

KARL GROSS LOGISTICS (USA), INC.

Bill of Lading Terms and Conditions (Rev. 02/2019)

NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) FMC OTI NO. 027503NF

1. DEFINITIONS

“Bill of Lading” as used herein, shall refer to this document, regardless of whether same is a designated as a “sea waybill” or otherwise.

“Carriage” means the whole or any part of the operations and services of whatsoever nature undertaken by or performed by or on behalf of the Carrier in relation to the Goods covered by this bill of lading including but not limited to the loading, transport, unloading, storage, warehousing and handling of the Goods and related documentary, customs and IT processes.

“Carrier” means Karl Gross Logistics (USA), Inc. an NVOCC as defined by the Shipping Act of 1984, as amended, and on whose behalf this Bill of Lading has been issued.

"Carrier's Agents" include, but are not limited to the Karl Gross entity or agent which arranged the Carriage and/or issued this bill of lading and the Karl Gross entity or agent in the country where the Goods are discharged and/or delivered.

“Charges” includes freight, demurrage, detention costs and all expenses and monetary obligations, including but not limited to duties, taxes and dues, incurred by the Carrier and payable by the Merchant.

“COGSA” means the Carriage of Goods by Sea Act of the United States of America approved on 16th April, 1936, as amended.

“COGWA” means the Carriage of Goods by Water Act 1936 of Canada, as amended.

"Consolidation" includes stuffing, packing, loading or securing of Goods on or within Containers and Consolidate shall be construed accordingly.

“Container” includes any container (including but not limited to open top containers), trailer, transportable tank, lift van, flat, pallet or any similar article of transport used to Consolidate or facilitate the transport of such Goods.

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

“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, but only if such amendments are compulsorily applicable to this Bill of Lading.

“Hague-Visby Rules” means the Hague Rules as amended by the Protocol signed at Brussels on 23rd February, 1968. It is expressly provided that nothing in this bill of lading shall be construed as contractually applying the Hague-Visby Rules.

“Holder” means any Person in possession of (or entitled to the possession of) this Bill of Lading.

"Indemnify" means defend, indemnify and hold harmless, including in respect of legal fees and costs, whether or not the obligation to indemnify arises out of negligent or non-negligent acts or omissions of the indemnifying party.

“Merchant” includes the Shipper and the Persons named in this bill of lading as consignee and notify party, the receiver of the Goods and the Person entitled to receive the Goods on notification by the Merchant, the Holder of this bill of lading, any Person owning or lawfully entitled to the possession of the Goods or this bill of lading, the Person on whose account the Goods are handed to the Carrier, any Person acting on behalf of any of the above mentioned Persons, including agents, servants and Sub-Contractors.

"Multimodal Transport" arises if the Carrier has indicated a place of receipt and a different place of delivery on the front hereof in the relevant spaces.

"Non US Carriage" means any carriage which is not US Carriage.

"Package" where a Container is loaded with more than one package or unit, the packages or other shipping units enumerated on the face of this bill of lading as packed in such Container and entered in the box on the face hereof entitled "Total number of Containers or Packages received by the Carrier" are each deemed a Package.

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

“Port to Port Shipment” arises where the Place of Receipt and the Place of Delivery are not indicated on the front of this Bill of Lading or if both the Place of Receipt and the Place of Delivery indicated are ports, and the Bill of Lading does not, in the nomination of the Place of Receipt or the Place of Delivery on the front hereof, specify any place or spot within the area of the port so nominated.

“Shipping Unit” includes freight unit and the term “unit” as used in the Hague Rules and Hague-Visby Rules.

"Shipper" means the Person who tendered the Goods to the Carrier and any Person named as shipper in the bill of lading.

“Stuffed” includes filled, consolidated, packed, loaded or secured.

"Sub-Contractor" includes but is not limited to owners, charterers and operators of Vessels (other than the Carrier), stevedores, terminal operators, road, rail and air transport operators, forwarding

agents, liner agents, customs brokers, warehousemen, longshoremen, customs inspection stations, port authorities, pilots and any independent contractors, servants or agents employed by the Carrier in performance of the Carriage and any direct or indirect sub-contractors, servants or agents thereof, whether in direct contractual privity with the Carrier or not.

"US Carriage" means carriage to, from or through any port of the United States of America.

