1. Definitions.
In this Bill of Lading, and except as otherwise expressly provided:
(a) "Carrier" means and includes the ocean carrier named on the face side hereof, the Vessel, her owner, Master, operator, demise charterer, and if bound hereby, the time charterer, and any substitute carrier, whether the owner, operator, charterer or Master shall be acting as carrier or bailee, and their respective agents, officers and employees
(b) "Vessel" means and includes the ocean vessel on which the Goods are shipped named on the face hereof, any substitute vessel, and any feeder vessel, ferry, barge, lighter or any other watercraft used in the performance of this contract;
(c) "Merchant" means and includes the shipper, consignee, receiver, holder of this bill of lading, the owner of the Goods, and the person or entity entitled to the possession of the Goods, and their respective agents, representatives and employees;
(d) "Charges" means and includes freight and all expenses and money obligations incurred and payable by Merchant hereunder, including demurrage and deadfreight;
(e) "Goods" means and includes the cargo received from the Merchant and described on the face side hereof and any Container not supplied by or on behalf of Carrier;
(f) "Container" means and includes any container, van, trailer, transportable tank, flat rack or any similar article of transport used to consolidate goods;
(g) "Package" means the single largest unit of Goods (e.g., Container, pallet, box, bale, vehicle, etc.) tendered to Carrier for transport hereunder;
(h) "Inland Carrier" means any barge line, vessel, trucker, or railroad with custody of the Goods under this Bill of Lading, and their respective agents and subcontractors;
(i) "On board" means and includes on board the Vessel when the Goods are being transported from a port and on board a means of conveyance of Inland Carrier en route to the port of loading for transport from an inland point; and
(j) "Subcontractor" means and includes all interests owning, operating or chartering the Vessel, any inland conveyance, terminal or warehouse, or otherwise performing services with respect to the Goods under this Bill of Lading.
(k) "Hague Rules" means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on August 25th, 1924.
(l) "COGSA" means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936. "
(m) "COGWA" means the Carriage of Goods by Water Act 1936 of Canada
1. Clause Paramount.
(a) This Bill of Lading shall have effect subject to the laws of the United States of America, and the provisions of COGSA which shall be deemed to be incorporated herein and the provisions of which (except as otherwise specifically provided herein) shall govern before loading on and after discharge from the Vessel and throughout the entire time the Goods are in the custody of Carrier, including the Inland Carrier, transshipment port, and terminal but always prior to delivery.
(b) Subject to sub-clause (a), if the place in which the Bill of Lading is issued or delivered, or if the port of loading, has in force a compulsorily applicable law respecting the rights and obligations of parties to a contract of sea carriage of goods similar to COGSA, then to the extent that such law is applicable, this Bill of Lading shall be subject to the provisions of said law; provided that if there be no such law at such place or port, then this Bill of Lading shall have effect subject to the Hague Rules which shall be deemed incorporated herein, but in all instances, the first sentence of Article 4 rule 5 and Article 9 thereof shall not apply and the limit of liability shall be as set forth in clause 17 hereof. Such mandatory law or the Hague Rules, as applicable, and except as otherwise specifically provided herein, shall govern before loading on and after discharge from the Vessel and throughout the entire time the Goods are in the custody of Carrier, including the Inland Carrier, transshipment port, and terminal but always prior to delivery. In all other respects, nothing herein contained shall be deemed a surrender by Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under COGSA. Where the provisions of sub-clause (b) apply, the governing law of the contract evidenced by this Bill of Lading shall be Canadian Maritime Law and provisions of COGWA
2. Jurisdiction and Claims.
Any dispute or claim arising under this Bill of Lading shall be decided exclusively by arbitration in New York before a single arbitrator pursuant to the rules of the Society of Maritime Arbitrators if not exceeding $50,000, and otherwise exclusively before the United States District Court for the Southern District of New York; otherwise when the Canadian Maritime Law is compulsory applicable - under the exclusive jurisdiction of the Federal Court of Canada.
