

# TERMS OF CARRIAGE

**1. Definitions** "At law" means as provided for under any applicable statute and/or under applicable common law. "Carriage" means the whole or any part of operations and services undertaken by the Carrier in relation to the Goods. "Carrier" means Oceanex. "Combined Transportation Way Bill" (or "CTWB") means this Way Bill. "Container" includes any container (including an open top container), flat rack, platform, trailer, transportable tank or any other similar article used to consolidate the Goods and any connected equipment. "Freight" includes all charges payable to the Carrier in accordance with these Terms and the applicable Rate Quotation and General Tariff. "General Tariff" means the General Tariff of Oceanex. "Goods" means the whole or any part of the cargo and any packaging accepted from the Merchant including any Container not supplied by or on behalf of the Carrier. "Hague-Visby Rules" means the provisions of the International Convention for the Unification of Certain Rules relating to bills of lading (25th August 1924) as amended by the Protocols of 23rd February 1968 and 21st December 1979. "Merchant" includes the Shipper, Consignee, Receiver of the Goods, any Person owning or entitled to the possession of the Goods and anyone acting on behalf of such Person. "Multimodal Transport" arises if the Place of Receipt and/or the Inland Place of Final Delivery are indicated here in the relevant spaces and where the Carriage requires inland transportation other than Carriage onboard the Vessel. "Oceanex" is the trade name of Oceanex Inc. "Person" includes an individual, corporation, or other legal entity. "Port-to-Port Shipment" arises when the Carriage is not Multimodal Transport. "Rate Quotation" means the applicable Rate Quotation of Oceanex. "Subcontractor" includes the owners, charterers and operators of Vessels (other than the Carrier), the Carrier's agents, stevedores, terminal and other operators, road and rail transport operators, warehousemen and any independent contractors employed by the Carrier performing the Carriage and any direct or indirect Subcontractors, servants and agents thereof. "Terms" means all terms, rights, defenses, provisions, conditions, exceptions, limitations and liberties in the Carrier's CTWB, Rate Quotation and General Tariff. "US COGSA" means the US Carriage of Goods by Sea Act 1936. "Vessel" means the ship named on the face of this Way Bill or its substitute as well as any water borne craft used in the Carriage under this Way Bill. "Way Bill" means this Combined Transportation Way Bill (CTWB).

## **2. Carrier's General Tariff, Rate Quotation and Way Bill**

**2.1** This Way Bill is a non-negotiable receipt for the Carriage of the Goods. The Terms of the Carrier's current applicable General Tariff and the Rate Quotation are incorporated herein. In the case of inconsistency between this Way Bill and the General Tariff or Rate Quotation, this Way Bill prevails.

**2.2** Any other shipping form, bill of lading, way bill or other document prepared or used by the Merchant shall be subordinated and superseded by the Terms of this Way Bill. In the event of a conflict, this Way Bill shall prevail. Merchant hereby agrees that any such other form or contract shall be deemed to state that it is *"subject to the Terms of Oceanex's CTWB which shall supersede and prevail over this document"*.

## **3. Warranty & Subcontracting**

**3.1** The Merchant warrants that in agreeing with these Terms it is, or has the authority to contract on behalf of, the Person owning or entitled to possession of the Goods.

**3.2** The Carrier is entitled to subcontract on any terms whatsoever the Carriage. Without prejudice to the foregoing, every such Subcontractor as well as the Carrier's agents and representatives shall have the benefit of all the Terms herein or otherwise benefiting the Carrier.

## **4. Paramount Clause**

The contract evidenced by this Way Bill is deemed to be a contract of carriage as defined in Article 1(b) of the Hague-Visby Rules and in US COGSA even though this Way Bill is a non-negotiable document. It is neither a document of title nor a bill of lading and no bill of lading will be issued or is intended to be issued. However, the Hague-Visby Rules or US COGSA apply to this Way Bill to the extent they apply by the force of law or by their contractual incorporation as provided herein, in which case, whenever the Hague-Visby Rules or US COGSA so apply, the words "Bill of Lading" they contain shall be read and interpreted as meaning "Way Bill".

## **5. Carrier's Responsibility: Port-to-Port Shipment**

**5.1** Where the Carriage is Port-to-Port, any liability of the Carrier for loss or damage to the Goods shall be determined in accordance with any national law making the Hague-Visby Rules or US COGSA compulsorily applicable to the shipment covered by this Way Bill or, in any other case, in accordance with the Hague-Visby Rules.