"Vessel" means any waterborne craft used in the Carriage under this bill of lading including but not limited to ocean vessels, feeder vessels and inland water vessels whether named in the bill of lading or substituted vessels.

2. CARRIER'S TARIFF AND TERMS AND CONDITIONS OF SERVICE

The provisions of the Carrier's applicable tariff, if any, and the Carrier's terms and conditions of service are incorporated herein. Copies of the provisions of the Carrier's applicable tariff are obtainable from the Carrier or its agents upon request or, from the Carrier's publicly available tariff, which is published at the location reported to the appropriate government body. The tariff is also available by subscription. The Carrier's terms and conditions of service are provided to the Merchant by the Carrier in other commercial documents related to the carriage hereunder (which may include, but are not limited to, the Carrier's invoices, the shipper's letter of instructions, the credit application, powers of attorney, and other commercial documents), and at the Carrier's offices. In the case of inconsistency between this Bill of Lading and the applicable tariff or the terms and conditions of service, this Bill of Lading shall prevail.

3. WARRANTY

The Merchant warrants that in agreeing to the terms hereof it is authorized to enter into this Bill of Lading.

4. NEGOTIABILITY AND TITLE TO THE GOODS

- (1) The Carrier shall issue an original bill of lading for the Goods carried hereunder.
- (2) If negotiable, an original bill of lading, properly endorsed, is required to be surrendered when the Goods are delivered.
- (3) If non-negotiable, delivery of the Goods shall be made to the named consignee upon surrender of an original counterpart and such delivery shall constitute due delivery hereunder. Carrier, in its exclusive discretion, may, but shall not be required to, release the Goods into the possession of the named consignee without presentation of an original bill of lading.
- (4) Whether the bill of lading is negotiable or non-negotiable, the Merchant receiving the Goods in any and all events warrants their entitlement to such receipt and agrees to indemnify Carrier against all damages and liabilities which Carrier may incur as a result of releasing the Goods.
- (5) This Bill of Lading shall be prima facie evidence of the Carrier's receipt of the Goods as herein described. However, proof to the contrary shall not be admissible when this Bill

of Lading has been negotiated or transferred for valuable consideration to a third party acting in good faith.

- (6) Notwithstanding the foregoing, if this document is a sea waybill, it is non-negotiable, shall not constitute a document of title to the Goods, and shall be prima facie evidence of the Carrier's receipt of the Goods as herein described.

5. CERTAIN RIGHTS AND IMMUNITIES FOR THE CARRIER AND OTHER PERSONS

- (1) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage.
- (2) The Merchant acknowledges that, subject to Clause 6(A)(b) below, no claim or allegations shall be made against any Person or vessel whatsoever, other than the Carrier, including, but not limited to, the Carrier's servants or agents, any independent contractor and his servants or agents, and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken, which imposes or attempts to impose upon any such Person or vessel any liability whatsoever in connection with the Goods or the Carriage. If a claim is nevertheless made against any such person, Merchant agrees to defend, indemnify and hold harmless the Carrier against all consequences thereof. By entering into this contract, the Carrier, to the extent of these provisions, does so not only on his own behalf, but also as agent or trustee for such Persons and vessels, and such Persons and vessels shall to this extent be deemed parties to this contract.
- (3) The Merchant shall defend, indemnify and hold harmless the Carrier against any claim or liability (and any expense arising therefrom) arising from the Carriage of Goods insofar as such claim or liability exceeds the Carrier's limited liability under this Bill of Lading.
- (4) The defenses and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier, whether the action is founded in contract, tort, bailment, breach of express or implied warranty or otherwise.
- (5) **HIMALAYA CLAUSE.** All exceptions, exemptions, defenses, immunities, limitations of liability, privileges, and conditions granted or provided by this Bill of Lading, tariff, or statute for the benefit of the Carrier, shall also apply to and for the benefit of the officers and employees of the Carrier and the agents, officers and crew of the vessel and to and for the benefit of all parties performing services in connection with the Goods as agents or contractors of the Carrier (including, without limitation, stevedores, terminal operators, and agents) and the employees of each of them.

6. CARRIER'S RESPONSIBILITY

(A) U.S. Carriage.

