

VAN ISLE BILL OF LADING TERMS AND CONDITIONS

1. DEFINITIONS

- "Customer" means the Person who requests Carriage.
"Merchant" includes the Customer, Shipper, Consignee, Receiver of the Unit or its Contents, if any, any Persons owning or entitled to the possession of the Unit or its Contents, if any, or to possession of the Bill of Lading and anyone acting on behalf of such Person, all of whom shall be jointly and severally liable to the Carrier for the due fulfilment of all obligations undertaken by the Merchant in this Bill of Lading.
"Person" includes an individual, group, company or other entity.
"Consignee" is deemed to be the Person identified as such where indicated overleaf or, if no Person is so identified, the Shipper.
"Sub-Contractor" includes owners and operators of vessels (other than the Carrier), stewards, terminal and groupage operators, road and rail transport operators and any independent contractor employed by the Carrier in performance of the Carriage and any sub-sub-contractors thereof.
"Indemnify" includes defend, indemnify and hold harmless.
"Contents" means the whole or any part of any contents of, and any equipment or anything attached to, any Unit.
"Unit" includes any trailer, flat-deck, van, container, reefer, transportable tank flat or pallet, any similar article used to consolidate goods, any automobile, any other item that the Carrier may accept for Carriage, 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 Unit covered by this Bill of Lading.
"Freight" includes all charges payable to the Carrier in accordance with the applicable Tariff and this Bill of Lading.
"Rules" means the Hague-Visby Rules set out in Schedule 3 to the Marine Liability Act, S.C. 2001, c. 6.
"Vessel" includes any vessel or conveyance on which the Unit or any of its Contents may be carried during the Carriage.

2. CARRIAGE IN ACCORDANCE WITH THE TERMS AND CONDITIONS

Carriage is provided subject to an in accordance with the terms and conditions of this Bill of Lading. THIS BILL OF LADING CONTAINS PROVISIONS WHICH LIMIT AND EXCLUDE THE LIABILITY OF THE CARRIER.

3. WARRANTY

The Merchant warrants that in agreeing to the terms and conditions hereof he is, or has the authority of, every Person owning, or entitled to the possession of, the Unit, its Contents, if any, or this Bill of Lading.

4. SUBCONTRACTING AND INDEMNITY

- The Carrier shall be entitled to subcontract the Carriage on any terms whatsoever.
- Himalaya Clause
 - It is hereby expressly agreed that no servant, agent, direct or indirect Sub-Contractor or other party employed by or on behalf of the Carrier, or whose services or equipment have been used in order to perform the Carriage (such persons so employed, or whose services or equipment have been used, hereinafter termed "Servant") shall in any circumstances whatsoever be under any liability whatsoever to any Merchant under this Bill of Lading for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on the Servant's part while acting in the course of or in connection with the performance of the Carriage.
 - Without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty contained herein (other than Art III Rule 8 of the Hague/Hague-Visby Rules if incorporated herein) and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the carrier or to which the Carrier is entitled hereunder including the right to enforce any jurisdiction or arbitration provision contained herein shall also be available and shall extend to every such Servant, who shall be entitled to enforce the same against the Merchant.
 - The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort or otherwise shall be made against any Servant which imposes or attempts to impose upon any of them or any vessel owned or chartered by any of them any liability whatsoever in connection with the Carriage whether or not arising out of negligence on the part of such Servant. The Servant shall also be entitled to enforce the foregoing covenant against the Merchant; and
 - The Merchant undertakes that if any such claim or allegation should nevertheless be made, he will indemnify the Carrier against all consequences thereof.
 - For the purpose of sub-paragraphs (a)-(d) of this clause (4)(2) the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of the Servant who shall to this extent be or be deemed to be a party to this Bill of Lading.
- The provisions of clause (4)(2) shall extend to such claims or allegations of whatsoever nature against other persons chartering space on the carrying vessel.
- The Merchant undertakes that no claim or allegation in respect of the Unit and its Contents, if any, which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Unit and its Contents, if any, whether or not arising out of negligence on the part of the Carrier shall be made against the Carrier by any person other than in accordance with the terms and conditions of this Bill of Lading and, if any such claim or allegation shall nevertheless be made, to indemnify the Carrier against all consequences thereof.