**5.2 Period of Responsibility:** The Carrier shall have no liability for any loss or damage whatsoever and howsoever caused to the Goods before their loading or after their discharge from the Vessel, whether the Goods are then in the Carrier's actual or constructive possession.

**5.3 Exclusions:** The Carrier shall be relieved of any liability for any loss or damage to the Goods where it was caused or contributed to by any of those causes listed in Article IV of the Hague-Visby Rules or, where the shipment is to or from a port in the U.S.A, in US COGSA.

**5.4 Limitation of Liability:** Subject to the other exonerations, exclusions and applicable limitations of liability provided in this Way Bill or at law, the aggregate total compensation payable by Carrier shall, under no circumstances whatsoever and howsoever arising, exceed either the lesser of (i) the actual value of Goods lost or damaged as proved by the Merchant, or (ii) USD 500 per package or unit where Carriage includes Carriage to or from a port in the U.S.A., or (iii) \$2.00 per lb. (i.e., \$4.41 per kg) of Goods lost or damaged where loss or damage occurs during a motor transport that is subject to a claim being made under the Carmack Amendment, or (iv) \$2.00 per lb. (i.e., \$4.41 per kg) on the total weight of the shipment where an upward amount of limitation of liability is not otherwise provided at law, or (v) the amount calculated by application of the Hague-Visby Rules which provides that, unless the value of the Goods has been declared, the Carrier shall not in any event be or become liable for any loss or damage in an amount exceeding 666.67 units of account (SDRs) per package or unit, or 2 units of account (SDRs) per kilogram of gross weight of the Goods lost or damaged, whichever is the higher; or (vi) the minimum liability as set out in the laws of the province of Canada or the laws of the United States of America that are found to be of compulsory application to this CTWB.

**5.5** In the case of full Container loads shipments or claims involving damages to vehicles, claims with a value of \$250.00 or less will not be processed or honoured. In the case of less than full Container loads shipments, claims with a value of \$50.00 or less will not be processed or honoured.

## **6. Carrier's Responsibility - Multimodal Transport**

**6.1 Where any part of Multimodal Transport is performed in the U.S.A.:** US COGSA, with its limitation of liability of USD 500 per package, shall apply to any loss or damage to the Goods sustained during that part of the Multimodal Transport performed in the U.S.A.

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**6.2 In any other case of Multimodal Transport:** The Hague-Visby Rules shall apply by virtue of and to the extent of their incorporation by reference into this contract of carriage to the exclusion of Article III 8 which shall not apply. Any liability of the Carrier shall be limited to the extent set out below:

**(a) Period of Responsibility:** The Carrier shall have no liability for any loss or damage whatsoever and howsoever caused to the Goods before their receipt by the Carrier at their Inland Place of Receipt or Port of Loading, as the case may be, or after their arrival at the Port of Discharge or at their Inland Place of Final Delivery, as the case may be. Furthermore, Carrier shall not be liable for any loss or damage whatsoever and howsoever caused to the Goods during their storage prior to their loading or further to their discharge from the Vessel.

**(b) Exclusions:** The Carrier shall be relieved of any liability for any loss or damage to the Goods where it was caused or contributed to by either **(i)** an act of God or from public enemies, riot, strike, a defect or inherent vice in the Goods, an act or default of the Merchant, authority of law, quarantine or by difference in weights caused by natural shrinkage, or **(ii)** any of those causes listed in Article IV of the Hague-Visby Rules.

**(c) Limitation of Liability:** Subject to the other exonerations, exclusions and applicable limitations of liability provided in this Way Bill or at law, the aggregate total compensation payable by Carrier shall, under no circumstances whatsoever and howsoever arising, exceed either the lesser of **(i)** the actual value of Goods lost or damaged as proved by the Merchant, or **(ii)** USD 500 per package or unit where Carriage includes Carriage to or from a port in the U.S.A. **(iii)** \$2.00 per lb. (i.e., \$4.41 per kg) of Goods lost or damaged where loss or damage occurs during a motor transport that is subject to a claim being made under the Carmack Amendment, or **(iv)** \$2.00 per lb. (i.e., \$4.41 per kg) on the total weight of the shipment where an upward amount of limitation of liability is not otherwise provided at law, or **(v)** the amount calculated by application of the Hague-Visby Rules which provides that, unless the value of the Goods has been declared, the Carrier shall not in any event be or become liable for any loss or damage in an amount exceeding 666.67 units of account (SDRs) per package or unit, or 2 units of account (SDRs) per kilogram of gross weight of the Goods lost or damaged, whichever is the higher; or **(vi)** the minimum liability as set out in the laws of the province of Canada or the laws of the United States of America that are found to be of compulsory application to this CTWB;