- (a) For US Carriage this bill of lading shall have effect subject to the provisions of COGSA regardless of whether said Act would apply of its own force. The provisions of COGSA are incorporated herein and, unless otherwise set forth

herein, shall apply at all times the Goods are in the Carrier's possession, custody, or control, including the period prior to loading and subsequent to discharge, for so long as the Goods remain in the possession, custody, or control of the Carrier or its Sub-Contractor, including Goods carried on deck. Nothing contained herein is to be deemed as a surrender by the Carrier of its rights, immunities, exemptions or limitations or an increase of any of its responsibilities or liabilities under COGSA. Except for clause 6(B), every other term, condition, limitation, defense and liberty whatsoever contained in this bill of lading shall apply to US Carriage.

- (b) Where the Merchant requests the Carrier to procure Carriage by an inland carrier in the United States of America, such Carriage shall be procured by the Carrier as agent only to the Merchant and such Carriage shall be subject to the inland carrier's own contractual conditions and/or tariff and in such event Merchant shall have no cause of action against Carrier for loss, damage or delay to the shipment caused by the acts or omissions of the inland carrier, and will assert said cause of action solely against the carrier(s) responsible for said loss, damage or delay. If, for any reason, the Carrier is denied the right to act as agent only at these times, his liability for loss, damage or delay to the Goods shall be determined in accordance with this clause 6.
- (c) Neither the Carrier nor the Vessel shall in any event be or become liable in an amount exceeding US\$500 per package or customary freight unit. For limitation purposes under COGSA, it is agreed that the meaning of the word "package" shall be any palletized and/or unitized assemblage of cartons which has been palletized and/or unitized for the convenience of the Merchant, regardless of whether said pallet or unit is disclosed on the front hereof.
- (d) The Carrier shall be entitled to the full benefit of, and rights to, all limitations and exclusions of liability conferred or authorized by any applicable law, statute or regulations of any country, including but not limited to, Sections 4281 to 4287 of the Harter Act, as amended, and where applicable, any other provisions of the laws of the United States of America, and without prejudice to the generality of the foregoing, also any laws, statutes, or regulations available to the owner of the vessel(s) on which the Goods are carried.
- (e) **Port to Port Transport:**

The responsibility of the Carrier is limited to that part of the Carriage from and during loading onto the vessel up to and during discharge from the vessel. The Carrier shall not be liable for any loss or damage whatsoever in respect of the Goods or for any other matter arising during any other part of the Carriage even though Charges for the whole Carriage have been charged by the Carrier. The Merchant authorizes the Carrier, as agent, to enter into contracts on behalf of the Merchant with others for transport, storage, handling or any other services in respect of the Goods prior to loading and subsequent to discharge of the Goods

from the vessel without responsibility for any act or omission whatsoever on the part of the Carrier or others. The Carrier may, as such agent, enter into contracts with others on any terms whatsoever, including terms less favorable than the terms in this Bill of Lading.

(f) Multimodal Transport:

For Multimodal Transports, the Carrier shall be liable for loss of or damage, save as otherwise provided in this Bill of Lading, to the Goods occurring from the time the Goods are taken into his charge, until the time and place of delivery as set forth in the bill of lading. In the event it can be shown that the damage or loss to the Goods occurred during the domestic transportation in the United States and a separate bill of lading is issued to cover such transport, Carrier's liability shall be limited to the lesser of the limits as set forth in clause 6(A)(c) herein or the liability as set forth or referenced in the separate bill of lading or the inland carrier's tariff. In all other cases, Carrier's liability shall be as set forth in clause 6(A)(c) herein.

(B) NON-US CARRIAGE.

(a) Port to Port Transport:

(i) The period of responsibility of the Carrier for any loss or damage to the Goods shall commence only at the moment the Goods are loaded on board the Vessel and shall end when the Goods have been discharged from the Vessel.

(ii) The liability of the Carrier for loss of or damage to the Goods shall be determined in accordance with any national law making the Hague Rules or Hague-Visby Rules compulsorily applicable to bills of lading and if no such national law is compulsorily applicable, then in accordance with the Hague-Visby Rules Article 1-8 inclusive (excluding Article 3 rule 8).

(iii) The Carrier shall be under no liability whatsoever for loss or damage to the Goods while in its actual or constructive possession before loading or after discharge, howsoever caused. Notwithstanding the foregoing, in case and to the extent that any applicable compulsory law provides to the contrary, the Carrier shall have the benefit of every right, defense, limitation and liberty in the Hague Rules, Hague-Visby Rules, or any other rules as applied by clause (b) during such additional compulsory period of responsibility, notwithstanding that the loss or damage did not occur at sea.

