

## NYK Shipped - Waybill Clause ('14 amendment)

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**Shipped** on board the Vessel, the Goods, or packages said to contain the cargo described below, in apparent good order and condition unless otherwise indicated herein, to be carried to the port of discharge or such port or place as selected by the Carrier under the terms and conditions of this Bill, with or without transshipment, as the Vessel and/or other connecting conveyances may safely get, and to be delivered there in like order and condition unto order or assigns, subject to the terms, conditions and exceptions on the face and back hereof.

This Bill (duly endorsed if it is negotiable) must be surrendered in exchange for the Goods or delivery order except where this Bill issued as a Sea Waybill. Where issued as a Sea Waybill, this Bill is not negotiable or a document of title and delivery shall be made to the named consignee on production of such reasonable proof of identify as may be required by the Carrier.

In accepting this Bill, the Merchant agrees to be bound by all the stipulations, exceptions, terms and conditions on the face and back hereof, whether written, typed, stamped or printed, as fully as if signed by the Merchant, any local custom or privilege to the contrary notwithstanding and agrees that all agreements or freight engagements for and in connection with the carriage of the Goods are superseded by this Bill.

In witness whereof, the undersigned, on behalf of Nippon Yusen Kaisha, the Master and the owner of the Vessel, has signed the number of Bill(s) stated below, all of this tenor and date, one of which being accomplished, the others to stand void.

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**1. (Definition)** The following words both on the face and back of this Bill have the meanings hereby assigned:

- (a) "Bill" means this document, whether issued as a Bill of Lading or a Sea Waybill, and whether issued in paper or electronic form ;
- (b) "Carrier" means Nippon Yusen Kaisha including the servants, agents and the Master, and the Vessel and/or her owner;
- (c) "Merchant" includes the shipper, consignor, consignee, owner or

receiver of the Goods and also the holder of this Bill and any other person acting on their behalf;

- (d) "Goods" mean the cargo described on the face hereof and, if the cargo is packed into container(s), loaded on pallet(s) or unitized into similar article(s) of transport supplied or furnished by or on behalf of the Merchant, include such article(s) of transport as well;
- (e) "Vessel" includes vessel, ship, craft, lighter or other conveyances which is or shall be substituted, in whole or in part, for the vessel named in the column "Ocean Vessel" on the face hereof.
- (f) "Sub-Contractor" includes owners and operators of the Vessel or any other vessel (other than the Carrier), stevedores, terminal operators, warehousemen, road and rail transport operators and any independent contractors employed by the Carrier in performance of the Carriage and any sub-contractor thereof.
- (g) "Carriage" means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods covered by this Bill.
- (h) "Person" includes an individual, group, company, or other entity.
- (i) "Shipper" means Person(s) described as shipper on this Bill and/or Person(s) who entered into the contract of Carriage.

2. (Clause Paramount) (1) This Bill shall have effect subject to the provisions of the International Carriage of Goods by Sea Act, 1957 of Japan, as amended on 3 June, 1992 (hereinafter called the "Act"), unless it is adjudged that any other legislation of a nature similar to the International Convention for the Unification of Certain Rules relating to bills of lading signed at Brussels on 25 August, 1924, or the amendments by the Protocol signed at Brussels on 23 February, 1968, or the amendments by the Protocol signed at Brussels on 21 December, 1979, including without limitation, the Carriage of Goods by Sea Act, 1936, of the United States (hereinafter called "US COGSA")(such similar legislation and US COGSA shall hereinafter be called "Hague Rules Legislation"), compulsorily applies to this Bill, in which case it shall have effect subject to the provisions of such Hague Rules Legislation. Notwithstanding anything else in this Bill, on all the Carriage to or from the United States of America (this expression includes its districts territories and possessions), this Bill shall have effect subject to US COGSA.

(2) The Act or Hague Rules Legislation, whichever is applicable pursuant to Article 2(1) shall also apply and govern the Carriage before the Goods are loaded on and after they are discharged from the Vessel and throughout the entire time the Goods are in custody of the Carrier, its agents, servants, representatives and Sub-Contractors.

The Act or Hague Rules Legislation shall be deemed to be incorporated herein. If any provision of this Bill is held to be repugnant to any extent to the Act or Hague Rules Legislation or to any other laws, statutes or regulations applicable to the contract evidenced by this Bill, such provision shall be null and void to that extent but no further.

