

TERMS AND CONDITIONS ACCEPTED BY SHIPPER/MERCHANT

1. DEFINITIONS

- a. *Carriage* means the whole of the operation or any part of the operation and services undertaken by the Carriers in respect of the Goods from the time of taking charge of the Goods / Loading on to the Vessel until discharge at the port of Delivery / Delivery as the case may be.
- b. *Carrier* means the person who actually performs or undertakes to perform the carriage or part thereof, whether he is identical with the Multimodal Transport Operator or not.
- c. *Consignee* means the person entitled to receive the Goods from the Multimodal Transport Operator.
- d. *Consignor* means the person who concludes the Multimodal Transport Contract with the Multimodal Transport Operator.
- e. *Container* includes Containers, Trailer, Transportable Tank, Flat Racks or Pallets or any similar Articles used for consolidating Goods and any Equipment / Articles connected thereto.
- f. *Delivery means*
 - (i) the handing over of the Goods to be Consignee, or
 - (ii) the placing of the Goods at the disposal of the Consignee in accordance with the Multimodal Transport Contract or with the law or usage of the particular trade applicable at the place of delivery, or
 - (iii) the handing over of the Goods to an authority or other third party to whom, pursuant to the law or regulations applicable at the place of delivery, the Goods must be handed over

- g. *Endorsee* means the person in whose favour an endorsement is made and in case of successive endorsements, the person in whose favour the last endorsement is made.
- h. *Endorsement* means the assigning by the Consignee or the Endorsee after adding direction on negotiable Multimodal Transport document to pass the property into the hands mentioned in the said document to a specified person.
- i. *Freight* includes all charges and sums due & payable to the Carriers in respect of the Goods carried in accordance with applicable Tariff or as mutually agreed upon in any independent document.
- j. *Goods* means any property including Living Animals as well as containers, Pallets or similar Articles of Transport or Packaging not supplied by the MTO, irrespective of whether such property is to be carried or is carried on or under Deck.
- k. *Goods Receipt* means Receipt issued under Section 9 of the Indian Carriage by Road Act, 2007.
- l. *Holder* means any person for the time being in possession of this document and includes Endorsee of this document.
- m. *Merchant* means the Shipper, Consignee or Receiver of the Goods or any persons owing or entitled to possession of the Goods or Holder of this document or any person who entered into this Contract of Carriage.
- n. *Mode of Transport* means carriage of Goods by Sea, Inland Waterways, Air or Surface Transport.
- o. *Multimodal Transport Contract* means a single contract for the carriage of Goods by atleast two different modes of Transport.

- p. *Multimodal Transport Document* (MT document) means a document evidencing a Multimodal Transport Contract and which can be replaced by electronic data interchange messages insofar as permitted by applicable law and be,
- (i) issued in a negotiable form, or
 - (ii) issued in a non-negotiable form indicating a named consignee.
- q. *Multimodal Transport Operator* (MTO) means any person who concludes a Multimodal Transport Contract and assumes responsibility for the performance thereof as a Carrier.
- r. *Person* means & includes an Individual, Firm, Company or any recognized legal entity.
- s. *Port-to-Port Shipment* arises when the carriage commences from the time of Loading on to the Vessel until Discharge from the Vessel and is not Multimodal Transport.
- t. *Special Drawing Right* (SDR) means the Unit of account as defined by the International Monetary Fund.
- u. *Sub-Contractor* includes Owners & Operator of the Vessel (other than Carrier), Stevedore, Terminal & Groupage Operator, Surface Transport Contractors and any Independent Contractor employed for performing carriage of Goods under this document.
- v. *Taking Charge* means the Goods have been handed over to and accepted for carriage by Multimodal Transport Operator or his authorized agent.

2. CARRIER'S TARIFF

The Terms & Conditions of the Carrier's applicable Tariff shall be deemed to be incorporated herein. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier or his Agents upon request. In the case of inconsistency between this Bill of Lading and any independent document setting out the Terms & Conditions of Carriage (including the Carrier's applicable Tariff), the Terms & Conditions of such independent document / agreement shall prevail.