3. Notice of Loss/Time Bar.
Unless notice of loss or damage and the general nature of such loss or damage be given in writing to Carrier or its agents at the port of discharge or the place of delivery, as the case may be, before or at the time of removal of the Goods into the custody of Merchant, such removal shall be prima facie evidence of the delivery by Carrier of the Goods as described in this Bill of Lading. Similarly, if the loss or damage is not apparent, then notice must be given within three (3) days of the delivery. In any event, Carrier shall be discharged from any liability, unless proceedings pursuant to Clause 3 are brought within one (1) year after delivery of the Goods or, in the case of non-delivery, the date when the Goods should have been delivered.
4. Tariff and Booking Note.
The Goods carried hereunder are subject to all the terms of Carrier's applicable tariff(s) at the date of shipment and relevant Booking Note, which are hereby incorporated herein. Copies of the relevant provisions of the applicable tariff(s) are available from Carrier upon request. In the event of any conflict between this Bill of Lading, the tariff(s) and the Booking Note, this Bill of Lading shall prevail over all, and the Booking Note shall prevail over the tariff(s).
5. Method and Route of Transport.
Carrier may at any time and without notice to the Merchant: (a) Use any means of transport or storage whatsoever; (b) transfer the Goods from one conveyance to another including transshipping or carrying the same on a substitute vessel or on any other means of transport whatsoever and even though transshipment or forwarding of the Goods may not have been contemplated or provided for herein, and delay forwarding awaiting a Vessel or conveyance whether in Carrier's own service or not; (c) sail without pilots, proceed via any route, proceed to, return to and stay at any port or place whatsoever (including the port of loading herein provided) in any order in or out of the route or in a contrary direction to or beyond the port of destination once or oftener for bunkering or loading or discharging cargo or embarking or disembarking any person(s) whether in connection with the present, prior or subsequent voyage or any other purpose whatsoever, and before giving delivery of the Goods at the port of discharge or the place of delivery herein provided and with liberties as aforesaid to leave and then return to and discharge the Goods at such port, to tow or to be towed, to make trial trips, with or without notice, to adjust compasses, or to repair or dry dock with or without cargo onboard, and proceed at reduced speed in order to conserve bunkers or as the Master may consider necessary or reasonable; (d) load and unload the Goods at any port or place (whether or not any such port is named on the face hereof as the port of loading or port of discharge) and store the Goods at any such port or place either on shore or afloat; (e) comply with any orders or recommendations given by any government or 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 Carrier the right to give orders or directions. Anything done or not done in accordance with the provisions of this clause 5 and any delay arising therefrom shall be deemed to be within the contractual carriage and the scope of the intended voyage and shall not be a deviation.
6. Matters Affecting Performance.
If at any time, for any reason whatsoever and howsoever caused, whether or not existing or anticipated before the commencement of or during the voyage, the performance of any part of the contract evidenced by this Bill of Lading becomes illegal or is or is likely to be affected by any hindrance, risk, delay, strike, difficulty, safety issue, or disadvantage to the Vessel or Goods of whatsoever kind, whether partial or general, that cannot be avoided by the exercise of reasonable endeavors, Carrier (whether or not the transport is commenced) may without notice to Merchant treat the performance of this contract as terminated and place the Goods or any part of them at Merchant's disposal at any place or port that Carrier may deem safe and convenient, whereupon the responsibility of Carrier in respect of such Goods shall cease and the Goods shall remain at the risk and expense of the Merchant, or the Carrier may retain the Goods on board until the return trip, if any, or until such time as the Carrier deems it advisable under the circumstances. Carrier shall nevertheless be entitled to full freight and charges on Goods received for transportation, and Merchant shall pay any additional costs of carriage to and delivery and storage at such place or port or while remaining on board. In the event that the Carrier performs any extra services for the Goods or the length or duration of the voyage is increased over the contemplated voyage, the Merchant shall pay the Carrier, in addition to earned freight, a reasonable extra compensation in line with such services or addition duration.
