

## **Port to Port Bill of Lading (as Carrier B/L)**

SHIPPED on board the Goods, or the total number of Containers or other packages or units enumerated below (\*) in apparent external good order and condition except as otherwise noted for transportation from the Port of Loading to the Port of Discharge subject to the terms hereof.

One of the original Bills of Lading must be surrendered duly endorsed in exchange for the Goods or Delivery Order unless otherwise provided herein.

In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its terms whether printed, stamped or written, or otherwise incorporated, notwithstanding the non-signing of this Bill of Lading by the Merchant.

IN WITNESS whereof the number of original Bills of Lading stated below have been signed, one of which being accomplished, the other(s) to be void.

(Terms of Bill of Lading continued on the back hereof)

### **1. DEFINITIONS**

“Carrier” means Mitsui O.S.K. Lines, Ltd., on whose behalf this Bill of Lading has been issued.

“Merchant” includes the Shipper, Holder of this Bill of Lading, Consignee, Receiver of the Goods, any Person owning or entitled to the possession of the Goods or of this Bill of Lading and anyone acting on behalf of any such Person.

“Person” includes an individual, group, company or other entity.

“Sub-Contractor” includes owners and operators of Vessels and space providers on Vessels (other than the Carrier), stevedores, terminal and groupage operators, any independent contractor directly or indirectly employed by the Carrier in performance of the Carriage, their respective servants and agents, and anyone assisting the performance of the Carriage.

“indemnify” includes defend, indemnify and hold harmless.

“Goods” means the whole or any part of the cargo received from the Shipper and includes any equipment or Container not supplied by or on behalf of the Carrier.

“Container” includes any container, trailer, transportable tank, flat or pallet and any equipment thereof or connected thereto.

“Carriage” means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods under this Bill of Lading.

“loading” commences with the hooking on the vessel’s tackle or, if not using the vessel’s tackle, with the receipt of the Goods on deck or hold, or in case of bulk liquids in the vessel’s tank.

“discharge” is completed when the Goods are freed from the vessel’s tackle or, if not using the vessel’s tackle, taken from deck or hold, or the vessel’s tank.

“Freight” includes all charges payable to the Carrier in accordance with the applicable Tariff and this Bill of Lading.

“Hague Rules” means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August, 1924 and includes the amendments by the Protocol signed at Brussels on 23rd February, 1968, and the amendments by the Protocol signed at Brussel on 21st December, 1979, but only if such amendments (hereinafter collectively called ‘the Visby Amendments’) are compulsorily applicable to this Bill of Lading (It is expressly provided that nothing in this Bill of Lading shall be construed as contractually applying Visby Amendments).

“Port of Loading” means a port or place so named overleaf.

“Port of Discharge” means a port or place so named overleaf or any other port or place where the Goods are discharged from the Vessel in accordance with Clause 6 or discharged from the Vessel as a disposal in accordance with Clause 20 or 21(c).

“Vessel” means the Ocean vessel named overleaf and includes vessel, ship, craft, lighter or other means of transport by sea or water which is or shall be substituted, in whole or in part, for the vessel named on the face hereof.

### **2. CARRIER’S TARIFF**

The terms of the Carrier’s applicable Tariff are incorporated herein. Copies of the relevant

provisions of the applicable Tariff are obtainable from the Carrier upon request. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

### **3. LIMITATION STATUTES**

Nothing in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection or exemption or limitation of liability authorized by any applicable laws, statutes or regulations of any country.

### **4. SUB-CONTRACTING AND INDEMNITY**

(1) The Carrier shall be entitled to sub-contract the Carriage on any terms whatsoever.

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

(3) The provisions of Clause 4(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.

### **5. CARRIER'S RESPONSIBILITY**

(1) Clause Paramount

This Bill of Lading shall have effect subject to the provisions of the Hague Rules Article 1- 8 inclusive unless it shall be adjudged that any national law making the Hague Rules effective is compulsorily applicable, then this Bill of Lading shall have effect subject to the provisions of such national law, and the Hague Rules or such national law shall be deemed to be incorporated herein, and nothing herein contained shall 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 the Hague Rules or such national law. If any terms of this Bill of Lading be repugnant to the Hague Rules or such national law to any extent, such terms shall be null and void to that extent but no further.