(iv) If the Goods are discharged at a port other than the Port of Discharge or at a Place of Delivery instead of the Port of Discharge, and the Carrier in its absolute discretion agrees to a request to such effect,

such further Carriage will be undertaken on the basis that this bill of lading is to apply to such Carriage as if the ultimate destination agreed with the Merchant had been entered on the front side of this bill of lading as the Port of Discharge or Place of Delivery.

(b) **Multimodal Transport:**

Where the non-US Carriage is Multimodal and the Merchant can prove at what stage the loss or damage occurred:

- (i) the liability of the Carrier shall be determined by the provisions contained in any international convention or national law, which applies compulsorily to the relevant stage of the Multimodal Transport and cannot be departed from by private contract to the detriment of the claimant; or
- (ii) where an international convention or national law does not apply compulsorily to the stage of the movement where the loss or damage occurred, any liability of the Carrier shall be determined by sub-paragraph 6(B)(c).

(c) Where the non-U.S. Carriage is Multimodal Transport but the Merchant cannot prove at what stage the loss or damage occurred or if this sub-clause applies pursuant to sub-paragraph 6(B)(b)(ii), the Carrier shall be relieved of liability for any loss or damage if such loss or damage arose or resulted from:

- (1) the wrongful act or neglect of the Merchant or any Person acting on behalf of the Merchant other than the Carrier or its servant, agent or Sub-Contractor;
- (2) compliance with the instructions of a Person entitled to give them;
- (3) the lack of, or defective condition of packing in the case of Goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
- (4) handling, loading, stowage or unloading of the Goods by the Merchant, or any person acting on behalf of the Merchant;
- (5) inherent vice of the Goods;
- (6) insufficiency or inadequacy of marks or numbers on the Goods, coverings, or unit loads;
- (7) strikes or lockouts or stoppage or restraint of labor from whatever cause whether partial or general;
- (8) an act, neglect or default in the navigation or management of the Vessel occurring during carriage by water;
- (9) fire, unless the fire was caused by the actual fault or privity of the Carrier or lack of exercise of due diligence to make the Vessel seaworthy, properly to man, equip and supply the Vessel or to make her fit and safe for the reception, carriage and preservation of the Goods; for which the Merchant shall have the burden of proof

- (10) a nuclear incident;
 - (11) any other cause or event which the Carrier could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- (d) When the Carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the causes, or events, specified in sub-paragraph 6(B)(c), it shall be presumed that it was so caused. The claimant 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.
- (e) Where the loss or damage was partly caused by one of the causes at sub-paragraph 6(B)(c) the Carrier shall only be liable to the extent that another cause contributed to the loss or damage.
- (f) Compensation and Limitation
- (i) Subject to the Carrier's right to limit liability as provided for within this bill of lading, the Carrier's liability shall be calculated by reference to the value of the Goods at the place and time at which they were accepted for Carriage.
 - (ii) Where the Hague Rules, Hague-Visby Rules or any other rules compulsorily apply to the Carriage the Carrier's liability shall in no event exceed the amounts provided for in the applicable rules.
 - (iii) In all other cases compensation shall not exceed the limitation of liability of 2 (two) SDRs per kilo of gross weight of the Goods lost, damaged or in respect of which the claim arises.
- (g) Time-bar
- (i) Where the Hague Rules, Hague-Visby Rules or any other rules apply compulsorily to the Carriage, the time limit for bringing claims will be as prescribed by the applicable rules.
 - (ii) In all other cases, the Carrier shall be discharged of all liability whatsoever unless suit is brought within nine months after the delivery of the Goods or the date when the Goods should have been delivered.

(C) PROVISIONS APPLICABLE TO CARRIER'S LIABILITY FOR BOTH U.S. AND NON-U.S. CARRIAGE:

(a) Delay

The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or to meet any particular market or use. The Carrier shall, under no circumstances be liable for direct, indirect, special, incidental, punitive or consequential damages including, but not limited to, loss of profits, income,

utility, interest or loss of market, caused by delay, whether or not Carrier had prior knowledge that such damage might be incurred. Scheduled or advertised departure and arrival times are only expected times and are not a guarantee of delivery by a date certain. Scheduled or advertised departure and arrival times may be advanced or delayed should the Carrier find it necessary, prudent or convenient, and guarantee delivery by a date certain.