7. Stowage and Special Handling.
Carrier may, in its complete discretion, containerize any Goods. Carrier shall be entitled but under no obligation to open any Container at any time and to inspect the contents thereof. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measures in relation to the Container or its contents or any part thereof, Carrier may abandon the carriage thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue the carriage or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under this Bill of Lading. Merchant shall indemnify Carrier against all reasonable additional expense as incurred. A loading certificate issued by the Classification Society's surveyor or any other competent person shall be conclusive evidence as to the fitness and safety at the beginning of the voyage of the refrigerated cargo installation for the reception, carriage and preservation of refrigerated cargo. Electric power is supplied on board or ashore to vehicles (including trailers, containers, flats, etc.) for heating, refrigeration, etc. without responsibility for any loss, damage or delay to Goods or equipment howsoever caused. Carrier shall not be obliged to provide for refrigerated storage ashore. Loading, discharging, stowing and other handling of single pieces or packages exceeding three (3) tons gross weight shall be for risk and account of Merchant, who if so required by Carrier shall provide the necessary lifting gear.
Merchant shall assume full responsibility for and defend, indemnify and hold the Carrier harmless against and for any loss or damage to any Container or other equipment furnished by or on behalf of Carrier that occurs while such Container or equipment is in the possession or control of Merchant or any agent or contractor engaged by or on behalf of Merchant.
8. Loading and Discharging.
Unless otherwise agreed prior to shipment, loading, discharging and delivery of the Goods shall be arranged by Carrier's Agent. Landing, storing and delivery shall be for Merchant's account. All general and bulk cargo shall be loaded, stowed, secured, lashed, trimmed (when necessary) and discharged at Merchant's risk and expense. Notwithstanding any other provision in this contract of carriage, any lightering and use of craft for loading or discharge to be for the account and risk of Merchant, the Carrier having no responsibility other than to arrange for lighter or craft as agent of the Merchant. Loading and discharging may commence without previous notice. Merchant shall tender the Goods for loading when the Vessel is ready to load and as fast as the Vessel can receive and, if required by Carrier, outside ordinary working hours notwithstanding any custom of the port, and failing same Carrier shall be relieved of any obligation to load the Goods or all of them, and the Vessel may leave the port without further notice and dead freight shall be payable by Merchant. Carrier may discharge the Goods as fast as the Vessel can deliver and outside ordinary working hours notwithstanding any custom of the port, and failing acceptance of the Goods thereupon by Merchant, Carrier shall be at liberty to take such other action as may be permitted under this Bill of Lading or at law, all of which shall be deemed a true fulfillment of the contract. Merchant shall bear all overtime charges in connection with tendering and delivery of the Goods as above. Carrier may in its absolute discretion receive the Goods as full container load and deliver them as less than full container load and/or as break bulk cargo and/or deliver the Goods to more than one receiver. In such event, Carrier shall not be liable for any shortage, loss, damage or discrepancies of the Goods that are found upon unpacking of the Container. Merchant shall accept its reasonable proportion of unidentified loose cargo. If any consignee has a shortage in the marks or numbers called for by this Bill of Lading, unclaimed Goods of like kind and quality, but of different marks or numbers, or of no marks nor numbers, shall at Carrier's option be deemed to constitute a part of the Goods and be accepted by Merchant as good delivery under this Bill of Lading. If the Goods are not claimed within thirty (30) days, or whenever in Carrier's opinion the Goods will become deteriorated, decayed or worthless, and notwithstanding any free days provided to the Merchant to take delivery of the Goods, Carrier may at its discretion and subject to its lien store, sell, abandon or otherwise dispose of the Goods at the sole risk and expense of Merchant.
9. Deck Cargo.
(a) 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 (b) below, such Goods whether carried on deck or under deck shall participate in General Average 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 (such as COGSA or COGWA) to this Bill of Lading.
(b) 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 waterway whether caused by un-seaworthiness 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.
10. Notification and Delivery.
The port of discharge for Goods accepted for delivery to optional ports must be declared to the Vessel's Agents at the first of the optional ports not later than 48 hours before the Vessel's scheduled arrival there. In the absence of such declaration, Carrier may elect to discharge at the first or any other optional port, whereupon the contract of carriage shall then be deemed fulfilled. Unless expressly set forth on this Bill of Lading, delivery of the total quantity shipped under this Bill of Lading will be made at a single port only. Any mention in this Bill of Lading of parties to be notified of the arrival of the Goods is solely for information of Carrier, and failure to give such notification shall not subject Carrier to any liability or relieve Merchant of any obligation hereunder.