(2) Period of Responsibility

The Carrier shall not be liable in any capacity whatsoever for any loss or damage to the Goods occurring before loading onto the Vessel at the Port of Loading or after discharge from the Vessel at the Port of Discharge, whether awaiting shipment, landed or stored or put into craft, barge, lighter or otherwise belonging to the Carrier or not or pending transshipment at any stage of the Carriage.

(3) Contribution of liability

Where loss or damage is caused partly by a cause for which the Carrier is liable and partly by a cause for which the Carrier is not liable, the Carrier shall be liable only for the portion of the loss or damage proved by the Merchant to have been produced by the cause for which the Carrier is liable.

(4) Hague Rules Limitation

If the Hague Rules are applicable by national law, the liability of the Carrier shall in no event exceed the limit provided in the applicable national law. If the Hague Rules are applicable otherwise than by national law, the liability of the Carrier shall in no event exceed 100 pounds sterling per package or unit.

(5) Ad Valorem

Higher compensation may be claimed only when, with the consent of the Carrier, the value for the Goods declared by the Shipper which exceeds the limits laid down in this Clause has been stated in the declared value box on the face of this Bill of Lading and, if applicable, the ad valorem freight has been paid. In that case the amount of the declared value shall be substituted for that limit. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

(6) Delay and Consequential Damages

The Carrier does not undertake that the Goods shall arrive at the Port of Discharge at any particular time or to meet any particular market or use, and the Carrier shall in no circumstances be liable for delay or for any indirect or special or consequential loss or damage incurred by the Merchant.

(7) Notice of Loss or Damage and Time-bar

Unless notice of loss or damage to the Goods and general nature of it be given in writing to the Carrier at the Port of Discharge at the time of the delivery of the Goods in accordance with Clause 6 or if the loss or damage is not apparent, within three days thereafter, the Goods shall be deemed to have been delivered as described herein. In any event the Carrier and the Vessel shall be discharged from all liability in any capacity whatsoever for any loss or damage to the Goods, unless suit is brought within one year after the delivery of the Goods or the date when the Goods should have been delivered. Suit shall not be deemed brought until jurisdiction shall have been obtained over the Carrier by service of process or by an agreement to appear.

(8) Scope of Application

(a) Save as otherwise expressly provided herein, the Carrier shall not be liable in any circumstances or in any capacity whatsoever for any loss or damage, howsoever arising out of or in connection with the Carriage or supply of the Container.

(b) The terms of this Bill of Lading shall govern the relations between the Carrier and the Merchant in respect of the Carriage, whether a Bill of Lading is issued or not.

(9) Defences, Limits, and Indemnities

The defences and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier for loss or damage to the Goods, whether the action be founded in contract or in tort.

(10) NVOCC

If this Bill of Lading is accepted by a non vessel operating common carrier (NVOCC), who has in turn made other contracts of carriage with third parties, the said NVOCC hereby;

(a) 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 hereof which imposes or attempts to impose upon the Carrier or any vessel owned or operated by the Carrier any liability whatsoever in connection with the Goods, 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, and

(b) warrants that all bills of lading or other documents recording the contracts of carriage issued by him in respect of the Goods shall incorporate the terms of this Bill of Lading including the law and jurisdiction clause, and agrees to indemnify the Carrier, his servants, agents and Sub-contractors against all consequences of his failing so to incorporate.

(11) HAMBURG RULES

(a) Notwithstanding the terms of Clause 28 herein if proceedings are brought before the courts of a Contracting State to the United Nations Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) or the courts of any State whose national legislation makes the Hamburg Rules effective and if such courts adjudge the Hamburg Rules or such national legislation to be compulsorily applicable to this Bill of Lading, then in those circumstances only shall this Bill of Lading take effect subject to the Hamburg Rules or such national legislation and any term of this Bill of Lading derogating therefrom to the detriment of the Merchant shall be void to that extent but no further.

(b) In any event the Carrier shall be entitled to contest enforcement of any judgement made in a Contracting State to the Hamburg Rules in any proceedings before courts in a Non-Contracting State.