(b) Ad Valorem

The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods, and that higher compensation than that provided for in this Bill of Lading may not be claimed unless, with the consent of the Carrier, the value of the Goods is declared by the shipper prior to the commencement of the Carriage stated in this Bill of Lading and extra freight is paid, if required. In that case, the amount of the declared value shall be substituted for the limits set forth in this Bill of Lading. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value. In the event Merchant procures insurance for the Goods, such action shall be conclusive as no value being declared for the Goods.

(c) Description of Goods

- (i) 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 Containers or other packages or units indicated in the applicable box on the face hereof.
- (ii) 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.
- (iii) If any particulars of any letter of credit, import license, and/or sales contract, invoice, 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 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 this Bill of Lading. The Merchant further agrees to defend, indemnify and hold harmless 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(C)(b) apply, the value of the Goods is unknown to the Carrier.
- (iv) It is agreed that superficial rust, oxidation or any like condition due to moisture, is not a condition of damage, but is inherent to the nature of the Goods, and the Carrier's acknowledgement of receipt of the Goods in apparent good order and condition is not a representation that such conditions of rust, oxidation or the like did not exist on receipt.

(d) Notice of Loss or Damage

The Carrier shall be deemed prima facie to have delivered the Goods as described in this Bill of Lading unless notice of loss of, or damage to, the Goods, indicating the general nature of such loss or damage shall have been given in writing to the Carrier or to his representative at the place of delivery before or at the time of removal of the Goods 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 (3) consecutive calendar days thereafter.

(e) Time-bar

The Carrier shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the Carrier within twelve months after delivery of the Goods or the date when the Goods should have been delivered. In the event that such time period shall be found contrary to any convention or law compulsorily applicable, the period prescribed by such convention or law shall then apply, but in that circumstance only.

(f) When any claims are paid to Merchant by Carrier, Carrier shall automatically be subrogated to all rights of merchant against any and all responsible parties, on account of the losses or damages for which such claims are paid.

7. SHIPPER'S/MERCHANT'S RESPONSIBILITY

(1) Each Person defined as a Merchant hereunder shall be jointly and severally liable to Carrier for fulfillment of all obligations undertaken by any Merchant, and the shipper set forth on the front side of this Bill of Lading shall notify all Merchant Person(s) of such liability in this Bill of Lading and remain so liable throughout Carriage, notwithstanding any transfer of this Bill of Lading and/or title to the Goods to another party.

(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 Merchant, are adequate and correct. The Merchant also warrants that the Goods are lawful goods and contain no contraband. If the Container is not supplied by or on behalf of the Carrier, the Merchant further warrants that the Container meets all ISO and/or other international safety standards and is fit in all respects for Carriage by the Carrier.

(3) The Merchant shall defend, indemnify and hold harmless the Carrier against all claims, losses, damages, fines and expenses arising or resulting from any breach of any of the warranties in Clause 7 hereof or from any other cause in connection with the Goods for which the Carrier is not responsible.

- (4) The Merchant shall comply with all applicable laws, regulations or requirements of Customs, the port 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 for any additional Carriage undertaken) incurred or suffered in respect of the Goods, and shall indemnify the Carrier in respect thereof. If the vessel is delayed due to an act or omission by the Merchant, the Merchant shall be responsible to Carrier for all costs, including clean up and delay, incurred as a result of the Merchant's acts or omissions.
- (5) If Containers supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty Containers free from labels etc., with interiors brushed clean, odor free and in every respect fit for immediate reuse, to the point or place designated by the Carrier, his servants or agents, within the time prescribed. Should a Container not be returned as required above within the time prescribed, the Carrier is entitled to take such steps as he considers appropriate for the account of the Merchant, and the Merchant shall be liable for any detention, loss or expense incurred as a result thereof.
- (6) The Merchant undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws, regulations and requirements which may be applicable. The Merchant shall be liable for any loss, damage or injury caused by faulty or insufficient packing or by faulty loading or packing within Containers when such loading or packing has been performed by the Merchant or on behalf of the Merchant, or by the defect or unsuitability of the Containers when supplied by the Merchant, and shall Indemnify the Carrier against any additional expenses so caused.
- (7) Containers released into the care of the Merchant for packing, unpacking or any other purpose whatsoever are at the sole risk of the Merchant until redelivered to the Carrier. The Merchant shall defend, indemnify and hold harmless the Carrier for all loss and/or damage to such Containers occurring during such period. The Merchant shall also indemnify the Carrier for any loss, damage, injury, fines or expenses caused or incurred by such Containers while in his control.
- (8) The Merchant shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Carrier or Sub-Contractor (other than the Merchant) caused by the Merchant or any Person acting on his behalf or for which the Merchant is otherwise responsible.