If Merchant fails to take delivery of the Goods or part of them in accordance with this Bill of Lading, in addition to any other rights under this contract of carriage, Carrier may without notice unstow the Goods or that part thereof and/or store the Goods or that part thereof ashore, afloat, in the open or under cover. Such storage shall constitute due delivery hereunder and thereupon all liability whatsoever of Carrier in respect of the Goods or that part thereof shall cease. Merchant shall under no circumstances refuse to take delivery of the Goods, or abandon the Goods prior to taking delivery. Should the Merchant nonetheless do so, it shall be responsible for all demurrage, duties, charges, costs and expenses arising therefrom, including reasonable legal fees incurred by the Carrier in selling or otherwise disposing of the Goods.
11. Shipper-Packed Containers.
When Containers, palletized units, and all other packages (all hereinafter referred to as "cargo units") are not packed or loaded by Carrier, such cargo units shall be deemed shipped as "Shipper's weight, load and count" and with no representation by Carrier as to the quantity, weight, condition, or existence of the contents thereof, as to which Carrier shall not be liable for non-receipt or misdeclaration. Carrier shall have no responsibility or liability whatsoever therefore for the packing, loading, securing and/or stowage of contents of such cargo units, or for loss or damage caused thereby or resulting therefrom, or for the physical suitability or structural adequacy of such cargo units to properly contain their contents.
Merchant, whether principal or agent, by packing or loading the cargo unit and/or by allowing the cargo unit to be so packed or loaded represents, guarantees and warrants that: (a) the Goods are properly described, marked and safely and securely packed in their respective cargo units; including but not limited to any necessary lashing or fastening, such cargo units are physically suitable, sound and structurally adequate properly to contain and support the Goods during handling and on the transport, and the cargo units may be handled in the ordinary course without damage to themselves or to their contents, or to the Vessel or conveyance or to their other cargo, or property, or persons; (b) all particulars with regard to the cargo units and their contents, and the weight of each said cargo unit, are in all respects correct; (c) Merchant has ascertained and fully disclosed in writing to Carrier and any Inland Carrier on or prior to shipment, any condition, ingredient or characteristic of the Goods that might indicate they are inflammable, explosive, corrosive, radioactive, noxious, hazardous or dangerous in nature, or that might cause damage, injury or detriment to the Goods, or to the Vessel, conveyance or other cargo or to property or persons; (d) Merchant has complied fully with all applicable laws, statutes, ordinances, orders and regulations with respect to labeling, packaging and preparation for shipment of all such Goods, and (e) that the Goods (whether or not intended to be carried on deck) are fit for deck carriage.
Merchant agrees to fully protect and indemnify Carrier and to hold it harmless in respect of any injury or death of any person, or loss or damage to cargo or cargo unit or any other property, or to the Vessel or any other conveyance, or any arrest, detention or seizure of the Vessel or any other conveyance, or expense or fine arising out of damage to cargo or cargo unit or any other property or otherwise, arising out of or in any way connected with breach of any of the foregoing representations or warranties, howsoever occurring, even without fault of Merchant and even though such injury, death, loss or damage is caused in whole or in part by any act, fault or neglect of Carrier or unseaworthiness.