5. CARRIER'S RESPONSIBILITY AND LIMITATION OF LIABILITY

Except as provided in this Bill of Lading, the Carrier shall be under no liability whatsoever for loss of or damage to the Unit or its Contents, if any, howsoever occurring.

- Carried On Deck
 - The Merchant acknowledges and agrees that the Unit and its Contents, if any, will be carried on deck and are not "goods" within the meaning of the Rules.
 - Benefit of the Rules
 - The Carrier shall have the benefit of every right, defence, limitation (except that the Carrier's liability shall be limited in accordance with Clause 5(7) herein) and liberty in the Rules, notwithstanding that loss of or damage to the Unit or its Contents, if any, may not have occurred during carriage by water.
- Compulsory Law
 - In case and to the extent that any applicable compulsory law imposes on the Carrier any period of responsibility, and which law cannot be departed from by private contract to the detriment of the Merchant:
 - The Carrier shall have the benefit of every right, defence, limitation (except that the Carrier's liability shall be limited in accordance with Clause 5(7) herein) and liberty in the Rules during that period, notwithstanding that the loss or damage may not have occurred during carriage by water.
 - In the event of the Unit or its Contents, if any, being discharged at a port other than the Destination Port nominated in this Bill of Lading and forwarded to the Destination Port by whatsoever means, the Carrier shall have the benefit of every right, defence, limitation (except that the Carrier's liability shall be limited in accordance with Clause 5(7) herein) and liberty in the Rules during that period, notwithstanding that the loss or damage may not have occurred during carriage by water.
- Carrier Not Liable in Certain Circumstances
 - In any event, the Carrier shall be relieved of liability for any loss or damage if such loss or damage is caused by:
 - An act or omission of the Merchant;
 - Insufficiency of or defective condition of the packaging or marking;
 - Handling, loading, stowage or unloading of the Unit or its Contents, if any, by or on behalf of the Merchant;
 - Inherent vice of the Unit or its Contents;
 - Strike, lockout, stoppage or restraint of labour from whatsoever cause, whether partial or permanent;
 - A nuclear incident;
 - Any cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence;
 - Compliance with instructions of any person entitled to give them;
 - Carrier Not Liable: Packing and Suitability of Units
 - The Carrier shall not be liable for the loss of or damage to the Unit or its Contents, if any, caused by:
 - The manner in which the Unit has been packed;
 - The unsuitability of the Unit or its Contents, if any, for the Carriage;
 - The unsuitability or defective condition of the Unit, or the incorrect setting of any refrigeration controls thereof, or
 - Packing refrigerated goods that are not at the correct temperature for Carriage.
 - The Shipper is responsible for the unpacking and sealing of all Units. The Carrier shall not be liable for any shortage of Contents of any Unit.
- The Merchant shall indemnify the Carrier against any loss, damage, liability or expense of whatsoever and howsoever arising caused by one or more of the matters referred to in Clause 5(4) and Clause 5(5).
- Burden of Proof
 - The burden of proof that the loss or damage was due to one or more of the causes or events specified in Clause 5(4) and in Clause 5(5) shall rest upon the Carrier save that if the Carrier establishes that, in the circumstance of the case, the loss or damage could be attributed to one or more of the causes or events specified in Clause 5(4)(b), (c) and (d) and in Clause 5(5) it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not in fact, caused either wholly or partly by one or more of these causes or events.
- Limitation of Liability of the Carrier
 - Except as provided in clause 6(1), total compensation for any liability of the Carrier shall in no circumstances whatsoever and howsoever arising exceed \$500 in the aggregate for each Unit and for its Contents, if any, lost or damaged.
 - Notice of Loss or Damage
 - Unless a compulsory law applies, which law provides for notice of loss or damage (in which case such alternative provisions shall apply), the Carrier shall be deemed prima facie to have delivered the Unit or its Contents, if any, as described in this Bill of Lading unless notice of loss or of damage to the Unit or its Contents, if any, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier before or at the time of removal of the Unit and its Contents, if any, into the custody of the person entitled to delivery thereof under this Bill of Lading, or, if the loss or damage is not apparent, within three working days thereafter.
 - Time-bars
 - Unless a compulsory law applies, which law provides for time-bars (in which case such alternative provisions shall apply), the Carrier shall be discharged of all liability whatsoever in respect of the Unit and its Contents, if any, unless suit is brought and notice thereof given to the Carrier within nine months after delivery of the Unit or the date when the Unit should have been delivered.