## **6. DELIVERY**

(1) The Goods may be discharged from the Vessel without notice of arrival or discharge, as soon as the Vessel is ready to do so and continuously Sundays and holidays included, at all such hours by day or by night as the Carrier may determine, no matter what the state of the weather or custom of the port may be. Irrespective of any agreements for the direct delivery of the Goods from the Vessel's tackle or hold to the Merchant, the Carrier is hereby authorized by the Merchant to discharge the Goods onto a wharf, quay and into lighters, barges, craft or

warehouse selected by the Carrier. If the Carrier makes a special agreement to deliver the Goods at a specified dock or wharf, 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 safely under her own power, proceed to, lie at, and return from the said dock or wharf, always afloat at any time of tide and only if such dock or wharf is available for the Vessel to discharge immediately and that otherwise the Goods shall be discharged at any other place in accordance with the preceding provisions of this Clause, whereupon the Carrier's responsibility shall cease. In any case the Carrier's responsibility shall cease at the time when the Goods are discharged from the Vessel and in any case all risks and expenses (including expenses for landing, lighterage, storage, cartage, port charges, etc.) incurred after discharge from the Vessel shall be borne by the Merchant, notwithstanding any custom of the port to the contrary. The Goods shall in any event be considered to be delivered to the Merchant at his own risk and expense in every respect when taken into the custody of customs or other authorities.

(2) Optional delivery shall be only granted when arranged prior to the Carriage and so expressly provided 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 the Vessel's call named in the option at least 48 hours prior to the Vessel's arrival there, otherwise the Goods shall be landed at any of the optional ports at the Carrier's option and the Carrier's responsibility shall then cease.

(3) If the Goods be unclaimed within 30 days after discharge from the Vessel, or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, they may, at the Carrier's discretion and subject to the Carrier's lien, be sold, abandoned or dealt with otherwise, solely at the risk and expense of the Merchant. The Carrier shall not be required to give any notice of disposition of the Goods under this Clause.

## **7. AGENCY**

(1) Where on the face of this Bill of Lading any place of destination is shown and is different from the Port of Discharge, the Carrier shall not be liable in any capacity whatsoever for loss, damage or delay of or to the Goods after discharge from the Vessel at the Port of Discharge. In these circumstances when making arrangements with a Person or carrier for or in connection with transshipping or forwarding of the Goods to any place of destination other than the Port of Discharge, the Carrier acts as agent only for the Merchant and the Merchant shall indemnify the Carrier for all charges and expenses therefor. The Carrier agrees to arrange transshipment of Goods to the place nominated in the column 'for transshipment to' overleaf on such condition.

(2) Where on the face of this Bill of Lading a local vessel has been named and this Bill of Lading has been issued at a place different from the Port of Loading, the statements herein as to shipment and the Goods shall be construed as relating exclusively to the time when and place where the Goods were loaded onto the named local vessel. In arranging for the carriage of the Goods to the Port of Loading by the named local vessel the Carrier shall be acting solely as the agent of the Merchant.

In these circumstances the Carrier shall not be liable in any capacity whatsoever for loss, damage or delay of or to the Goods before the loading at the Port of Loading onto the Vessel.

(3) If, for any reason, the Carrier is denied the right to act as agent only as mentioned in (1) or (2) above, his liability for loss, damage or delay of or to the Goods shall be determined in accordance with this Bill of Lading.

## **8. MERCHANT-PACKED CONTAINERS**

If a Container has not been packed or filled by or on behalf of the Carrier:

(1) The Carrier shall not be liable for loss or damage to the Goods and the Merchant shall indemnify the Carrier against any loss, damage, liability or expense incurred by the Carrier, if such loss, damage, liability or expense has been caused by;

(a) the manner in which the Container has been packed or filled, or

(b) the unsuitability of the Goods for the Carriage in the Containers, or

(c) the unsuitability or defective condition of the Container which would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was

filled or packed.

(2) The stuffing of the Container by the Merchant shall be prima facie evidence that the Container was sound and suitable for use and the Merchant agrees that he will return the Carrier's Container in the same condition as received. Any loss or damage caused to the Container supplied by the Carrier while in the possession of the Merchant is for the account of the Merchant.