3. WARRANTY

The Merchant Warrants that in agreeing to the Terms hereof & / or in Agreement executed, he is, or has the authority of, the person Owning or entitled to the possession of the Goods and this Bill of Lading.

4. SUB-CONTRACTING AND INDEMNITY

(1) The Carrier shall be entitled to Sub Contract on any Terms the whole or any part of the Carriage.

(2) The Merchant undertakes that no Claim or allegation shall be made against any Servant, Agent or Sub-Contractor of the Carrier, or any other person Chartering space on Vessels in this service, which imposes or attempts to impose upon any such person, or any Vessel owned by any such person, any liability whatsoever in connection with the Goods, whether or not arising out of negligence on the part of such person and, if any such claim or allegation should nevertheless be made, to Indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing every such person

shall have the benefit of every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity of whatsoever nature applicable to the Carrier as if such provisions were expressly for his benefit; and in entering into this Contract, the Carrier, to the extent of these provisions, does so not only on his own behalf but also as Agent and Trustee for such Persons / Sub-Contractor.

5. **CARRIER'S RESPONSIBILITY (PORT – TO – PORT)**

Where the Carriage called for by this Bill of Lading is a Port-to-Port Shipment, the liability (if any) of the Carrier for loss of or damage to the Goods occurring from and during the Loading onto any Sea Going Vessel upto and during Discharge from that Vessel or from another Seagoing Vessel into which the Goods have been transhipped shall be determined in accordance with and limited as per the Indian Carriage of Goods by Sea Act, 1925 (As Amended) compulsorily applicable to this Bill of Lading.

Notwithstanding the above, the Carrier shall be under no liability whatsoever for loss or damage to the Goods howsoever occurring, even if caused by negligence, when such loss or damage has occurred prior to the Loading on to the Vessel named herein or subsequent to the Discharge from the Vessel.

6. **CARRIER'S RESPONSIBILITY**

Combined/Multimodal Transport

Where the Carriage called for by any Bill of Lading is Multimodal Transport Contract, the Carrier undertakes to perform & / or in his Own

name to procure performance of the Multimodal Transport Contract from time of taking Charge of the Goods and, save as is otherwise provided in this Bill of Lading, the Carrier shall be liable for loss or damage occurring during Carriage undertaken until Delivery by them to the extent set out below.

(1) Where the stage of Carriage where loss or damage occurred is not known

(a) Exclusions

Where the stage of Carriage where the loss or damage occurred is not known, the Carrier shall be relieved of liability for any loss or damage if such loss or damage was caused by :

- (i) an act or omission of the Merchant
- (ii) Insufficiency of or Defective condition of Packing or Marking
- (iii) Handing, Loading Stowage or Unloading of the Goods by or on behalf of the Merchant
- (iv) Inherent Vice of the Goods
- (v) Strike, Lock-Out, Stoppage or Restraint of Labour
- (vi) a Nuclear Incident,
- (vii) Any Cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence.
- (viii) Compliance with instructions or directions issued by any Competent Authority or in compliance with any Rules & Regulations as prevailing at the place of entrustment / Port of Loading & / or Port of Discharge / Place of Delivery.

b) 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 this Sub-Clause (1) during the Carriage shall rest upon the Carrier. Save that 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 paragraph (a), (ii), (iii), (iv), (v) or (viii) above, 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.

(c) 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 Port of Discharge before or at the time of the 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 consecutive days thereafter.

(d) Time – Bar

Unless there exists a provision in the applicable law to the contrary which cannot be derogated from, the carriers shall be discharged of all liabilities and all claims shall extinguish unless such Suit is brought and Notice thereof is given to the

carriers within 9 (nine) months after delivery of the Goods or the date when the Goods should have been delivered.

(2) Where the stage of Carriage where the loss or damage occurred is known

Notwithstanding anything provided for in sub clause 6 (1) above and subject to Clause 17 (Deck Cargo and Live Animals), where it is known the stage of transportation at which the loss or damage occurred, the liability of the Carrier in respect of such loss or damage shall be determined in accordance with Indian Multimodal Transportation of Goods Act, 1993 (As amended).