(3) Where this Bill is issued as a Sea Waybill, this Bill shall have effect subject to the CMI Uniform Rules for Sea Waybills, which are deemed to be incorporated herein; provided, however, that if any provisions of such Rules are inconsistent with those of this Bill, the latter shall prevail.

3. (Governing Law and Jurisdiction) (a) The contract evidenced by or contained in this Bill shall be governed and construed by Japanese law except as may be otherwise provided for herein, and (b) notwithstanding anything else contained in this Bill or in any other contract, any and all actions against the Carrier in respect of the Goods or arising out of the Carriage shall be brought before the Tokyo District Court in Japan to the exclusion of the jurisdiction of any other courts whilst any such actions against the Merchant may be brought before the said Court or any other competent court at the Carrier's option. Where the Goods are subjected to adverse or competing claims, the Carrier may place the Goods in the custody of a court of competent jurisdiction for a determination of ownership and/or right to possession. The Carrier shall have no liability to the Merchant arising out of such placement. The Merchant consents to the exclusive jurisdiction of such Court.

4. (Carrier's Tariff) The terms of the Carrier's applicable Tariff are deemed to be 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 and the applicable Tariff, this Bill shall prevail.

5. (Limitation Statutes, Demise Clause) (1) Nothing in this Bill shall operate

to limit or deprive the Carrier of the benefit of, and right to, all limitations of or exemptions from liability authorized by laws, statutes or regulations of any countries.

(2) If the Vessel is not owned by, or chartered by demise to the Carrier (as the case may be notwithstanding anything that appears to the contrary), this Bill shall have effect only as a contract with the owner or demise charterer, as principal, as the case may be, made through the agency of the Carrier, who acts as agent only and shall be under no liability whatsoever in respect thereof.

6. (Period of Responsibility) (1) The Carrier shall in no event be liable for any loss of or damage to or in connection with the Goods, whether caused by the Carrier's negligence or not, occurring before loading on board and/or after discharge from the Vessel, whether the Goods are awaiting shipment, landed or stored or put into craft, barge, lighter or otherwise whether belonging to the Carrier or not, or pending transshipment at any stage of the Carriage.

(2) In case loading and/or discharge are effected by the Merchant at his expense (in which case the terms "FI", "FO" or "FIO" are shown in this Bill as the case may be), the Carrier's responsibility shall, notwithstanding the preceding paragraph, commence when loading has been completed and/or cease when discharge has begun respectively, and shall be exonerated from any loss of or damage to or in connection with the Goods occurring during such loading and/or discharge, even if such loading and/or discharge are done with the assistance and/or advice of the Master/Vessel's officers/crew, who in such cases, are deemed to be an agent(s) or employee(s) of the Merchant.

7. (Sub-Contracting and Indemnity) (1) The Carrier shall be entitled to sub-contract the Carriage on any terms whatsoever, including liberty to further sub-contract.

(2) The Merchant undertakes that no claim or allegation shall be made against any Person whomsoever by whom the Carriage is performed or undertaken (including all Sub-Contractors of the Carrier), other than the Carrier, which imposes or attempts to impose upon any such Person, or any vessel owned by any such Person, any liability whatsoever in connection

with the Goods or the Carriage, whether or not arising out of negligence on the part of such Person 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 Person shall have the benefit of every right, defence, limitation and liberty of whatsoever nature herein contained or otherwise available to the Carrier as if such provisions were expressly for his benefit; and in entering into this contract, the Carrier, to the extent of these provisions, does so not only on his own behalf but also as agent and trustee for such Persons.

(3) The provisions of Article 7.(2), including but not limited to the undertakings of the Merchant contained therein, shall extend to claims or allegations of whatsoever nature against other Persons chartering space on the carrying vessel.

(4) The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person other than in accordance with the terms and conditions of this Bill which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage, whether or not arising out of negligence on the part of the Carrier and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

8. (Scope of Contractual Carriage) (1) The Carrier shall have liberty to carry the Goods as a single shipment or as several shipments by the Vessel and/or any other means of transport including by land and air, whether owned or operated by the Carrier or not, by any route whatsoever, whether or not such route is direct, advertised or customary.