**(d)** In the case of full Container loads shipments or claims involving damages to vehicles, claims with a value of \$250.00 or less will not be processed or honoured. In the case of less than full Container loads shipments, claims with a value of \$50.00 or less will not be processed or honoured.

### 7. Compensation and Liability Provisions

**7.1** Subject always to the Carrier's right to limit liability as provided for herein and provided that the Carrier is liable for compensation in respect of loss or damage to the Goods, such compensation shall be calculated by reference to the lesser of **(i)** the actual value of Goods lost or damaged as proved by the Merchant by reference to the value of such Goods at the place and time they are delivered or should have been delivered to the Merchant (the value of the Goods shall be fixed according to the current market price, by reference to the normal value of goods of the same kind and/or quality); or **(ii)** the invoice cost of the Goods plus Freight and paid premium for the insurance of the Goods.

**7.2** Save as provided in clause 7.3, for the purpose of determining the aforesaid limitation of liability, it is agreed that the following will constitute one single package or unit irrespective of the Merchant's listing or description of the Goods in this Way Bill: **(i)** For full Container loads shipped, where the Container is owned or leased by the Carrier, the total contents of the Container; **(ii)** for full Container loads shipped, where the Container is not owned or leased by the Carrier, the Container and the total contents of that Container; **(iii)** for shipments of less than full Container loads, where the Container is owned or leased by the Carrier, the aggregate of the contents made up of pallets, boxes, pieces or packages belonging to the Merchant; **(iv)** for shipments of less than full Container loads, where the Container is not owned or leased by the Carrier, the Container and the aggregate of the contents made up of pallets, boxes, or packages belonging to the Merchant; **(v)** the aggregate of the vehicle, its truck and their total contents if carried on the same voyage; **(vi)** each separate automobile and its contents if not carried on or in a Container; and **(vii)** the aggregate components of a shipped piece of equipment that must be broken down for shipment purposes.

**7.3** The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods and higher compensation than that provided for in these Terms may be claimed only when, with the consent of the Carrier, the Declared Value of the Goods by the Merchant to the Carrier has been stated in this Way Bill AND PROVIDED that extra Freight has accordingly been agreed to and paid by the Merchant prior to the loss or damage. In that case, the amount of the Declared Value shall be substituted for the applicable limit of liability provided in these Terms. Any partial loss or damage shall then be adjusted pro rata on the basis of such Declared Value.

### 8. General

**8.1** The Carrier will not be liable for any consequential damages arising from the Carriage of the Goods and does not undertake that the Goods shall arrive at any point or place at any stage during the Carriage, or at the Port of Discharge or Inland Place of Final Delivery, at any particular time, or to meet any particular requirement of any license, permission, sale contract, or credit of the Merchant, or any market, or use of the Goods. The Carrier shall under no circumstances whatsoever be liable for any type of loss or damage caused by delay.

**8.2** Once the Goods have been received by the Carrier, the Merchant shall not be entitled to interfere, for any reason, with either the Carrier's manner of performance, or the exercise of the liberties conferred by this Way Bill, nor to instruct, or require delivery of the Goods anywhere other than the location named herein or such other port or place selected by the Carrier in the exercise of its liberties. The Merchant shall indemnify the Carrier against all claims, legal fees and/or expenses caused to the Carrier, its agents or to any other cargo, or to the owner of such cargo, arising from any stoppage (whether temporary or permanent) in the Carriage, whether at the request of the Merchant or in consequence of any breach by the Merchant of this clause, or in consequence of any dispute whatsoever in respect of the Goods.