(3) If the Container is discharged from the Vessel at the Port of Discharge with seals intact, such discharge shall be deemed as full and complete performance of the Carrier's obligation hereunder and the Carrier shall not be liable for any loss or damage to the Goods.

## **9. INSPECTION OF GOODS**

(1) The Carrier shall be entitled, but under no obligation, to open any Container or package at any time and to inspect, reweigh, remeasure, revalue or repack the Goods without notice to the Merchant.

(2) If Clause 9(1) applies or if by order of the authorities at any place, a Container or package has to be opened, the Carrier will not be liable for any loss or damage incurred as a result of any opening, unpacking, inspection, reweighing, remeasurement, revaluation or repacking. The Merchant shall indemnify the Carrier for the cost of all measures taken as above.

## **10. DESCRIPTION OF GOODS**

(1) This Bill of Lading shall be prima facie evidence of the receipt by the Carrier in apparent external good order and condition except as otherwise noted of the total number of Containers or packages (for the Goods not shipped in or on Container(s)) or the Goods (for the Goods in bulk or in liquid).

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

(3) If any particulars of any Letter of Credit and/or Import Licence and/or Sale Contract and/or Invoice or Order Number and/or details of any contract to which the Carrier is not a party are shown on the face of this Bill of Lading, such particulars are included solely at the request of the Merchant for his convenience. The Merchant acknowledges that except when the provisions of Clause 5(5) apply, the value of the Goods is unknown to the Carrier, and 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 this Bill of Lading. The Merchant further agrees to indemnify the Carrier against all consequences of including such particulars in this Bill of Lading.

## **11. MERCHANT'S RESPONSIBILITY**

(1) All of the Persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the due fulfillment of all obligations of the Merchant in this Bill of Lading.

(2) The Merchant warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Merchant on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on behalf of the Shipper are accurate and correct. The Merchant also warrants that the Goods are lawful goods and contain no contraband, are adequately packed and prepared for shipment, and will not cause loss, damage or expenses to the Carrier, the Vessel, or to any other cargo during the Carriage.

(3) Unless agreed to the contrary by the Carrier, the Merchant shall warrant and ensure that each piece or package tendered for shipment shall have any appropriate lifting rings, bolts, lashing or fixing points, cross bars or frames to ensure safe and proper handling on loading, stowage and discharge.

(4) The Merchant shall indemnify the Carrier against all loss, damage and expenses arising or resulting from any breach of any of the warranties in Clause 11 (2) and (3) hereof or from any other cause whatsoever in connection with the Goods, unless the Merchant proves that the Carrier is responsible for them.

(5) The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect or

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

## **12. FREIGHT**

(1) Freight shall be deemed fully earned on receipt of the Goods by the Carrier, whether the Goods are lost or not, and shall be paid and non-returnable in any event.

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

(3) Freight has been calculated on the basis of particulars furnished by or on behalf of the Merchant. If the particulars furnished by or on behalf of the Merchant are incorrect, it is agreed that a sum equal to double the correct Freight less the Freight charged shall be payable as liquidated damages to the Carrier, provided that the Carrier's Tariff does not stipulate otherwise.

(4) All Freight shall be paid to the Carrier by the Merchant in cash without any set-off, counter claim, deduction or stay of execution either at or prior to the time agreed for payment or at latest before delivery of the Goods.

(5) The Merchant shall be liable to the Carrier for the payment of all Freight and/or expenses including but not limited to court costs, legal fee and expenses incurred in collecting monies due to the Carrier. Payment of the Freight to a freight forwarder, broker or anyone other than the Carrier or its authorized agent shall not be deemed payment to the Carrier and shall be made at the Merchant's sole risk.

## **13. LIEN**

The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract and for general average contributions, to whomsoever due. The Carrier shall also have a lien against the Merchant on the Goods and any documents relating thereto for all sums due from the Merchant to the Carrier under any other contract. For recovering any sums due, the Carrier shall have the right to sell the Goods by public auction or private sale, without notice to the Merchant. In any event any lien shall extend to cover the cost of recovering any sums due. The lien shall survive delivery of the Goods.