12. Freight and Charges.
Freight and Charges, whether pre-payable or not and whether actually paid or not, shall be considered as fully earned, without set-off, counterclaim or deduction or stay of execution, upon receipt of the Goods under the custody of Carrier under this Bill of Lading, including receipt by any Inland Carrier, and shall be paid, and be non-returnable in any event, Vessel and/or Goods damaged, lost or not lost. Interest at the rate of two percent (2%) per month or part thereof shall run from the date when freight and Charges are due. Freight and Charges are payable only in U.S. Dollars. Merchant shall be liable for expenses of fumigation, gathering and sorting loose cargo and weighing onboard, repairing damage to and replacing of packing due to excepted causes, and for all extra handling of the Goods for any of the aforementioned reasons. Any dues, duties, taxes and charges in respect of the transportation services to be provided by Carrier that any jurisdiction may levy, whether on the basis of amount of freight, weight of cargo, tonnage of the Vessel, or any other, and all fines and/or losses that Carrier, Vessel, or the Goods may incur through non-observance of any customs house and/or import or export regulations, shall be for Merchant's account. In the event of any forced interruption or abandonment of the voyage at any place, any forwarding of the Goods or any part thereof shall be at the risk and expense of the Merchant. In case of any incorrect declaration by Shipper of contents, weights, measurements or value of the Goods, Carrier may collect double the amount of freight that would have been due if such declaration had been correctly given. For the purpose of ascertaining the actual facts, Merchant shall upon request provide to Carrier the original invoice in respect of the Goods, and permit the contents to be inspected and the weight, measurement or value verified.Merchant shall be liable for the payment of all Freight and Charges due hereunder, without discount, together with any court costs, expenses and reasonable attorneys' fees incurred in collecting any sums due to Carrier. Payment to a freight forwarder, or anyone other than Carrier or its authorized agent, shall not be deemed payment to Carrier and shall be made at payer's sole risk, and Merchant shall remain liable for all freight and other charges due hereunder notwithstanding any extension of credit by Carrier to such freight forwarder or other person.
13. Liens.
Carrier shall have a lien on the Goods and any documents relating thereto for all sums whatsoever due at any time to the Carrier from the Merchant and for General Average contributions, which lien shall survive delivery, for all Freight, Charges and other sums due under this contract and any other contract, and all costs of recovering same and expenses incurred in preserving this lien including reasonable legal expenses, which may be enforced by public auction or private sale of the Goods without notice to Merchant and at the Merchant expense and without any liability towards the Merchant.
14. Identity of Carrier.
Other than the Carrier, no person whatsoever (including the Master, officers and crew of the Vessel, and all agents, employees, representatives, and Subcontractors) is or shall be deemed to be liable with respect to the Goods as carrier, bailee or otherwise howsoever, in contract or in tort. If, however, it should be adjudged that any other than said Carrier is under any responsibility with respect to the Goods, all limitations of and exonerations from liability provided by law or by the terms hereof shall be available to such other persons. In contracting for the foregoing exemptions, limitations and exonerations from liability, Carrier is acting as agent and trustee for and on behalf of all persons described above, all of whom be deemed to be a party in the contract evidenced by this Bill of Lading.
15. Subcontracting.
Carrier and Inland Carrier each may subcontract on any terms the whole or any part of the transport, loading, unloading, storing or other handling of the Goods undertaken by Carrier. The Merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the Carrier. Merchant shall not hold, or seek to hold, anyone other than the Carrier, whether any agent or Subcontractor, or any vessel owned or chartered by any of them, under any liability whatsoever to Merchant in connection with the Goods, and if any such claim or allegation should nevertheless be made Merchant shall indemnify Carrier against all consequences thereof. Without prejudice to the foregoing, every such agent and Subcontractor shall have the benefit of all provisions, including every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity of whatever nature herein benefiting Carrier as if such provisions were expressly for their benefit, and all limitation of and exonerations from liability provided to Carrier by law and by the terms hereof shall be available to them, and, in entering into this contract Carrier, to the extent of such provisions, does so not only on its own behalf but also as agent and trustee for such agents and Subcontractors.
The defenses, exonerations and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier or other persons or vessel referred to in this Clause, whether the action be founded upon contract, bailment or in tort.
16. Delay.
Carrier shall not be liable for any direct, indirect, consequential or special damages, or for any other loss sustained through delay of the Goods. If Carrier shall nonetheless be held legally liable for any such damages or loss, such liability shall in no event exceed the freight paid for the transport of the Goods hereunder. Carrier shall have the option of replacing or repairing lost or damaged Goods. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the transport.