**8.3** The stipulations of this clause also apply in connection with the supplying of a Container to the Merchant.

### 9. Defenses of the Carrier & Time Bar

**9.1** The Terms of this Way Bill shall apply in any action against the Carrier whether the action be founded in contract, bailment, or in tort, and even if the loss or damage arose as a result of unseaworthiness of the Vessel or Container, negligence or breach of contract.

**9.2** The Carrier shall in any event 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. This period may, however, be extended if the parties so agree in writing after the cause of action has arisen.

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## 10. Containers

10.1 If a Container has not been stuffed, stowed and secured by the Carrier, this Way Bill shall evidence receipt only of the Container.

10.2 The Carrier shall not be liable for loss or damage to the contents of the Container and the Merchant shall indemnify the Carrier against any liability or expense incurred by the Carrier if such loss of, or damage to, the contents and/or such liability or expense arise out of matters beyond its control including, without limiting the generality of the foregoing:

- (a) The manner in which the Container has been stuffed, stowed and secured;
- (b) The unsuitability of the Goods for Carriage in Containers; or
- (c) The unsuitability or defective condition of the Container or the incorrect setting of any thermostat, ventilator, valve, switch, manifold or other special controls thereof, provided that, if the Container has been supplied by the Carrier, this unsuitability or defective condition could have been apparent upon inspection by the Merchant prior to, at the time of or upon completion of its stuffing.

10.3 The Merchant is responsible for the stuffing, securing, packing and sealing of all Containers and, if a Container is delivered by the Carrier with its original seal intact, the Carrier shall not be liable for: any shortage of Goods ascertained at delivery; or for any damage to Goods ascertained at delivery, where such damage is determined to be caused by the Merchant's stuffing, securing packing or sealing of a Container..

10.4 The Merchant shall inspect all Containers before packing/stuffing them and the use of Containers shall be prima facie evidence of the Containers being sound and suitable for use.

10.5 (a) It is the responsibility of the Merchant as Shipper under the Canadian Procedure for Obtaining the Verified Gross Mass of Containers as required by SOLAS VI/2 – TP 15330 (hereinafter referred to as the "regulatory requirement") to provide the Carrier with the verified gross mass of each Container to be shipped before it is loaded on the Vessel.

(b) The Carrier in compliance with the regulatory requirement, shall cause the verified gross mass of the Container as determined and advised by the Merchant as Shipper to be entered in the box marked "Verified gross mass" in this Way Bill.

(c) Where the Merchant as Shipper does not determine and provide the Carrier with the verified gross mass of a Container before the Carrier takes delivery of that Container, the Merchant as Shipper agrees that the Carrier may act as the Merchant as Shipper's agent for the purpose of so determining the verified gross mass of that Container, and in such case, the Merchant as Shipper accepts that the Carrier shall be entitled to charge such additional costs as the Carrier may determine. In such a case, the Carrier shall weigh the Container and determine the verified gross mass of the Container in accordance with the regulatory requirement before it is loaded on the Vessel. The Carrier, on the Merchant's behalf as Shipper, shall cause the verified gross mass of the Container so determined to be entered in the box marked "Verified gross mass" in this Way Bill.

## 11. Perishable Cargo

11.1 Goods, including Goods of a perishable nature, shall be carried in ordinary Containers without special protection, services or other measures unless there is noted on this Way Bill that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specifically equipped Container or are to receive special attention in any way. The Merchant undertakes not to tender for Carriage any Goods which require refrigeration, ventilation or any other specialized attention without giving advance written notice of their nature and the required temperature or other setting of the thermostatic, ventilation or other special controls to the Carrier. If the above requirements are not complied with by the Merchant, the Carrier shall not be liable for any loss of or damage to the Goods howsoever arising.

11.2 It is hereby expressly understood that refrigerated Containers are not designed:

11.3 To freeze cargo which has not been presented for stuffing at its designated carrying temperature. The Carrier shall not be responsible for the consequences of cargo being presented at a different temperature than that required for the Carriage; nor

11.4 To monitor and control humidity levels, albeit a setting facility exists, in that humidity is influenced by external factors beyond the control of the Carrier such that the maintenance of any intended level of humidity inside the Container cannot be warranted.

11.5 The term "apparent good order and condition" when used with reference to Goods which require refrigeration, ventilation or other specialized attention does not mean that the Goods, when received were verified by the Carrier as being at the stated temperature, humidity level or other condition declared by the Merchant.