(2) The Vessel shall have liberty to call and/or stay at any port or place in or out of the direct, advertised or customary route, once or more often and in any order backwards or forwards, and/or to omit calling at any port or place whether scheduled or not.

(3) The Vessel shall have liberty to, either with or without the Goods on board, and before or after proceeding towards the port of discharge, adjust compasses and other navigational instruments, make trial trips or tests, drydock, go to repair yards, shift berths, take in fuel or stores, embark or disembark any Person, carry contraband, explosives, munitions, warlike

stores and hazardous cargo, sail with or without pilots, tow or be towed, and save or attempt to save life or property.

(4) Any action taken by the Carrier under this Article shall be deemed to be included within the scope of the contractual carriage and such action or delay resulting therefrom shall not be deemed to be a deviation. Should the Carrier be held responsible in respect of such action, the Carrier shall be entitled to the full benefit of all privileges, rights and immunities contained herein.

9. (Liberties) (1) In any situation whatsoever, whether or not existing or anticipated before commencement of or during the Carriage, which in the judgement of the Carrier, (i) has given or is likely to give rise to danger, injury, loss, delay, risk of capture, seizure or detention, or disadvantage of whatsoever nature to the Vessel, the Carrier, the Goods, any Person or any property, or (ii) has rendered or is likely to render it in any way unsafe, impracticable or unlawful or against the interest of the Carrier or the Merchant to commence or continue the Carriage or to discharge the Goods at the port of discharge by the route or in the manner originally intended by the Carrier, the Carrier (a) before the Goods are loaded on board the Vessel, may cancel the contract of the Carriage without compensation and to require the Merchant to take delivery of them and upon his failure to do so, to warehouse or place them anywhere at the risk and expense of the Merchant; and/or (b) if the Goods have been loaded on board the Vessel whether or not approaching, entering or attempting to approach, enter the port of discharge or attempting or commencing to discharge, may discharge the Goods or any part thereof at any port or place selected by the Carrier or to carry them back to the port of loading and there discharge them; and/or (c) at any time, may dispose of the Goods in such way as the Carrier may deem advisable at the risk and expense of the Merchant. Any action under (b) above shall constitute complete and final delivery and full performance of this contract, and the Carrier shall thereafter be freed from any obligation hereunder.

(2) If, after any action under the preceding paragraph, the Carrier makes any arrangements to store and/or transship and/or forward the Goods, it is agreed that the Carrier does so as agent only for, and at the sole risk and

expense of, the Merchant without any liability whatsoever in respect of such agency. The Merchant shall reimburse the Carrier forthwith upon demand all extra freight, charges and expenses incurred thereby.

(3) The situations referred to in the paragraph (1) above shall include, but shall not be limited to, those caused by the existence or apprehension of war declared or undeclared, hostilities, warlike or belligerent acts or operations, riots, civil commotions or other disturbances; closure of, obstacle in or danger to any canal; blockade of port or place or interdict or prohibition of or restriction on commerce or trading; quarantine, sanitary or other similar regulation or restrictions; strikes, lockouts or other labour troubles whether partial or general and whether or not involving employees of the Carrier or his Sub - Contractors; congestion of port, wharf, quay or any other place; shortage, absence or obstacles of labour or facilities for loading, discharge, delivery or other handling of the Goods; epidemics or diseases; bad weather, shallow water, ice or other obstacles in navigation.

(4) In case the Goods or their condition bring about, during the Carriage, any danger or risk which renders it, in the judgment of the Master, unsuitable or unsafe for the Vessel to continue the navigation, due to any cause or reason for which the Carrier is not responsible, the Carrier may take any action as provided for in the paragraphs (1) and (2) above, with the same effect as provided for in the last sentence of the paragraph (1) above.

(5) The Carrier, in addition to all other liberties provided for in this Article, shall have liberty to comply with orders, directions, regulations, recommendations or suggestions as to departure, arrival, route, ports of call, stoppage, loading, discharge, handling, destination, delivery, quarantine or otherwise, howsoever given by any government, public authorities or department thereof or any person acting or purporting to act with authority of such government, public authorities or department thereof or by any committee or Person having, under the terms of any insurance on the Vessel, the right to give such orders, directions, regulations, recommendations or suggestions. If by reason of and/or in compliance with any such orders, directions, regulations, recommendations or suggestions anything is done or is not done, the same shall be deemed to be included within the contractual carriage and shall not be deemed to be a deviation.