17. Limitation of Liability.
For all shipments subject provisions of COGSA Carrier shall not in any event be liable for loss or damage to the Goods in an amount exceeding U.S. $500, or in all other cases to GBP 100 sterling (which shall not be based on the gold value), per Package (or for Goods not shipped in Packages, per customary freight unit), unless the value (and nature) of the Goods higher than this amount has been declared in writing by Merchant before receipt of the Goods by Carrier and inserted on the face of this Bill of Lading and extra freight has been paid as required, in which event Carrier's liability shall not exceed such higher value (or pro rata for loss or damage to less than all the Goods). If the actual value of the Goods per package or unit exceeds such declared value, the value declared shall be deemed to be the value. If the declared value has been misstated or is materially higher than the actual value, Carrier shall not be liable to pay any compensation. Nothing contained in this Bill of Lading shall deprive the Vessel, Shipowner or Carrier of the right to claim the benefit of any statutory exemption from or limitation of liability. It is agreed by the Merchant that the Carrier, Company, Inland Carrier, and all agents and Subcontractors qualify as person entitled to limit liability under any Convention or Act pertaining to limitation of liability on maritime claims, whichever is applicable.
Nothing in this bill of lading shall operate to limit or deprive the Carrier of any statutory protection, defence, exception or limitation of liability authorised by any applicable laws, statutes or regulations of any country. The Carrier shall have the benefit of the said laws, statutes or regulations as if it were the owner of any carrying ship or vessel.Notwithstanding any other provision of this Bill of Lading, Carrier shall not be liable for any loss, damage, delay or failure of performance resulting from act of war, acts of public enemies, thieves, pirates and assailing thieves including robbers and hijackers. The defenses and limits of liability provided for in this Bill of Lading shall apply in any action against Carrier for loss or damage to the Goods, whether founded in tort, bailment or in contract. The terms of this Bill of Lading shall govern the responsibility of Carrier in connection with or arising out of the supplying of a Container to the Merchant, whether before or after the Goods are received by Carrier or Inland Carrier for transport or delivery thereof to Merchant.
18. Responsibility Clause for Combined Transport.
Where the nature of this contract of carriage is one of through transit of containerized or otherwise unitized Goods commencing at and terminating at interior places that are expressly stated in this Bill of Lading, Carrier shall be responsible for the Goods in the manner herein provided from the time they are received for shipment by its agents until delivery at the specified place of final destination, but in all other instances, Carrier shall not be responsible for loss of or damage to the Goods during the periods before receipt of the Goods at the sea terminal at the port of loading or after delivery of the Goods in question from the sea terminal at the port of discharge. If it cannot be established in whose custody the Goods were when any damage or loss occurred, the damage or loss shall be deemed to have occurred during the sea voyage and the appropriate COGSA (or, if inapplicable, Hague Rules) provision shall apply.
19. Terminal Clause.
Otherwise than as provided for in this Bill of Lading, Carrier accepts no responsibility whatsoever in relation to the Goods stored at any terminal, or other yards or warehouses, and during the whole period of such storage the Goods remain at the risk and expense of Merchant. The Carrier is not to be liable whatsoever if heat, refrigeration or other temperature control facilities, or power there for, shall not be furnished during any time that the Goods are at a terminal, warehouse, or transshipment port. This clause to be deemed agreed and to remain in force notwithstanding any local legislation.
20. New Jason Clause.
In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequences of which Carrier is not responsible by statute, contract or otherwise, Merchant shall contribute with Carrier in General Average to the payment of any sacrifice, 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 Goods.
General Average shall be settled according to the York Antwerp Rules 1990 and be adjusted at any port or place by one or more General Average Adjuster(s) appointed by Carrier. If a salving Vessel is owned or operated by Carrier, salvage shall be paid for as fully as if the salving Vessel or Vessels belonged to strangers. All Goods (including utilized and deck cargo and live animals) shall contribute to and receive contribution in General Average. Carrier shall be under no obligation to exercise any lien for General Average Contribution due to Merchant.
By receiving the Goods, Merchant shall personally be liable in respect of the contribution to General Average whether or not an Average Bond or other security has been demanded, provided Carrier notifies Merchant within 90 days after receipt by Merchant of the Goods of Carrier's intention to declare General Average. Merchant undertakes, if so requested by Carrier, to disclose to the General Average Adjuster the CIF value of the Goods and the name and address of the cargo insurer. Unless Merchant provides Carrier with an undertaking from such insurers to pay any General Average contribution, Merchant shall on demand give Carrier such other security in respect of General Average as Carrier may require.