11.6 The Carrier shall not be liable for any loss or damage to the Goods arising from latent defects, derangement, breakdown, defrosting, stoppage of the refrigerating, ventilating or any other specialized machinery, plant, insulation and/or apparatus of the Container, Vessel, conveyance and any other facilities, provided that the Carrier shall before and at the beginning of the Carriage exercise due diligence to maintain the Container supplied by the Carrier in an efficient state.

## 12. Inspection of Goods

The Carrier shall be entitled to inspect the Goods, the Container or contents therein at any time. If it appears that the Goods 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 the Goods, the Carrier may, without notice, as the Merchant's agent only, take any measures to interrupt, carry or to continue the Carriage thereof, and/or to sell or dispose of the Goods, and/or to abandon the Carriage, and/or to store the Goods ashore or afloat, under cover or in the open, at any place, whichever the Carrier, in its absolute discretion, considers most appropriate. In which case, any such sale, disposal, abandonment, or storage, shall be deemed to constitute due delivery by the Carrier to the Merchant under this Way Bill. The Merchant shall indemnify the Carrier against any additional expense so incurred. The Carrier in exercising the liberties contained herein shall not be under any obligation to take any particular measures and shall not be liable for any loss or damage howsoever arising from any action or lack of action under this clause.

## 13. Description of Goods

13.1 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, except where the Carrier under section 10.5 of this Way Bill causes the verified gross mass of a Container on the Merchant as Shipper's behalf to be entered in the box marked "Verified gross mass" in this Way Bill. In such a case, such entry shall be regarded as a representation made by the Carrier on the Merchant as Shipper's behalf in compliance with the regulatory requirement.

13.2 The Merchant warrants to the Carrier that the particulars relating to the Goods as set out on this Way Bill have been checked by the Merchant and that such particulars, and any other particulars furnished by or on behalf of the Merchant, are adequate and correct. The Merchant also warrants that the Goods are lawful goods, and contain no contraband, drugs, other illegal substances or stowaways, and that the Goods will not cause loss, damage or expense to the Carrier, or to any other cargo during the Carriage.

13.3 If any particulars of any letter of credit and/or import license and/or sales contract and/or invoice or order number and/or



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details of any contract to which the Carrier is not a party are shown on the face of this Way Bill, such particulars are included at the sole risk of the Merchant and for its convenience. The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way increases the Carrier's liability under these Terms.

### 14. Merchant's Responsibility

14.1 All of the Persons coming within the definition of Merchant in clause 1 shall be jointly and severally liable for the Merchant's obligations under this Way Bill and those Persons must take delivery of the Goods in accordance with clause 20 and pay Freight earned to the Carrier in accordance with clause 15. Goods are not subject to acceptance by Merchant. If an issue exists about the Goods the Merchant is obliged to accept them, to mitigate the damage or loss and file a formal claim. Freight is payable when earned under these terms and without holdbacks or setoff.

14.2 The Merchant shall be liable for, and shall indemnify the Carrier against, all loss or damage arising from any cause whatsoever in connection with the Goods for which the Carrier is not responsible.

14.3 The Merchant shall comply with all regulations or requirements of the competent authorities and shall bear and pay all duties, taxes, fines, expenses, loss or damage (including, without limiting the generality of the foregoing, Freight for any additional Carriage undertaken), incurred by reason thereof, or by reason of any illegal, incorrect, or insufficient declaration, marking, numbering or particulars of the Goods, and shall indemnify the Carrier in respect thereof.

14.4 The Merchant is responsible for returning the empty Containers, with interiors clean, odor free and in the same condition as received, to the point or place designated by the Carrier and within the time prescribed by the Carrier. Should a Container not be returned as required, the Merchant shall be liable for any detention, loss or damage or expense incurred as a result thereof. Demurrage will be charged in accordance with the Rate Quotation or General Tariff.

14.5 Containers released into the care of the Merchant are at the sole risks of the Merchant until redelivered to the Carrier. The Merchant shall indemnify the Carrier for all loss of and/or damage and/or delay to such Containers.

14.6 No claim for concealed damage or shortage of Goods is receivable after the expiration of 6 days from the date of delivery of the Goods.

### 15. Freight, Expenses and Fees

15.1 Freight shall be payable based on the particulars furnished by or on behalf of the Merchant. The Carrier may at any time open the Goods and, if the Merchant's particulars are incorrect the Merchant and the Goods shall be liable for 150% of the correct Freight and any expenses incurred in assessing the Goods.

