse the Goods at the risk and expense of the Goods, or the vessel, whether or not proceeding towards or entering or attempting to enter a port of discharge, or reaching or attempting to reach the port of discharge, or the port of discharge, or the port of shipment, may discharge the Goods and/or devian the contents of any container(s) at another port, depot, lighter, craft, or other place, or may forward or transship them as provided in this Bill of Lading, or the Carrier or the Master may retain the Goods, vanned or unvanned, on board until the return of the vessel to the port of loading or to the port of discharge or until such time as the Master thinks advisable and discharge the Goods at any place whatsoever as herein provided. The Carrier or the Master is not required to give notice of such devianing or of discharge of the Goods or of the forwarding there as herein provided. When the Goods are discharge from the ship, as herein provided, such shall be at the risk and expense of the Goods. Such discharge shall constitute a complete delivery and the Merchant under this contract and the Carrier shall be free any further responsibility, unless it be shown that any loss or damage to the Goods arose from Carrier's negligence in the discharge and delivery as herein provided, the burden of establishing such negligence being on the Merchant.
(n) In any situation where the Merchant is liable for loss or damage to existing or anticipated to the Goods as herein above provided for or for any delay or expense to the Merchant as a result thereof, the Carrier shall be entitled to a reasonable extra compensation, and shall have a lien on the goods for such carriage. Notice of disposition of the Goods shall be mailed to shipper or consignee named in this Bill of Lading. Goods shut out from the vessel named hereon or for any cause shall be forwarded on a substitute vessel, whether by Line or, at Carrier's option, on a vessel of another Line or other mode of transportation.
(o) Notwithstanding the foregoing the Carrier shall neither be a liable therefor, nor concluded as to, the correctness of any such marks, descriptions or representation.
(p) When cargo units are packed, loaded, unloaded, or discharged by shipper or its agent, or discharged by consignee or its agent, shipper, consignee, receiver, holder of this Bill of Lading, owners of the Goods and person entitled to the possession of the Goods shall be and remain liable, jointly and severally, for any loss or damage to the cargo unit during such loading or discharge, howsoever such damage may occur, and for any damage to such cargo units, or for any loss, damage or expense incurred by Carrier as a result of the failure to return the cargo unit to the Carrier in the same sound condition and state of cleanliness as when receive by shipper. Such loss, damage, expense or delay shall constitute a lien on the Goods. Where a cargo unit is to be unpacked or unloaded by consignee or its agent, consignee or its agent shall promptly unpack or unload such cargo unit and take delivery of its contents, irrespective of whether the Goods are damaged or not. Carrier shall not be liable for loss or damage caused to the Goods by or during such unpacking or unloading.
(q) When containers, vans, trailers, transportable tanks, palletized units, and all other packages (all hereinafter referred to generically as "cargo units") are not packed or loaded by Carrier, such cargo units shall be deemed shipped as "Shipper's weight, load and count" Carrier has no reasonable means of checking the quantity, weight, condition or existence of the contents thereof, does not represent the quantity, weight, condition or existence of such contents, as furnished by the shipper and inserted in this Bill of Lading, to be accurate, and shall not be liable for non receipt or misdescription of such contents. Carrier shall have no responsibility or liability whatsoever therefore for the packing, loading, securing and/or stowage of contents of such cargo units, or for any loss or damage to such cargo units, or for the physical suitability or structural adequacy of such cargo units property to contain their contents.
(r) The Merchant, whether principal or agent by packing or loading the cargo unit and/or by allowing the cargo unit to be so packed or loaded, represents, warrants and warrants: (a) that the contents of such cargo units are as described in this Bill of Lading and that the contents of such cargo units, that such cargo units are physically suitable, sound and structurally adequate to contain and support the Goods during handling and on the transport, and that the cargo units may be handled in the ordinary course without damage to the themselves or to the contents, or to the goods or conveyance or to the person or persons; (b) that all particulars with regard to the cargo units and their content, and the weight of each said cargo unit, are in all respects correct, and (c) that they have ascertained and fully disclosed in writing to the Carrier and all participating Carriers on or prior to shipments, to the Carrier and its agents, the nature and extent of any injury or death of any person, or any inflammable, explosive, corrosive, radioactive, noxious, hazardous or dangerous in nature, or which might cause damage, injury or detriment to the Goods, or to the vessel, conveyance or other cargo or property or persons that they have complied fully with all statutes, ordinances and regulations of the Department of Transportation of the United States of America and all other applicable laws with respect to labeling, packaging and preparation for shipment of all such Goods.
(s) The shipper, consignee, receiver, holder of this Bill of Lading owner of the Goods and persons entitled to the possession of the Goods jointly and severally agree fully to protect and indemnify Carrier, and to hold harmless in respect of any injury or death of any person, or loss or damage to cargo or cargo or any other property, or to the vessel or conveyance or expense or fire arising out of or in any way connected with breach of any of the foregoing representations or warranties howsoever occurring, even without fault of shipper, consignee and receiver, and to hold harmless in respect of any injury or death of any person, or loss or damage to cargo or cargo or any other property, or to the vessel or conveyance or expense or fire arising out of or in any way connected with breach of any of the foregoing representations or warranties howsoever occurring, even without fault of shipper, consignee and receiver, and to hold harmless in respect of any injury or death of any person, or 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