10. (Unknown Clause) (1) Any reference on the face hereof to marks,

numbers, description, quantity, gauge, weight, measure, nature, kind, value and any other particulars of the Goods is as furnished by the Merchant, and the Carrier shall not be responsible for the accuracy thereof. The Merchant warrants the Carrier that the particulars furnished by him are correct and shall indemnify the Carrier against all loss, damage, expenses, liability, penalties and fines arising out of or resulting from inaccuracy thereof.

(2) If the cargo received by the Carrier is packed into container(s), loaded on pallet(s) or unitized into similar article(s) of transport by or on behalf of the Merchant, this Bill is prima facie evidence of the shipment only of the number of such article(s) as shown on the face hereof; and the order and condition of the contents and any other reference to marks, numbers, number and kind of packages or pieces, description, quality, quantity, gauge, weight, measure, nature, kind and value are unknown to the Carrier. The Carrier shall accept no responsibility therefor.

11. (Deck Cargo, Live Animals) (1) The Goods stowed in poop, forecastle, deckhouse, shelter deck, passenger space or any other covered space shall be deemed to be stowed under deck for all purposes including general average.

(2) The Carrier has the right to carry the Goods in container(s) under deck or on deck. When the Goods are carried on deck, the Carrier shall not be required to specially note, mark or stamp any statement of "on deck stowage" on the face hereof, any custom to the contrary notwithstanding, and the Goods so carried shall be subject to the applicable Hague Rules Legislation as provided for in Article 2 hereof, and shall be deemed to be carried under deck for all purposes including general average.

(3) The Goods carried on deck and herein stated to be so carried and live animals, birds, reptiles and fish are accepted solely at the risk of the Merchant and the Carrier shall not be liable for any loss, damage, disease or mortality thereof, whether or not caused by the act or negligence of the Carrier or by the unseaworthiness of the Vessel.

12. (Dangerous Goods, Contraband) (1) The Carrier undertakes to carry the Goods of an explosive, inflammable, radioactive, corrosive, damaging, noxious, hazardous, poisonous, injurious or dangerous nature only upon the Carrier's acceptance of a prior written application by the Merchant for the carriage of such Goods. Such application must accurately state the nature,

name, label and classification of the Goods as well as the method of rendering them innocuous, with the full names and addresses of the shipper and the consignee.

(2) The Merchant shall undertake that the nature of the Goods referred to in the preceding paragraph is distinctly and permanently marked and manifested on the outside of the Goods or package(s) and shall also undertake to submit the documents or certificates required by any applicable laws or regulations or by the Carrier.

(3) Whenever the Goods are discovered to have been shipped without complying with the paragraph (1) or (2), or (6), or the Goods are found to be contraband or prohibited by any laws or regulations of the port of loading, discharge or call or any place or waters during the Carriage, the Carrier shall be entitled to have such Goods rendered innocuous, thrown overboard or discharged or otherwise disposed of at the Carrier's discretion without compensation and the Merchant shall be liable for and indemnify the Carrier against any kind of loss, damage or liability including loss of freight, and any expenses directly or indirectly arising out of or resulting from such Goods.

(4) The Carrier may exercise or enjoy the right or benefit conferred upon the Carrier under the preceding paragraph whenever it is apprehended that the Goods shipped in compliance with the paragraph (1), (2) and (6) become dangerous to the Carrier, Vessel, cargo, Persons and/or other property.

(5) The Carrier has the right to inspect the contents of the Goods or package(s) at any time and anywhere without the Merchant's agreement but only at the risk and expense of the Merchant.

(6) The Merchant shall be obligated to provide the Carrier, in writing and in advance of shipment, with all up to date information within his knowledge as to requirements for the safe Carriage of the Goods and any other information with respect to the Goods, the Carriage and/or the Merchant required by any applicable law or regulation or by the Carrier.

13. (Special Goods) (1) Special Stowage: The Goods shall not be carried in the refrigerated, ventilated, insulated, heated or any other special compartments but shall be carried in the ordinary compartments, unless (i) special arrangements for such stowage have been agreed upon in writing prior to shipment between the Carrier and the Merchant, (ii) such special

arrangements are noted on the face of this Bill, and (iii) special freight as required has been prepaid. The Carrier shall not be liable for any loss of or damage to or in connection with the Goods arising out of or resulting from such stowage in the ordinary compartments.