15.2 Freight shall be considered irrevocably and completely earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event, whether the Vessel and/or the Goods are thereafter lost or damaged, in whole or in part.

15.3 All sums payable to the Carrier are due on demand and shall be paid in full in Canadian currency or, at the Carrier's option, in another currency.

15.4 In the event of any discrepancy between Freight in the Way Bill and any Carrier invoices, the former shall prevail.

15.5 All Freight shall be paid without any deduction, at the latest, before delivery of the Goods unless credit terms have been expressly agreed to by the Carrier and provided that no amount is outstanding in relation to prior shipments.

15.6 If the Merchant fails to pay the Freight, he shall be also liable for payment of a service fee and interest due on any outstanding and/or overdue amount. Payment of Freight to a freight forwarder, broker or anyone other than the Carrier or its authorized agent, shall not be deemed payment to the Carrier. The Merchant agrees to pay, on a full indemnification basis, any and all legal fees of the Carrier incurred in legal proceedings for the recovery of all sums payable to the Carrier under these Terms.

15.7 The acceptance by the Carrier of instructions to collect Freight, duties, fees, demurrage/detention and/or costs and expenses from a designated Person shall not relieve the Merchant from its responsibility to acquit same and the Carrier shall not be held liable for being unable to collect same.

15.8 The Carrier may, at its sole discretion, grant credit. Such credit terms will not apply to subsequent carriages unless expressly agreed in writing.

### 16. Lien

The Carrier shall have a maritime and/or possessory lien over the Goods and any document relating thereto for all Freight and sums due to the Carrier under this Way Bill or any other contract. The Carrier may exercise its lien at any time in its sole discretion. The Carrier has the right to sell the Goods by private sale without notice.

### 17. Methods and Routes of Carriage

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

- (a) Use any means of transport or storage whatsoever;
- (b) Transfer the Goods from one conveyance to another including transshipping or carrying the same on a Vessel other than the Vessel named on this Way Bill or by any other means of transport whatsoever and even though transshipment or forwarding of the Goods may not have been contemplated or provided for herein;
- (c) De-stuff, unpack or remove the Goods which have been stuffed or stowed into a Container and forward them via Container or otherwise;
- (d) Sail without pilots, proceed via any route, (whether or not the nearest or most direct or customary or advertised route) at any speed and proceed to, return to and stay at any port or place whatsoever (including the Port of Loading herein provided) once or more often, and in any order in or out of the route or in a contrary direction to or beyond the Port of Discharge once or more often;
- (e) Load and unload the Goods at any place or port (whether or not any such port is named herein as the Port of Loading or Port of Discharge) and store the Goods at any such port or place;
- (f) Comply with any orders or recommendations given by any government or authority or any Person or body or purporting to act as or on behalf of such government or authority or having, under the terms of insurance for any conveyance employed by the Carrier or a Subcontractor, the right to give orders or directions.

17.2 The liberties set out in clause 17.1 may be invoked by the Carrier for any purpose whatsoever whether or not connected with the Carriage of the Goods, including but not limited to loading or unloading other goods, bunkering or embarking or disembarking any Person(s), undergoing repairs and/or dry-docking, towing or being towed, assisting other Vessels, sea trials and adjusting instruments. Anything done or not done in accordance with clause 17.1 or any delay arising there from shall be deemed to be within the contractual Carriage and shall not be a deviation.

### 18. Matters Affecting Performance.

If at any time Carriage is or is likely to be affected by any danger, or difficulty which cannot be avoided by the exercise of reasonable

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endeavors, the Carrier may at its sole discretion and without notice to the Merchant and whether or not the Carriage is commenced either:

- (a) Carry the Goods to the contracted location by an alternative route. If the Carrier elects to invoke the terms of this clause 18(a) then, notwithstanding the provisions of clause 17 hereof, it shall be entitled to charge such additional Freight as the Carrier may determine; or
- (b) Suspend the Carriage of the Goods and store them ashore or afloat upon the Terms of this Way Bill and endeavor to forward them as soon as possible, but the Carrier makes no representations as to the maximum period of suspension. If the Carrier elects to invoke the terms of this clause 18(b) then, notwithstanding the provisions of clause 17 hereof, it shall be entitled to charge such additional Freight and costs as the Carrier may determine; or
- (c) Abandon the Carriage of the Goods and place them at the Merchant's disposal at any place or port which the Carrier may deem convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full Freight on the Goods received for Carriage, and the Merchant shall pay any additional costs incurred by reason of the abandonment of the Goods. If the Carrier elects to use an alternative route under clause 18(a) or to suspend the Carriage under clause 18(b) this shall not prejudice its right subsequently to abandon the Carriage.