8. DANGEROUS, HAZARDOUS, OR NOXIOUS CARGO

- (1) Merchant shall not tender to Carrier any Goods which are or may become dangerous (whether or not so listed in codes), inflammable, damaging, injurious

(including radioactive materials), noxious or which are or may become liable to damage any property or Person whatsoever without the written consent of the Carrier.

- (2) In the event such written consent is obtained by the Carrier, the Container and/or other covering in which the Goods are to be transported and/or the Goods themselves shall be sufficiently and distinctly marked on the outside so as to indicate the nature and character of any such Goods and so as to comply with all applicable laws, regulations and/or requirements.
- (3) If the Merchant fails to provide such information and the Carrier is unaware of the dangerous nature of the Goods and the necessary precautions to be taken and if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation, and the Merchant shall be liable for all loss, damage, delay or expenses arising from the Carriage. The burden of proof that the Carrier knew the exact nature of the danger constituted by the carriage of the Goods shall rest upon the Merchant.
- (4) The Merchant shall comply with rules which are mandatory according to the national law or by reason of international convention, relating to the carriage of Goods of a dangerous nature. If any Goods shipped with the knowledge of the Carrier as to their dangerous nature shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the Carrier without liability on the part of the Carrier except to General Average, if any.
- (5) The Merchant shall indemnify the Carrier against any loss, damage, claim, liability or expense whatsoever arising from any breach of the provisions of this clause 8 or from any cause in connection with the Goods for which the Carrier is not responsible.
- (6) Temperature-controlled cargo:
 - (i) The Merchant undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice (and filling in the box on the front of this Bill of Lading, if this Bill of Lading has been prepared by the Merchant or a Person acting on his behalf) of their nature and particular temperature range to be maintained, and in the case of a temperature controlled Container stuffed by or on behalf of the Merchant, further undertakes that the Container has been properly pre-cooled, that the Goods have been properly stuffed in the Container, and that its thermostatic controls have been properly set by the Merchant before receipt of the Goods by the Carrier. If the above requirements are not complied with the Carrier shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

- (ii) The Carrier shall not be liable for any loss of, or damage to, the Goods arising from defects, derangement, breakdown, stoppage of; the temperature controlling machinery, plant, insulation or any apparatus of the Container, provided that the Carrier shall before, or at the beginning of the Carriage, exercise due diligence to maintain the refrigerated Container in an efficient state.

9. CONTAINERS

- (1) Goods may be stuffed by the Carrier in or on Containers and Goods may be stuffed with other Goods.
- (2) The terms of this Bill of Lading shall govern the responsibility of the Carrier in connection with or arising out of the supply of a Container to the Merchant, whether supplied before or after the Goods are received by the Carrier or delivered to the Merchant.
- (3) If a Container has been stuffed by or on behalf of the Merchant:
 - (A) the Carrier shall not be liable for loss of or damage to the Goods:
 - (i) caused by the manner in which the Container has been stuffed;
 - (ii) caused by the unsuitability of the Goods for Carriage in Containers;
 - (iii) caused by the unsuitability or defective conditions of the Container, provided that where the Container has been supplied by or on behalf of the Carrier, this paragraph (iii) shall only apply if the unsuitability or defective condition would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was stuffed; and
 - (iv) if the Container is not sealed at the commencement of the Carriage except where the Carrier has agreed to seal the Container.
 - (B) the Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, claim, liability, or expense whatsoever arising from one or more of the matters covered by 9(3)(A) above, except for 9(3)(A)(iii)(a) above.
- (4) Where the Carrier is instructed to provide a Container, in the absence of a written request to the contrary, the Carrier is not under an obligation to provide a Container of any particular type or quality.