(2) Valuable Goods: The Carrier shall not be liable to any extent for any loss of or damage to or in connection with platinum, gold, silver, jewellery, precious stones, precious metals, radioisotopes, precious chemicals, bullion, specie, currency, negotiable instruments, securities, writings, documents, pictures, embroideries, works of art, curios, heirlooms, collections of every nature or any other valuable goods whatsoever including goods having particular value only for the Merchant, unless the true nature and value of the Goods have been declared in writing by the Merchant before shipment of the Goods, and the same is inserted in this Bill and the additional charges as required have been prepaid in addition to freight.

(3) Iron and Steel: The iron, steel and metal goods which are at the time of shipment in the ordinary external condition as to rust, corrosion, oxidation, moisture, scratch, dent or bend are admitted as being in apparent good order and condition by the Carrier and the Merchant, and the terms "apparent good order and condition" on the face hereof does not mean any admission by the Carrier as to the absence of such ordinary rust, corrosion, oxidation, moisture, scratch, dent or bend. In case of iron and steel, angles, bars, channels, etc. shipped loose or in bundles, the Carrier shall not be responsible for correct delivery, and all expenses incurred at the port of discharge consequent upon insufficient securing or marking shall be paid by the Merchant unless; (a) every piece is distinctly and permanently marked with oil paint; (b) every bundle is securely fastened, distinctly and permanently marked with oil-paint and metal-tagged, so that each piece or bundle can be distinguished at the port of discharge.

(4) Cotton: As the Carrier has no reasonable means of checking the marks upon the cotton at the time of shipment, any reference to the marks on the face hereof is made at the Merchant's request only for the Merchant's convenience and the Carrier shall not be liable for the inaccuracy thereof. The Merchant shall undertake to take delivery of the cotton actually loaded at the port of loading and shall not refuse to do so merely because of discrepancy of the marks between those stated on the face hereof and those shown upon the cotton.

(5) Lumber and Timber: the lumber, timber and products thereof which are at the time of shipment in the ordinary external condition as to chafage, breakage, hook holes, split, broken pieces, stain, warps, shakes and/or decoloration are admitted as being in apparent good order and condition by the Carrier and the Merchant, and the term "apparent good order and condition" on the face hereof does not mean any admission by the Carrier as to the absence of such ordinary chafage, breakage, hook holes, split, broken pieces, stain, warps, shakes and/or decoloration.

(6) Bulk Cargo: The quantity or weight of the Goods shown on the face hereof is ascertained by a party other than the Merchant and the Carrier, who have no reasonable means of checking the accuracy thereof, and agreed to be stated herein only for the Merchant's convenience, without constituting any evidence against the Carrier.

14. (Weight Declaration of Goods) (1) The weight must be declared by the Merchant in writing before receipt by the Carrier and must be marked clearly and durably on the outside of the piece or package in letters and figures not less than two inches high.

(2) In case of the Merchant's failure in his obligations under the preceding paragraph, the Carrier shall not accept the Goods, and if he accepts, shall not be responsible for any loss of or damage to or in connection with the Goods, and at the same time the Merchant shall be liable for loss of or damage to any property or for personal injury arising as a result of the Merchant's said failure and shall indemnify the Carrier against any kind of loss, damage or liability suffered or incurred by the Carrier as a result of such failure.

15. (Delivery by Marks) (1) The Carrier shall not be liable for failure of or delay in delivery in accordance with marks unless such marks shall have been clearly and durably stamped or marked upon the Goods, or package(s) by the Merchant before shipment in letters and numbers not less than 2 inches high, together with the names of the port of discharge and/or destination.

(2) In no circumstances shall the Carrier be responsible for delivery in accordance with other than leading marks.

(3) The Merchant warrants the Carrier that the marks on the Goods or

package(s) correspond to the marks shown on this Bill and also in all respects comply with all laws and regulations in force at the port of discharge and/or destination, and shall indemnify the Carrier against all loss, damage, expenses, penalties and fines arising out of or resulting from incorrectness or incompleteness thereof.

(4) Goods which cannot be identified as to marks and numbers, cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated for the purpose of completing delivery to the various merchants of goods of like character, in proportion to any apparent shortage, loss of weight or damage, and such Goods or parts thereof shall be accepted as full and complete delivery.