7. AMOUNT OF COMPENSATION

i) Basis of Compensation

Compensation shall be calculated by a reference to the Value of such Goods at the place and time when they are delivered to the Receiver / Merchant or the place and time when they should have been delivered. For the purpose of determining the extent of Carriers liability for loss or damage to the Goods, the sound value of the Goods is agreed to be Invoice Value + Freight and Insurance if paid subject to limitation as provided in the (a) Indian Carriage of Goods by Sea Act, 1925 or Multimodal Transportation of Goods Act, 1993 (both as Amended) as applicable or (b) in other case shall not exceed SDR 666.67 per Package / Unit or SDR 2 per kilogram, Gross Weight of the Goods lost or damaged but subject to Invoice Value of the affected Goods if the same is less than Limitation of Liability stated herein.

ii) Merchant/Shipper agrees and acknowledges that the Carrier has no knowledge of the Value of the Goods and that higher compensation than that provided above shall not be claimed unless the Value of the Goods is Specifically Declared with the consent of the Carrier prior to commencement of the Carriage and is so stated on this Bill of Lading by paying Extra Freight if required. In such case the amount of the Declared Value or Invoice Value, whichever is less, shall be substituted for the above Limitation of Liability laid down. Any partial loss or damage shall be adjusted Pro Rata on the basis of such Declared or Invoice Value, whichever is less.

8. SUNDRY LIABILITY PROVISIONS

(1) Delay

The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Delivered at any particular time or to meet any particular market or use and the Carrier shall in no circumstances be liable for any direct, indirect or consequential loss or damage caused by delay whatsoever and howsoever arising even if caused by negligence.

(2) Scope of Application

- (a) 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 for Carriage or delivered to the Merchant.
- (b) The Defenses and Limits of Liability provided for in this Bill of Lading shall apply in any action against the Carrier & / or its Sub-

Contractors & / or Agents for loss or damage or delay, whether the action be founded in Contract or in Tort and even if the loss, damage or delay arose as a result of negligence or fundamental breach of Contract.

The Carrier & / or its Sub-Contractors & / or Agents shall in no circumstances be liable for direct or indirect consequential loss or damage whatsoever or howsoever arising.

(3) Mandatory Inspection by Authorities

If by order of the Authorities at any place the Goods have to be unpacked from their Containers for any reasons whatsoever, the Carrier & / or its Sub-Contractors & / or Agents shall not be liable for any loss or damage incurred during the Unpacking, Inspection or Repacking. The Carrier & / or its Sub-Contractors & / or Agents shall be entitled to recover the Cost of Unpacking, Inspection, Port Demurrage, Storage Charges and Repacking from the Merchants before giving delivery of the Goods and shall have right to exercise General Lien on the Goods for the same.

9. SHIPPER-PACKED CONTAINERS

If a Container has not been stuffed by or on behalf of the Carrier

(a) The Carrier shall not be liable for loss of or damage to the Goods caused by

- (i) the manner in which the Container has been stuffed or
- (ii) the unsuitability of the Goods for Carriage in Containers or
- (iii) the unsuitability or defective condition of the Container provided that where the Container has been provided by or on behalf of the Carrier this paragraph (iii) shall only apply if the

unsuitability or defective condition could have been apparent upon Inspection by the Merchant/Shipper at or prior to the time when the Container was stuffed.

(b) If the Shipper-stuffed Container is delivered by the Carrier or on its behalf with its Original Seal as affixed by the Shipper is intact, then such Delivery shall constitute Full Performance of the Carrier's obligation hereunder and the Carrier & / or its Sub-Contractors & / or Agents shall not be liable for any Loss or Damage to the Goods ascertained at the time of Delivery.