6. SUNDRY LIABILITY PROVISIONS

- Ad Valorem
 - The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Unit or of its Contents, if any, and that higher compensation than that provided for in sub-Clause 5(7) of this Bill of Lading may not be claimed unless, with the consent of the Carrier, the value of the Unit and its Contents, if any, is declared by the shipper prior to the commencement of the Carriage is stated on this Bill of Lading and extra Freight paid, if required. In that case the amount of the declared value shall be substituted as the maximum total compensation stated in sub-Clause 5(7) of this Bill of Lading. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.
 - Delay
 - The Carrier does not undertake that the Unit and its Contents, if any, shall arrive at the Destination Port or place of delivery at any particular time or to meet any particular market or use, and the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct, indirect or consequential loss or damage caused by delay.
 - Scope of Application
 - The rights, defences, limitation and liberties of whatsoever nature provided for in this Bill of Lading shall apply in any action against the Carrier for loss of or damage or delay, howsoever occurring and whether the action be founded in contract or in tort and even if the loss, damage or delay arose as a result of seaworthiness, negligence or fundamental breach of contract.
 - Save as may otherwise be provided for in this Bill of Lading the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct or indirect or consequential loss or damages or loss of profits.
 - Inspection by Authorities
 - If by order of the authorities at any place, a Unit has to be opened for the Unit or its Contents, if any, to be inspected, the Carrier will not be liable for any loss or damage incurred as a result of any opening, unpacking, inspection or repacking. The Carrier shall be entitled to recover the cost of such opening, unpacking, inspection and repacking from the Merchant.
- SHIPPER'S / MERCHANT'S RESPONSIBILITY
 - 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 fulfilment of all obligations undertaken by the Merchant in the Bill of Lading.
 - The Shipper warrants to the Carrier that the particulars relating to the Unit and its Contents, if any, as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on behalf of the Shipper are adequate and correct. The Shipper also warrants that the Unit and its Contents, if any, are lawful, and contain no contraband.
 - The Merchant shall indemnify the Carrier against all claims, loss, damages, fines and expenses arising or resulting from any breach or any of the warranties in this Clause 7 and for any other cause in connection with the Unit or its Contents, if any, for which the Carrier is not responsible.
 - The Merchant shall comply with all regulations or requirements of customs, court and other authorities and shall bear and pay all duties,

taxes, fines, imposts, expenses or losses (including without prejudice to the generality of the foregoing, freight or any additional Carriage undertaken) 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 Unit or its Contents, if any, and shall indemnify the Carrier in respect thereof.

8. INSPECTION OF UNIT AND ITS CONTENTS

The Carrier or any Person to whom the Carrier has subcontracted the Carriage or any person authorized by the Carrier shall be entitled, but under no obligation, to open any Unit at any time and to inspect the Unit and its Contents, if any.

9. CARRIAGE EFFECTED BY CONDITION OF UNIT OR ITS CONTENTS, IF ANY

If it appears at any time that, due to their condition, the Unit or its Contents 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 Unit or its Contents, 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 sell or dispose of the Unit or its Contents, and/or abandon the Carriage and/or store them ashore or afloat, undercover or in the open, at any place, whichever the Carrier, in his absolute discretion, considers the most appropriate, which abandonment, storage, sale or disposal shall be deemed to constitute due delivery of the Unit and its Contents to the Carrier against any additional expense so incurred and the Carrier shall account to the Merchant for the disposal of the Unit and its Contents, if any.