10. INSPECTION OF GOODS

The Carrier, or any Person authorized by the Carrier, shall be entitled, but under no obligation, to open any Container or package at any time, and to inspect the Goods.

11. MATTERS AFFECTING PERFORMANCE

- (1) If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty, or disadvantage of any kind (including the condition of the Goods), whensoever and howsoever arising (whether or not the Carriage has commenced), the Carrier may:
 - (A) without notice to the Merchant, abandon the Carriage of the Goods, and where reasonably possible, place the Goods or any part of them at the Merchant's disposal at any place which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease;
 - (B) without prejudice to the Carrier's right subsequently to abandon the Carriage under 11(A) above, continue the Carriage. In any event, the Carrier shall be entitled to full Charges on Goods received for Carriage and the Merchant shall pay any additional costs resulting from the above circumstances.
- (2) The liability of the Carrier in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with the orders or recommendations given by any government, authority, or any Person acting or purporting to act as or on behalf of such government or authority.

12. METHODS AND ROUTE OF TRANSPORTATION

- (1) The Carrier may at any time and without notice to the Merchant: use any means of transport or storage whatsoever, including but not limited to, inland carriage by truck, rail and/or air; load or carry the Goods on any vessel, whether named on the front hereof or not; transfer the Goods from one conveyance to another, including transshipping or carrying the same on another vessel than that named on the front hereof or by any other means of transport whatsoever; at any place unpack and remove Goods which have been stuffed in or on a Container and forward the same in any manner whatsoever; proceed at any speed and by any route in Carrier's discretion (whether or not the nearest, direct, customary, advertised, or published route) and proceed to or stay at any place whatsoever once or more often and in any order; load or unload the Goods from any conveyance at any place (whether or not the place is a port named on the front hereof as the intended Port of Loading or intended Port of Discharge); comply with any orders or recommendations given by any government, authority, or any Person or body acting or purporting to act as or on behalf of such government or authority, or having under the terms of the insurance on the conveyance employed by the Carrier, the right to give orders or directions; permit the vessel

to proceed with or without pilots, to tow or be towed, or to be dry-docked; permit the vessel to carry livestock, Goods of all kinds, dangerous or otherwise, contraband, explosives, munitions or warlike stores, and sail armed or unarmed.

- (2) The liberties set out in 12(1) above may be invoked by the Carrier (without notice to Merchant) for any purposes whatsoever, whether or not connected with the Carriage of the Goods. Any act in accordance with 12(1) above or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation of whatsoever nature or degree.

13. DECK CARGO (AND LIVESTOCK)

- (1) Goods of any description, whether containerized or not, may be stowed on or under deck without notice to the Merchant, and such stowage shall not be a deviation of whatsoever nature or degree. Subject to 13(2) below, such Goods, whether carried on deck or under deck, shall participate in General Average, as explained in Paragraph 16 below, and such Goods (other than livestock) shall be deemed to be within the definition of Goods for the purposes of the Hague Rules or any legislation making such Rules or the Hague-Visby Rules compulsorily applicable (such as COGSA or COGWA) to this Bill of Lading.
- (2) Goods (not being Goods stuffed in or on Containers other than open flats or pallets) which are stated on the front of this Bill of Lading to be carried on deck and which are so carried (and livestock, whether or not carried on deck) are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during carriage by sea or inland water-way whether caused by unseaworthiness or negligence or any other cause whatsoever. The Merchant shall defend, indemnify and hold harmless the Carrier against all and any extra cost incurred for any reason whatsoever in connection with carriage of such livestock.

14. DELIVERY OF GOODS

If delivery of the Goods or any part thereof is not taken by the Merchant, at the time and place when and where the Carrier is entitled to call upon the Merchant to take delivery thereof, the Carrier shall be entitled without notice to remove from a Container the Goods or that part thereof if stuffed in or on a Container and to store the Goods or that part thereof ashore, afloat, in the open or under cover at the sole risk and expense of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods or that part thereof shall cease.