### **19. Dangerous Goods**

19.1 The Merchant warrants that the Carriage of all dangerous goods will be fully declared prior to their shipment as part of the Goods to be carried and that those are stuffed, packed and stowed in a manner adequate to withstand the risks of Carriage having regard to their nature and in compliance with all laws, regulations or requirements which may be applicable during the Carriage.

19.2 The Merchant shall indemnify the Carrier against all claims, liabilities, losses, damages, delays, costs, fines and/or expenses arising in consequence of the Carriage of such goods, including any steps taken by the Carrier to mitigate risks whether or not the Merchant was aware of the dangerous nature of the Goods.

### **20. Notification and Delivery**

20.1 The Merchant has the duty to monitor and inform itself as to the arrival of the Goods. Any reference in this Way Bill to Persons to be notified of the arrival of the Goods is solely for information of the Carrier. Failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.

20.2 The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Rate Quotation or General Tariff. If the Merchant fails to do so, the Carrier may without notice unpack or de-stuff the Goods, if stowed in Containers, and/or store the Goods ashore, afloat, in the open or under cover, at the sole risks of the Merchant. Such storage shall constitute due delivery hereunder and, thereupon, all liability whatsoever of the Carrier in respect of the Goods shall cease and the costs of such storage shall forthwith, upon demand, be paid by the Merchant to the Carrier.

20.3 If the Goods remain unclaimed within a reasonable time or whenever, in the Carrier's opinion, the Goods are likely to deteriorate, decay or become worthless, or incur charges, whether for storage or otherwise, in excess of their value, the Carrier may at its discretion and without prejudice to any other rights which it may have against the Merchant, without notice and without any responsibility attaching to it, sell, abandon or otherwise dispose of the Goods at the sole risks and expenses of the Merchant and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Way Bill.

20.4 Refusal by the Merchant to take delivery of the Goods in accordance with the Terms of this clause and/or to mitigate any loss or damage thereto shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof and the Merchant, including all Persons within the definition of that term, shall be jointly and severally liable for all costs, losses and/or damages, or delays, resulting there from including demurrage over Containers.

20.5 The Carrier may, in its absolute discretion, deliver the Goods de-stuffed from their Container as break bulk cargo and/or deliver the Goods to more than one receiver as per the Merchant's request. In such event, the Carrier shall not be liable for any shortage, loss, damage or discrepancies of the Goods, which are found upon de-stuffing the Container or delivery.

20.6 In any case where the Merchant and the Carrier agree as a part of the booking confirmation process or otherwise, that the Carrier is to deliver Goods by road transportation to the Merchant/Consignee named on the first page of the CTWB issued in respect of the carriage of the Goods to their Inland Place of Final Delivery as specified on the first page of the same CTWB outside the Merchant/Consignee's scheduled business hours, at a time and location when and where a representative employed or otherwise engaged by the Merchant/Consignee will not be present to accept the delivery of such Goods, unless the Merchant and the Carrier otherwise agree in writing, the parties agree as follows:

- (a) the Merchant agrees to designate, and by entering into and agreeing to such delivery arrangements with the Carrier, appoints and designates the Carrier's driver to act on the Merchant/Consignee's behalf for the purposes of completing on delivery of the Goods to the Merchant/Consignee's premises proof of delivery documents in electronic or written form indicating: (i) that delivery of the Goods and the Container carrying the Goods has been made by the Carrier to the Merchant/Consignee's premises on the date and within the time period agreed upon; and (ii) the Goods and the Container carrying the Goods have been received in apparent good condition and without any apparent shortages, overages or damages to the Goods or damage to the Container at their time of delivery, unless the Carrier's driver observes any such condition in which case the Carrier's driver will record the same on the delivery documents;
- (b) The Merchant/Consignee will have up until 12 noon local time at the delivery location of the Goods, the next business day after the Carrier sends the Merchant and the Merchant/Consignee if different from the Merchant, a copy in electronic or written form of the proof of delivery document completed by the Carrier's driver on the Merchant's behalf to advise the Carrier of any error or omission in the proof of delivery documents, after which time, the Merchant and the Carrier agree that the proof of delivery document will be deemed to be accurate in all material respects.