16. (Loading, Discharge and Delivery) (1) Loading and discharge shall be effected by the Carrier at his expense unless otherwise specifically shown herein. However, any expense, costs, dues and other charges which incur before loading and after discharge of the Goods shall be borne by the Merchant.

(2) Notwithstanding any custom of the port to the contrary, the Goods may be discharged as soon as the Vessel is ready to discharge, without notice, continuously day and night, Sundays and holidays included, regardless of weather, onto wharf or quay or into warehouse, or into lighter, hulk, lazaretto, craft or on any other place and may be stored there.

(3) At any port the Carrier is authorized by the Merchant to entrust masterportage (receiving, watching, weighing, delivering, lighterage, cartage, custody) and any other services to any firm, corporation, Person, whether owned by, subsidiary to, associated or affiliated with or employed by the Carrier or not, or to custom or public authorities or department thereof, and who are deemed to act solely as agent of the Merchant.

(4) Optional delivery shall be granted only when arranged prior to the time of shipment the Goods and so expressly noted herein. The Merchant desiring to avail himself of the option so expressed must give notice in writing to the Carrier at the first port of call of the Vessel named in the option at least 48 hours prior to the Vessel's arrival there, otherwise the Goods shall be discharged at any of the optional ports at the Carrier's option and the Carrier's responsibility shall then cease.

(5) Notwithstanding any Article to the contrary, the Carrier does not

undertake that the Goods shall arrive at the port of discharge or destination at any particular time, or in time to meet any particular market or use and the Carrier shall not be responsible for any direct or indirect loss or damage which is caused through delay.

17. (Transshipment and Forwarding) (1)(i) In case of through carriage under this Bill, the Merchant constitutes the Carrier his agents to enter into contract with others for the pre-carriage and/or on-carriage of the Goods and/or for the storing, lightering, transshipment or other dealing therewith, prior to, or in the course of, or subsequent to the Carriage in the Carrier's Vessel without any liability attaching to him in respect of such agency. (ii) The responsibility of each carrier acting as such is limited to that part of the transport actually undertaken by him, and the Carrier shall not be under any liability for damage and/or loss arising from whatsoever cause during any other part of the transport, even though the freight for the whole transport has been collected by the Carrier.

(2) Any statement of the port or place, whether littoral or inland, in the column "Final Destination" on the face hereof is solely for the purpose of the Merchant's reference, and in case the columns "(Local Vessel)" and "(From)" on the face hereof are filled up and this Bill is issued at a place other than the port of loading onto the Vessel, any statement herein as to the shipment of the Goods shall be construed to relate only to the time when and place where the Goods were loaded on board the local vessel. The Carrier's liability, in those events, shall be determined in accordance with paragraph (1) of this Article.

(3) The Carrier shall be at liberty, whether or not arranged beforehand or indicated on the face hereof, to transship the whole or any part of the Goods, with or without notice, at any port or place for any purpose whatsoever, or to forward the same by any means of transport by water, land or air, whether owned or operated by the Carrier or not. The Carrier's liability shall, in this event, cease when the Goods leave the Vessel's tackle.

18. (Over-carriage) In case the Goods or any part thereof can not be found during the Vessel's stay at the port of discharge, the Goods are, when found, to be forwarded to their destination at the Carrier's expense but free of liability for any loss, depreciation or damage arising from over-carriage or

return-carriage.

**19. (Lien and Unclaimed Goods)** (1) The Carrier shall have a lien on the Goods, which shall survive delivery, for all freight, dead freight, demurrage, storage, general average, salvage, damages, loss, charges, expenses and any other sums whatsoever payable by or chargeable to or for the account of the Merchant under this Bill and any other contracts of carriage with the Merchant whatsoever, whether they may be relevant to this Bill or not, and the cost and expenses of recovering the same, and may sell the Goods privately or by public auction without notice to the Merchant. If on sale of the Goods, the proceeds fail to cover the amount due and the cost and expenses incurred, the Carrier shall be entitled to recover the deficit from the Merchant.

(2) If the Goods are unclaimed during a reasonable time, or whenever in the Carrier's judgement the Goods will become deteriorated, decayed or worthless, the Carrier may, at his discretion and without any responsibility attaching to him, sell, abandon or otherwise dispose of the Goods solely at the risk and expense of the Merchant.