15. BOTH-TO-BLAME COLLISION

If the vessel carrying the Goods (the carrying vessel) collides with any other vessel or object (the non-carrying vessel or object) due to the negligence of the non-carrying vessel or object, or their

owner(s), charterer(s), or Person(s) responsible for the non-carrying vessel or object, the Merchant undertakes to defend, indemnify, and hold harmless the Carrier against all claims, liability, costs, attorneys' fees, and other expense arising therefrom, in respect of any loss, damage, or claim whatsoever of the non-carrying vessel or object.

16. GENERAL AVERAGE

- (1) The Carrier may declare "General Average" which shall be adjustable according to the New York Antwerp Rules of 1974 at any place at the option of the Carrier. The Amended Jason Clause as approved by BIMCO is incorporated herein, and the Merchant shall provide such security as may be required by the Carrier in this regard.
- (2) Notwithstanding 16(1) above, the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claim (and any expense arising therefrom) of a General Average nature which may be made against the Carrier, and shall provide such security as may be required by the Carrier in this connection.
- (3) The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

17. FREIGHT & CHARGES

- (1) Freight shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event by the Merchant.
- (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 shipper. 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.
- (4) All freight shall be paid without any set-off, counter-claim, deduction or stay of execution before delivery of the Goods.
- (5) The Merchant, as defined herein, shall be jointly and severally liable to the Carrier for the payment of freight and all Charges, including attorneys' fees, costs, and expenses incurred in collecting such freight, and the performance of the obligation of each of them hereunder.
- (6) The Merchant, as defined herein, shall be jointly and severally liable for demurrage, detention, general order, and any and all costs associated with the abandonment of the freight or a refusal of the consignee to make delivery, whether or not freight is "pre-paid" or "collect."
- (7) The Carrier shall be entitled to all freight and other Charges due hereunder, whether actually paid or not, and to receive and retain them irrevocably under any circumstances whatsoever, whether the vessel and/or goods be lost or not, or the voyage be broken up, or frustrated, or abandoned at any stage of the entire transit period.

- (8) The Merchant shall be jointly and severally liable for, and indemnify the Carrier against all dues, duties, taxes and Charges including consular fees levied on the goods or all fines and/or losses sustained or incurred by the Carrier in connection with the goods however caused, including the procedure consular, board of health, or other certification to accompany the goods.
- (9) The Merchant shall be jointly and severally liable for return freight and Charges on the goods refused exportation or importation.
- (10) The Merchant authorizes the Carrier to pay and/or incur all such Charges and expenses and to do any matters mentioned above at the expense of and as agent for the Merchant, to engage other Persons to regain possession of the Goods, and to do all things deemed advisable to the Carrier for payment of all Freight and Charges and for the performance of the obligation of each of them hereunder.

18. COSTS OF COLLECTION

In any dispute involving monies owed to Carrier, Carrier shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less. If any suit is brought by Merchant against Carrier and Carrier is determined not to be liable to Merchant or its liability is limited in accordance with these terms and conditions, Carrier shall be entitled to its reasonable attorney's fees incurred in defending said action. The foregoing sentence shall not apply in the event a Court or other tribunal determines that New York law does not apply to the services rendered by Carrier.

19. LIEN

The Carrier shall have a general and continuing lien on the Goods and any documents relating thereto for all sums whatsoever due at any time to the Carrier from the Merchant with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both, and for General Average contributions to whomsoever due and for the costs, including attorney's fees of recovering the same. The Carrier shall have the right to sell the Goods and documents by public auction or private treaty, upon notice to the Merchant, at the Merchant's expense, and without any liability towards the Merchant. If on the sale of goods, the proceeds fail to cover the amount due and attorneys' fees, costs and expenses incurred, then Carrier may recover the difference from Merchant.

20. WRITING REQUIRED TO VARY OR MODIFY THE CONTRACT

Only Carrier's officer, director, or agent with actual authority shall have power to waive, vary, alter, or modify any terms herein. Any changes must be agreed upon in writing by Carrier and Merchant.

21. SEVERABILITY

If any provision in this Bill of Lading is held to be invalid or unenforceable by any court or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall attach only to such provision. The validity of the remaining provisions shall not be affected thereby, and this Bill of Lading contract shall be carried out as if such invalid or unenforceable provisions were not contained herein.

22. JURISDICTION AND LAW CLAUSE

Any claim or dispute arising under this Bill of Lading shall be determined according to the laws of the United States and the laws of the State of New York as applicable. Actions against the Carrier may only be instituted in the state or federal courts located in New York County, New York.