### **21. Both-to-Blame Collision Clause**

The latest edition of the Both-to-Blame Collision and New Jason clauses published and/or approved by the Baltic International Maritime Council (BIMCO) and obtainable from the Carrier or its agent upon request are hereby incorporated herein.

### **22. General Average and Salvage**

22.1 In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible, by statute, contract, or otherwise, the Merchant shall contribute with the Carrier in general average to the payment of any sacrifices, loss or damages or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the Goods. General average is to be adjusted at any port or place at the Carrier's option and to be settled according to the York-Antwerp Rules 1994.

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22.2 Such security as a cash deposit, insurer's letter of undertaking, or bank letter of credit, as the Carrier may accept, to cover the estimate of the total contribution of the Goods, in general average, for salvage and/or as special charges thereon shall, if required by the Carrier, be submitted to the Carrier prior to delivery of the Goods. The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.

22.3 If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving ship belonged to a third party.

22.4 In the event of the Carrier considering that salvage services are needed, the Merchant agrees that the Carrier may act as its agent to procure such services to the Goods and that the Carrier may act as its agent to settle salvage remuneration.

### **23. Carrier's Responsibility for Stored Goods**

23.1 Carrier shall not be regarded as a warehouseman of Goods for Merchant or any other person unless Carrier and Merchant enter into a further written agreement providing for the warehousing of such Goods by Carrier. Unless Carrier has entered into such an agreement, Carrier's liability for loss or damage to Goods stored on "Carrier's premises") before loading on a ship or following unloading from a ship), shall not exceed the applicable amounts determined and calculated in accordance with the Terms.

23.2 Carrier, subject to the law of the place where the Goods are stored, shall not be liable for any loss or damage to Goods tendered, stored or handled while being warehoused, unless such loss or damage results from the failure of the Carrier to exercise such care in respect of such Goods as a reasonably careful person would exercise in like circumstances. Carrier is not liable for damages which could not have been avoided by the exercise of such care.

23.3 Carrier, subject to the law of the place where the Goods are stored, shall be entitled to claim and maintain a warehouseman's lien and to exercise such rights and remedies in relation thereto as the law of the place where the Goods are being stored permits.

23.4 Carrier may charge Shipper or Consignee for storage of goods in accordance with its tariff or quote to Merchant, but such charge for storage shall not increase liability of Carrier.

### **24. Variation of the Contract**

No servant or agent of the Carrier shall have the power to waive or vary any Terms in this Way Bill, the Rate Quotation, or the General Tariff, unless such variation is in writing and is approved and ratified in writing by the Carrier.

### **25. Law and Jurisdiction**

This Way Bill shall be governed by *Canadian maritime law* as this expression is defined at section 2 of the *Federal Courts Act*. Any dispute in connection with the Carriage of the Goods or this Way Bill shall be referred to the exclusive jurisdiction of the Federal Court of Canada.

### **26. Severability**

In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Way Bill, and this Way Bill shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited or eliminated only to the extent necessary to remove the invalidity, illegality or unenforceability.

### **27. Language of Documentation**

This Way Bill as well as any other document incorporated by reference into it, notices, schedules and authorizations may be drafted or completed in any one of both official languages in Canada. However, by using or accepting to use the English version form of this Way Bill, the parties are deemed to have agreed that their agreement be drawn in the English language. In case of any inconsistency between the English and French version of same, the English version shall prevail. *Cette Lettre de Transport ainsi que tout document qui y est incorporé par référence, avis, annexe ou autorisation ont été ou peuvent être rédigés ou complétés dans l'une ou l'autre des deux langues officielles au Canada. Toutefois, par leur utilisation ou acceptation de la version anglaise du formulaire de cette Lettre de Transport, les parties aux présentes sont réputées avoir convenu à ce que cette entente soit rédigée dans la langue anglaise. En cas de divergences entre leur version anglaise et française, le texte de la version anglaise prévaudra.*