## **14. STOWAGE AND DECK CARGO**

(1) The Goods may be packed by the Carrier in Containers.

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

(3) Notwithstanding Clause 14(2), Goods which are stated herein to be carried on deck are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during the Carriage by sea whether caused by unseaworthiness or negligence or any other cause whatsoever.

(4) Goods stowed in poop, forecastle, deckhouse, shelter deck, passenger space, storeroom, bunker space, or any other covered space shall be deemed to be stowed under deck for all purposes, including general average. The Merchant agrees that the Goods need not be stowed under deck and that they may be stowed on deck unless the Shipper informs the Carrier in writing before delivery of the Goods to the Carrier that under deck stowage is required.

## **15. VALUABLE GOODS**

The Carrier shall not be liable to any extent for loss or damage to platinum, gold, silver, jewellery, radioisotopes, precious metals, precious stones, precious chemicals, bullion, specie, currency, securities, negotiable instruments, 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 thereof have been declared in writing by the Shipper before the Carriage and inserted in this Bill of Lading, and unless ad valorem freight shall have been fully prepaid

thereon in accordance with Clause 5(5).

#### **16. HEAVY LIFT**

Single piece or package exceeding 4,000 lbs. in weight shall be declared in writing by the Shipper before the Carriage and the weight be clearly and durably marked on the outside of the piece or package. The Merchant shall be liable for, and shall indemnify the Carrier in respect of any expense, loss or damage to the Carrier, Vessel or cargo or any Person arising from Shipper's failure, inadequacy or incorrectness in connection with such declaration and/or marking, or from any defects, whether latent or not, or inadequacies or faults in the lifting rings, bolts or other similar devices, if any.

#### **17. LIVE ANIMALS**

Live animals are carried without responsibility on the part of the Carrier for any accident, injury, illness, death, loss or damage arising at any time whether caused by unseaworthiness or negligence or any other cause whatsoever. The Merchant shall indemnify the Carrier against any claim, loss, damage or expense arising in consequence of the Carriage of live animals.

#### **18. IRON AND STEEL**

The term 'apparent external good order and condition' when used in this Bill of Lading with reference to iron, steel or metal products does not mean that the Goods, when received, are free of visible rust or moisture. If the Merchant so requests, a substitute Bill of Lading will be issued omitting the above definition and setting forth any notation as to rust or moisture which may appear on the mates' or tally clerks' receipts.

#### **19. METHODS AND ROUTES OF CARRIAGE**

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

- (a) use any means of carriage whatsoever,
- (b) transfer the Goods from one conveyance to another, including transshipping or carrying them on a different vessel from that named overleaf,
- (c) unpack and remove the Goods which have been packed into a Container and forward them in a Container or otherwise,
- (d) proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route) and proceed to or stay at any place or port whatsoever, once or more often and in any order,
- (e) load and unload the Goods at any place or port (whether or not such port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such place or port,
- (f) comply with any orders or recommendations given by any government or authority, or any Person acting or purporting to act as or on behalf of such government or authority, or having under the terms of any insurance on any conveyance employed by the Carrier the right to give orders or directions,
- (g) permit the Vessel to proceed with or without pilots, to tow or be towed, or to be dry-docked, loaded or not.
- (h) comply with the custom or practice of any port or place, whether legal, factual or commercial, whether prevailing locally, nationally, or internationally, and whether the Merchant personally knows of the custom or practice with regard to receiving, loading, stowing, keeping, carrying, discharging, and/or delivering Goods and in particular, the Carrier shall be entitled to give delivery of the Goods without surrender of an original Bill of Lading in those jurisdictions where such practice is recognized whether by custom or law. Compliance with such customs or practice shall be deemed to be proper performance of the contract of carriage hereunder.

(2) The liberties set out in Clause 19(1) may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage including loading or unloading other goods, bunkering, undergoing repairs, adjusting instruments, picking up or loading any persons and assisting vessels in all situations. Anything done in accordance with Clause 19(1) or any delay arising therefrom shall be deemed to be within the Carriage and shall not be a deviation.