**20. (Notice of Claim and Time for Suit)** (1) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier at the port of discharge before or at the time of delivery of the Goods or, if the loss or damage be not apparent, within 3 days after delivery, the Goods shall be deemed to have been delivered as described in this Bill .

(2) In any event the Carrier shall be discharged from all liability whatsoever in respect of the Goods unless suit is brought within one year after delivery of the Goods or the date when the Goods should have been delivered.

**21. (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 all liability whatsoever in respect of the Goods whether the action be founded in contract, in tort or otherwise.

**22. (Limitation of Liability)** (1) When the Carrier is liable for compensation

in respect of any loss of or damage to the Goods, such compensation shall be calculated by reference to the value of the Goods at the place and time they are discharged from the Vessel, or at the place and time they should have been discharged. For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the value of the Goods is presumed to be the invoice value plus freight and insurance premium, if paid. In no event shall the Carrier be liable for any loss of profit or any consequential loss.

(2) (i) Notwithstanding the preceding paragraph, the Carrier shall not be liable for loss or damage in an amount exceeding 666.67 Units of Account per package or unit or 2 Units of Account per kilogramme of gross weight of the Goods lost or damaged, whichever is the higher, or in case of the Goods not shipped in packages, per customary freight unit, unless the value of the Goods higher than this amount has been declared in writing by the Merchant before shipment of the Goods and inserted in this Bill together with nature thereof and the additional charges as required have been prepaid in addition to freight. This declaration, if embodied in this Bill, shall be prima facie evidence, but shall not be conclusive on the Carrier. The Unit of Account mentioned in the preceding paragraph is the Special Drawing Right(SDR) as defined by the International Monetary Fund. Notwithstanding anything else contained herein, if this Bill covers the Goods moving to or from the U.S.A. (including its districts, territories or possessions), and if the following is not invalid or unenforceable under the local law of the jurisdiction in which legal proceedings are brought, then the amount of the foregoing limitation shall instead be U.S.\$500 per package or customary freight unit. If the actual value of the Goods per package or unit exceeds such declared value, the value the Carrier may be liable for shall nevertheless be deemed to be the declared value and the Carrier's liability, if any, shall not exceed the declared value. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value. In case the declared value is markedly higher than the actual value, the Carrier shall in no event be liable to pay any compensation. (ii) Where the cargo has been packed into container(s) or unitized into similar article(s) of transport by or on behalf of the Merchant, and when the number of packages or units packed into container(s) or unitized into similar article(s) of transport is not enumerated on the face hereof, each container or similar article including the entire

contents thereof shall be considered as one package for the purpose of the application of the limitation of liability provided for herein.

23. (Freight and Charges) (1) Freight may be calculated on the basis of the particulars of the Goods furnished by the Merchant who shall be deemed to have guaranteed the Carrier the accuracy of the contents, weight, measure or value as furnished by him, at the time of shipment, but the Carrier may, for the purpose of ascertaining the actual particulars, at any time, open the package(s), container(s), pallet(s) and/or other similar article(s) of transport and examine contents, weight, measure and value of the Goods at the risk and expense of the Merchant. In case of incorrect declaration of the contents, weight, measure or value of the Goods, the Merchant shall be liable for and bound to pay to the Carrier, (a) the balance of freight between the freight charged and that which would have been due, had the correct details been given, (b) as and by way of liquidated and ascertained damages, a sum equal to the correct freight, plus (c) all expenses including attorneys' fees incurred by the Carrier in ascertaining the inaccuracies and collecting all sums due to him.

(2) Full freight to the port of discharge and/or destination named herein shall be considered as completely earned on shipment of the Goods, whether the freight be stated or intended to be prepaid or to be collected at the port of discharge, destination or any other place. The Carrier shall be entitled to all freight and other charges due hereunder, whether actually paid or not, and to receive and retain them irrevocably under any circumstances whatsoever, whether the Vessel and/or the Goods be lost or not, or the voyage be broken up or frustrated or abandoned at any stage of the Carriage. Full freight shall be paid on damaged or unsound Goods.