21. Both-to-Blame Collision Clause.
If the Vessel comes into collision with another Vessel as a result of the negligence of the other Vessel, and any act of negligence or default of the Master, mariner, pilot or the servants of Carrier in the navigations or in the management of the Vessel, Merchant will indemnify Carrier against all loss or liability to the other or non-carrying Vessel or her owners insofar as such loss or liability represents loss of or damage to or any claim whatsoever of the owner of the Goods paid or payable by the other or non-carrying Vessel or her Owner to the owner of the Goods and set off, recouped or recovered by the other or non-carrying Vessel or her Owner as part of its claim against the carrying Vessel or Carrier. The foregoing provisions shall also apply where the owner, operator or those in charge of any vessel or vessels or objects other than or in addition to the colliding vessels or objects are at fault in respect of a collision or contact, and is to remain in effect in other jurisdictions even if unenforceable in the United States.
22. Warranty
The Merchant warrants that in agreeing to the terms and conditions hereof, it is or has the authority of the person owning or entitled to the possession of the Goods and any original of this Bill of Lading.
23. Good of perishable nature
If fresh fruits, vegetables, meats or any goods or articles of a perishable nature shall at any stage become decayed, injurious or offensive, or be condemned, discharged or ordered destroyed by any health or other authorities, such Goods may be refused loading, jettisoned, or discharged without notice, either before or after arrival, notwithstanding any danger to such Goods of freezing, heating or being affected by other weather or temperature conditions, and without any liability to the Carrier. Merchant to indemnify, defend and hold Carrier harmless from any fines, expenses, charges, penalties or fees that Carrier may have to pay or undertake in relation thereto.
24. Packing and Description of cargo, Forbidding of Narcotic drugs and other Illegal Substances
The Merchant shall be deemed to have guaranteed the Carrier the accuracy, at the time the Goods were taken in charge by the Carrier, of the description of the Goods, marks, numbers, quantity, weight and/or volume as furnished by him, and the Merchant shall defend, indemnify and hold harmless the Carrier against all loss, damage and expenses arising or resulting from inaccuracies or inadequacy of such particulars. Merchant remain the only and solely responsible person before the local and/or federal government or other authorities for the nature and/or contents and its proper, definite and accurate description, whereby the Merchant shall ensure and recheck that all cargo, including its parts or contents, is licit and is not narcotic drugs and/or any other illegal substances according to the laws of countries of origin, transshipment and destination; that if the shipment of cargo requires the advance notifications to the relevant authorities such notification were in due time and properly made.
25. Return of empty containers
If Containers supplied by the Carrier are unpacked at Merchant's premises, Merchant is responsible for returning the empty Containers, in the same order and condition as when delivered, with interior brushed and clean, to the place designated by the Carrier or his agent, and within the time prescribed either in the Tariff or otherwise by the Carrier. Should the Container not be returned within the prescribed time or in the condition set out herein, the Merchant shall be liable for any detention, loss or expense arising there from.
26. ISPS Code
The Merchant must comply with the provisions of the ISPS Code. If the Carrier is found liable by any State Authority or any other third party in violation of the ISPC Code requirements, the Merchant will indemnify, defend and hold Carrier harmless, including payment of reasonable legal fees, for any damages resulting from the Merchant failing to so comply, including compensation for any delays to the Vessel. The Merchant undertakes to pay to the Carrier any costs or expenses whatsoever arising out of or related to security regulations or measures required by the Port facility or any relevant authority in accordance with the ISPS Code in relation to the Goods.
The Carrier and Vessel may deviate to a different port and to there discharge the Goods if the Government or authorities at the port of discharge have increased their level of security according to the ISPS Code after the Goods have been loaded aboard the Vessel.
27. Alteration.
No agent, officer or employee of Carrier shall have authority to waive or vary any provision of this Bill of Lading unless in writing and expressly authorized or ratified in writing by Carrier.