10. DESCRIPTION OF UNIT AND ITS CONTENTS

- This Bill of Lading shall be prima facie evidence of the receipt by the Carrier from the shipper in apparent good order and condition, except as otherwise noted, of the total number of Units indicated in the box on the face hereof entitled "Total No. of Units Received by the Carrier".
- Except as provided in Clause 10(1) no representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of any such Unit or its Contents, if any, and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.
- If any further particulars whatsoever 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 agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way effects 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. The Merchant acknowledges that except when the provisions of Clause 6(2) apply, the value of the Unit and its Contents, if any, is unknown to the Carrier.

11. FREIGHT

- Freight shall be deemed fully earned on receipt of the Unit by the Carrier and shall be paid and non-refundable in any event, Unit or its contents, if any, lost or not lost.
- Shipper acknowledges that Freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper.
- All freight shall be paid without any set-off counter-claim, deduction or stay of execution before delivery of the Unit or of any of its Contents.
- Any person engaged by the Merchant to perform forwarding services in respect of the Unit or its Contents, if any, shall be considered to be the exclusive agent of the Merchant, for all purposes and any payment of freight to such Person shall not be considered to the Carrier in any event. Failure of such Person to pay any part of the freight to the Carrier shall be considered a default by the Merchant in the payment of freight.

12. LIEN

The Carrier shall have a lien on the Unit and its Contents, if any, and any documents relating thereto for all sums payable to the Carrier by any of the Persons defined as Merchant in Clause 1 and for general average contribution, to whomsoever due. The Carrier shall also have a lien against the Unit and its Contents, if any, and any documents relating thereto for all sums due from him to the Carrier under any other contract. In any event, any lien shall extend to cover the cost of recovering the sums due and for that purpose the Carrier shall have the right to sell the Unit and its Contents, if any, by public auction or private treaty, without notice to the Merchant.

13. METHODS AND ROUTE OF CARRIAGE

- The Carrier may at any time and without notice to the Merchant:
 - Use any means of carriage whatsoever,
 - Transfer the Unit and its Contents, if any, from one conveyance to another, including but not limited to, trans shipping or carrying them on another vessel than that named on the face hereof,
 - Unpack and remove the Unit or its Contents, if any, and forward them in another Unit or otherwise,
 - Proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or port whatsoever, once or more often and in any order,
 - Load or unload the Unit and its Contents, if any, at any place or port (whether or not such port is named overleaf as the Loading Port or Destination Port) and store the Unit and its Contents, if any, at any such place or port,
 - Comply with any orders or recommendations given by any governmental or authority, or any person acting or purporting to act as or on behalf of such governmental or authority, or having under the terms of any insurance or any conveyance employed by the Carrier the right to give orders or directions,
 - Permit the vessel to proceed with or without a pilot to tow or to be towed or to be dry-docked.
- The liberty set out in Clause 13(1) may be invoked by the Carrier for any purpose whatsoever, whether or not it connected with the Carriage of the Unit and its Contents, if any, including loading or unloading other Units or goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing any Persons, including but not limited to Persons involved with the operation or maintenance of the vessel and assisting vessels in all situations. Anything done in accordance with Clause 13(1) or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation.
- By tendering the Unit and its Contents, if any, for Carriage without any written request for Carriage subject to any particular attention or condition, the Merchant accepts that the Carriage may properly be undertaken in the customary manner.

14. MATTERS AFFECTING PERFORMANCE

- At any time, the Carriage is or is likely to be effected by any hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Unit or its Contents, if any, safely or properly to be carried or carried further) 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 Unit and its Contents, if any, were received for 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:
 - Carry the Unit, with its Contents, if any, to the Destination Port by an alternative route to that indicated in this Bill of Lading or that which is usual for Units consigned to that Destination Port. If the Carrier elects to invoke the terms of this Clause 14(a) then, notwithstanding the provision of Clause 13 hereof he shall be entitled to charge such additional Freight as the Carrier may determine; or
 - Abandon the Carriage of the Unit and store the Unit and its Contents, if any, 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 14(b) then notwithstanding the provisions of Clause 13 hereof, he shall be entitled to charge such additional freight as the Carrier may reasonably determine; or
 - Abandon the Carriage of Unit and place the Unit and its Contents, if any, at the Merchant's disposal at any place or port which the Carrier may deem fit and convenient, whereupon the responsibility of the Carrier in respect of such Unit and its Contents, if any, shall cease. The Carrier shall nevertheless be entitled to full freight on the Unit and its Contents, if any, if any 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 14(a) or to suspend the Carriage under Clause 14(b) this shall not prejudice his right subsequent to abandon the Carriage.