## **20. CARRIAGE AFFECTED BY CONDITION OF GOODS**

If it appears at any time that, due to their condition, the Goods cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measure(s) in relation to the Container or the Goods, the Carrier may without notice to the Merchant (but as his agent only) take any measure(s) and/or incur any additional expense to carry or to continue the Carriage thereof, and/or store them ashore or afloat, under cover or in the open, at any place, whichever the Carrier, in his absolute discretion, considers most appropriate. Furthermore, the Carrier shall be entitled with or without notice to the Merchant to abandon the Goods whether in store or not or to effect a sale or disposal of the Goods as may be necessary or appropriate. Subject to Clause 5 (2) the Carrier's liability shall cease upon such abandonment, storage, sale or disposal. The Merchant shall indemnify the Carrier against any additional expense so incurred.

## **21. MATTERS AFFECTING PERFORMANCE**

If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time this contract was entered into or the Goods were received for the Carriage), the Carrier (whether or not the Carriage is commenced) may, without prior notice to the Merchant and at the sole discretion of the Carrier, either:

(a) Carry the Goods to the named Port of Discharge by an alternative route to that indicated in this Bill of Lading or that which is usual for Goods consigned to that Port of Discharge (If the Carrier elects to invoke the terms of this Clause 21(a), then notwithstanding the provisions of Clause 19 hereof, he 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 Bill of Lading and endeavour 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 21(b) then he shall be entitled to such additional Freight as the Carrier may determine); or

(c) Abandon the Carriage of the Goods and place the Goods at Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full Freight on the Goods received for Carriage, and the Merchant shall pay any additional costs of the Carriage to, and delivery and storage at, such place or port. If the Carrier elects to use an alternative route under Clause 21(a) or to suspend the Carriage under Clause 21(b) this shall not prejudice his right subsequently to abandon the Carriage.

## **22. DANGEROUS GOODS**

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

(2) If the requirements of Clause 22 (1) are not complied with, the Goods may, at any time or place, be unloaded, destroyed, or rendered harmless without compensation and the Merchant shall indemnify the Carrier against all loss, damage or expenses arising out of the Goods being tendered for transportation or handled or carried by the Carrier. Further, the Carrier shall be under no liability to make any general average contribution in respect of such Goods.

(3) Whether or not the Merchant or the Carrier is aware of the nature of such Goods, the Merchant shall indemnify the Carrier against all claims, loss, damage or expenses arising in consequence of the Carriage of such Goods.

## **23. MARKING**

Each piece or package shall be clearly and durably marked or stamped by the Merchant before loading in letters and numbers not less than two inches high, together with the name of port of discharge and such marks shall correspond to the marks inserted in this Bill of Lading and otherwise the Carrier shall not be liable for delay in or failure of delivery in accordance with



marks. In no circumstances will the Carrier accept responsibility for delivery in accordance with other than leading marks. Goods which cannot be identified as to leading marks, Goods out of or separated from their Containers or packages, cargo sweepings, liquid residue and any unclaimed Goods not otherwise accounted for shall be allocated for completing delivery to the various consignees of goods of like character, in proportion to any apparent shortage, loss of weight or damages and such Goods or parts thereof shall be accepted as good delivery. Loss or damage to Goods in bulk without separation from other Goods in bulk of like quality, shipped by either the same or another Shipper, shall be divided in proportion among such several shipments. If any bagged or baled Goods are discharged slack or torn, the Merchant shall accept its proportion of the sweepings. The Carrier shall not be responsible for loss of weight in bags or bales torn, mended or with sample holes.

#### **24. NOTIFICATION**

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

#### **25. AMENDED JASON CLAUSE AND BOTH-TO-BLAME COLLISION**

(The amended Jason Clause)

In the event of an accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the Goods, and the Merchant shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, loss 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. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully in the same manner as if the said salving vessels belonged to strangers.