(3) The payment of freight and/or charges shall be made in full and in cash without any offset, counterclaim or deduction. Freight and all other charges shall be paid in the currency named in this Bill, or at the Carrier's option, in its equivalent in the currency of the Port of Loading or of Discharge or the Place of Receipt or of Delivery or as specified in the applicable Carrier's Tariff or custom at the place of payment.

(4) Goods once shipped cannot be taken away or disposed of by the Merchant except upon the Carrier's consent and against payment of full freight and compensation for any loss, damage or expense sustained by the Carrier

through such taking away or disposal. If the Goods are not available when the Vessel is ready to load, the Carrier is relieved of any obligation to load such Goods and the Vessel may leave the port without further notice and dead freight shall be paid by the Merchant.

(5) The Merchant shall be liable for, and indemnify the Carrier against all dues, duties, taxes and charges including consular fees levied on the Goods, or all fines and/or loss sustained or incurred by the Carrier in connection with the Goods howsoever caused, including the Merchant's failure to comply with laws and regulations of any government or public authorities in connection with the Goods or to procure consular, Board of Health or other certificate to accompany the Goods. The Merchant shall be liable for return freight and charges on the Goods refused exportation or importation by any government or public authorities. If the Carrier is of the opinion that the Goods stand in need of sorting, inspecting, mending or repairing or reconditioning or otherwise require protecting or caring for, the Carrier may carry out such work at the cost and expense of the Merchant. The Merchant authorizes the Carrier to pay and/or incur all such charges and expenses and to do any matters mentioned above at the expense of and as agent for the Merchant and to engage other Persons to regain or seek to regain possession of the Goods and do all things deemed advisable for the benefit of the Goods.

(6) The shipper, consignor, consignee, owner or receiver of the Goods and holder of this Bill shall be jointly and severally liable to the Carrier for the payment of all freight and charges and for the performance of the obligation of each of them hereunder.

24. (General Average, New Jason Clause) (1) General average shall be adjusted, stated and settled at Tokyo or any other port or place at the Carrier's option according to the York-Antwerp Rules, 1994 and as to matters not provided for by these Rules, according to the laws and usages of the port or place of adjustment, and in the currency selected by the Carrier. The general average statement shall be prepared by the adjusters appointed by the Carrier. Average agreement or bond and such cash deposit as the Carrier may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon and any other additional securities as the Carrier may require shall be furnished by the Merchant to

the Carrier before delivery of the Goods.

(2) The New Jason Clause as published by the Baltic and International Maritime Council is hereby incorporated into this Bill.

25. (Both to Blame Collision Clause) The Both to Blame Collision Clause as published by the Baltic and International Maritime Council is hereby incorporated into this Bill.

(Local Clause) (1) Goods to or from U. S. A. : In case this Bill covers the Goods moving to or from the U. S. A. and if it is adjudged that the Carriage of Goods by Sea Act, 1936 of the U. S. A. governs this Bill (i) the provisions of the Carriage of Goods by Sea Act, 1936 of the U. S. A. shall govern before the Goods are loaded on and after they are discharged from the Vessel and throughout the entire time the Goods are in the custody of the Carrier, notwithstanding Article 6 (1), and (ii) Article 11 (2) hereof shall be replaced by the following terms; "With respect to live animals, birds, reptiles and fish and the Goods carried on deck and stated herein to be so carried, all risks of loss or damage by perils inherent in or incidental to such carriage shall be borne by the Merchant, but in all other respects in connection with the custody and carriage of such Goods, the Carrier shall have the benefit of the provisions of the Carriage of Goods by Sea Act, 1936 of the U. S. A., notwithstanding Section 1 (c) thereof, and of all the terms and conditions of this Bill except those inconsistent with the provisions of this Article".

(2) Goods for Holland, Belgium, Germany: Weighing on board during discharge is only allowed by permission of the Carrier. If permission be given all additional expenses incurred by the Vessel in consequence of such weighing on board and whether in respect of extra stevedoring charges or otherwise shall be for account of the Merchant, notwithstanding any custom to the contrary. Permission may be withdrawn by the Carrier at any time during discharge without prejudice to the Carrier's right to recover additional expenses already incurred.

(3) Goods to and from Amsterdam: The Goods to and from Amsterdam to be transhipped at Rotterdam at the expense of the Carrier, but at the risk of the Merchant.

(4) Goods for Algier and Casablanca: Taxe de Péage to be paid by consignees.