15. DANGEROUS OR GOODS

- No goods which are or may be come dangerous, inflammable or damaging (including radio active materials), or which are or may become liable to damage any property whatsoever, shall be tendered to the Carrier for Carriage without his express consent in writing, and without the Unit or other covering in which the goods are to be carried as well as the goods themselves being distinctly marked on the outside so as to indicate the nature and character of any such goods and so as to comply with any applicable laws, regulations or requirements. If any such goods are delivered to the Carrier without such written consent and/or marking or if in the opinion of the Carrier goods are or are liable to become a dangerous, inflammable or damaging nature, they may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to freight.
- The Merchant warrants that which are or may be come dangerous, inflammable or damaging (including radio active materials), or which are or may become liable to damage any property whatsoever are packed in a manner adequate to withstand the risks of Carriage having regard to their nature and in compliance with all laws or regulations which may be applicable during the Carriage.
- Whether or not the Merchant was aware of the nature of the goods, the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of the Carriage of such Unit and its Contents, if any.
- Nothing contained in this Clause shall deprive the Carrier of any of his rights provided for elsewhere.

16. REEFERS, EQUIPMENT ON UNITS

The Carrier shall have no responsibility whatsoever which respect to status or functioning of any equipment that may be on, in or attached to any Unit. In particular, but without limiting the generality of the foregoing sentence, the Carrier shall not be required to take any steps whatsoever to monitor, adjust, or provide power for, the operation of reefers.

17. LIVE ANIMALS

Live animals are carried at the sole risk of the Merchant. The Carrier shall be under no liability whatsoever for any injury, illness, death or destruction howsoever arising. Should the Master in his sole discretion consider that any live animal is likely to be injurious to any other live animal or any person or property on board, or to cause the vessel to be delayed or impeded in the prosecution of the Carriage, such live animal may be destroyed and thrown overboard without any liability attaching to the Carrier. The Merchant shall indemnify the Carrier against all or any of the consequences of such destruction or disposal. The Carrier shall be under no liability whatsoever in connection with the Carriage of any live animals.

18. GENERAL AVERAGE & SALVAGE

- Unit and its Contents, if any, even though carried on deck, shall participate in general average.
- 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, losses 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 Unit or its Contents, if any. All expenses in connection with a general average or salvage act to avoid damage to the environment always to be considered general average expenses.
- Any general average on a vessel operated by the Carrier shall be adjusted according to the York/Antwerp Rules (1994) or any subsequent amendment thereto at any port or place and in any currency at the option of and by an adjuster appointed by the Carrier. Any general average on a vessel not operated by the Carrier (whether a seagoing or inland waters 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 Unit and its Contents, if any. Any security, other than cash deposits must be given by a party acceptable to and with assets in jurisdiction nominated by the Carrier. Such security must be provided before delivery if the Carrier requires, or, if the Carrier does not so require, within three months of delivery of the Unit or of its Contents, if any, 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.
- Conversion into the currency of the adjustment shall be calculated at the rate prevailing on the date of payment for disbursements and on the date of completion or discharge of the vessel for allowances, contributory values, etc.
- In the event of any general average credit balances due to Merchant still being unclaimed five years after the date of issue of the Adjustment, these shall be paid to the Carrier (and not the owner or deposit owner of the vessel), who will hold such credit balances pending application by the Merchants entitled thereto.
- If a salvaging vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the salvaging vessel or vessels belong to strangers.
- In the event of the Master considering that salvage services are needed, the Merchant agrees that the Master may act as his agent to procure such services to the Unit and to its Contents, if any, and that the Carrier may act as his agent to settle salvage remuneration.

19. VARIATION OF THE CONTRACT

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.

20. VALIDITY

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

21. BOTH-TO-BLAME

The Both-to-Blame Collision clause as published by the Baltic and International Maritime Council is hereby incorporated into this Bill of Lading.

22. NON-NEGOTIABLE BILL OF LADING

This Bill of Lading is not negotiable.