(Both to Blame Collision clause)

If the (carrying) Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default in the navigation or the management of the carrying Vessel, the Merchant undertakes to pay the Carrier, or, where the Carrier is not the owner and in possession of the carrying Vessel, to pay to the Carrier as trustee for the owner and/or demise charterer of the carrying Vessel, a sum sufficient to indemnify the Carrier and/or the owner and/or demise charterer of the carrying Vessel against all loss or liability to the other or non carrying ship or her owners in so far as such loss or liability represents loss or damage to his Goods or any claim whatsoever of the Merchant, paid or payable by the other or non-carrying ship or her owners to Merchant and setoff, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying Vessel or her owner or demise charterer or the Carrier. The foregoing provisions shall also apply where the owners, operators, or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact stranding or other accident.

#### **26. GENERAL AVERAGE & SALVAGE**

- (1) Any general average on a Vessel operated by the Carrier shall be adjusted according to the York/Antwerp Rules of 1994 (or at the election of the Carrier, York/Antwerp Rules 1974 as amended in 1990 or York/Antwerp Rules 2004 or York/Antwerp Rules 2016) thereof at any port or place and in any currency at the option of the Carrier. Any general average on a Vessel not operated by the Carrier (whether a seagoing or inland waterways Vessel) shall be adjusted according to the requirements of the operator of that Vessel. In either case the Merchant shall give such cash deposit or other security as the Carrier may deem sufficient to cover the estimated general average contribution of the Goods before delivery if the Carrier requires, or, if the Carrier does not so require, within three months of the delivery of the Goods, whether or not at the time of delivery the Merchant had notice of the Carrier's lien. The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.
- (2) All expenses in connection with a general average or salvage act to avoid damage to the environment always to be considered general average expenses.

- (3) If salvage services are rendered to the Vessel and the Goods then, as soon as requested to do, the Merchant shall provide salvage security in the amount and in the form requested by the salvor or shall provide counter security to the Carrier if the Carrier has provided security to the salvor on behalf of the Merchant. In the event of any failure to provide security promptly the Merchant shall indemnify the Carrier for all loss, damage and expenses, including consequential loss caused by delay, suffered by the Carrier.

#### **27. FIRE AND NUCLEAR INCIDENT**

(a) The Carrier shall not be responsible for any loss or damage to the Goods arising or resulting from fire occurring at anytime, unless caused by the actual fault or privity of the Carrier.

(b) The Carrier shall not be responsible for any loss or damage to the Goods arising or resulting from nuclear incident occurring at any time, unless caused solely by personal willful misconduct of the Carrier.

#### **28. LAW AND JURISDICTION**

The contract evidenced by or contained in this Bill of Lading shall be governed by Japanese law except as may be otherwise provided for herein.

Unless otherwise agreed, any action against the Carrier thereunder must be brought exclusively before the Tokyo District Court in Japan. Any action by the Carrier to enforce any provision of this Bill of Lading may be brought before any court of competent jurisdiction at the option of the Carrier.

#### **29. VARIATION OF THE CONTRACT**

Any agreement for or in connection with the Carriage of the Goods is superseded by this Bill of Lading. No servant or agent of the Carrier shall have the power to waive or vary any of the terms of this Bill of Lading unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

#### **30. VALIDITY**

In the event that anything herein contained is inconsistent with any applicable international convention or national law which cannot be departed from by private contract, the provisions hereof shall be null and void to the extent of such inconsistency but no further.

#### **31. WAIVER**

Non-performance or delay by the Carrier in exercising its rights for any period of time under this Bill of Lading shall not be a waiver of any of the Carrier's rights.

#### **32. US CLAUSE PARAMOUNT**

(1) If the Carriage covered by this Bill of Lading includes Carriage to or from a port or place in the United States of America, this Bill of Lading shall be subject to the United States Carriage of Goods by Sea Act 1936 (US COGSA), the terms of which are incorporated herein and shall govern throughout the entire time during which the Goods are in the actual custody of the Carrier. Neither Clause 5(1), the Hamburg Rules nor the Visby Amendments shall apply to the Carriage to or from the United States.

(2) If US COGSA applies as (1) above, neither the Carrier, nor the Vessel shall, in any event, be or become liable for any loss or damage to or in connection with the Goods in an amount exceeding \$500.00 per package, lawful money of the United States, or in case the Goods not shipped in packages, per customary freight unit unless the value of the Goods has been declared and inserted in the declared value box on the face hereof, in which case Clause 5(5) shall apply.