10. INSPECTION OF GOODS

The Carrier or any persons to whom the Carrier has Sub-Contracted the Carriage 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. CARRIAGE AFFECTED BY CONDITIOIN OF GOODS

If it appears at any time that the Goods, 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 Measure(s) in relation to the Container or the Goods or any part thereof, the Carrier may without notice to the Merchant/Shipper take any Measure(s) and/or incur any Additional Expense to carry or to continue the Carriage thereof, and/or abandon the Carriage and/or store the same ashore or afloat, under cover or in the open, at any place which abandonment or Storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant/Shipper shall Indemnify

the Carrier & / or its Sub-Contractors & / or Agents against any such Additional Expense so incurred.

12. DESCRIPTION OF GOODS

(1) This Bill of Lading shall be Prima Facie evidence of the receipt by the Carrier in apparent Good Order and Condition, except as otherwise noted of the Total Number of Containers, or Weight of Goods specified on the face hereof.

(2) Except as provided in sub clause 11 (1) above, no representation is made by the Carrier as to the correctness of Weight, Contents, Measure, Quantity, Quality, Description, Conditions, Marks, Numbers or Value of Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

13. SHIPPER'S / MERCHANT'S RESPONSIBILITY

(1) The Merchant/Shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Merchant / Shipper on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on their behalf are correct.

(2) The Merchant/Shipper shall Indemnify without any demur the Carrier against all loss, damage, fines and expenses arising or resulting from inaccuracies in or inadequacy of such particulars or from any other Cause in connection with the Goods for which the Carrier is not responsible.

(3) The Merchant/Shipper shall comply with all Regulations or Requirements of Customs, Port and other Authorities, and shall bear and pay all Duties, Taxes & Fines imposed, Port Charges/Demurrages, Expenses or losses (including Without Prejudice to the generality of the foregoing the full

return Freight for the Goods if returned or if “On Carried” the full Freight from the Port of Discharge to the amended Port of Discharge) incurred or suffered by reason of any failure to so comply or by reason of any Illegal, Incorrect or Insufficient Marking, Numbering or addressing of the Goods and shall Indemnify without any demur the Carrier & / or its Sub-Contractors & / or Agents in respect of any such failure to comply or by reason of any such Marking, Numbering or addressing of the Goods.

(4) Where Containers Owned or Leased by the Carrier & / or on its behalf, are unpacked at the Merchant’s / Receiver’s Premises, the Merchant / Receiver shall be responsible for returning the empty Containers, with interiors brushed and clean, to the Port of Discharge or to the point or place designated by the Carrier, his Servants or Agents, within the time prescribed. Should a Container not be returned within the prescribed time, the Merchant / Receiver shall be liable for any damage, loss or expenses which may arise from such non-return.

14. **FREIGHT**

(1) Freight shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid without any demur and non-refundable in any event.

(2) Freight has been calculated on the basis of particulars furnished by the Shipper. The Carrier & / or its Sub-Contractors & / or Agents may at any time open any Container or other package or until in order to identify Weight, Measure or Value of the contents and if the particulars furnished by or on behalf of the Shipper 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.

(3) Freight shall be paid without any demur and without any set-off, counter-claim, deduction or stay of execution before delivery of the Goods.

(4) Any Person engaged by the Merchant to perform forwarding services in respect of the Goods 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 payment to the Carrier. Failure of such Person to pay any part of the Freight to the Carrier shall be considered a default by the Merchant in payment of Freight.

(5) The Freight payable, unless otherwise expressly agreed in writing, shall not and does not include the costs of Loading and Discharging the Goods / Container, Container Detention charges & Port Demurrage, Storage & Trucking Charges, etc. which shall be borne by the Merchant.

15. **LIEN**

The Carrier shall have a General Lien on the Goods and any documents relating thereto for all sums as stated in above Paras nos. 13 & 14 and payable to the Carrier under this Contract or any other Contract and for Salvor's Dues & General Average Contributions, and for whomsoever due and for the Cost of recovering the same, and for that purpose shall have the right to sell the Goods by Public Auction or Private Treaty without notice to the Merchant & without prejudice to their rights to recovery action if the amounts so realized from the sale is short of the amounts due.

16. **OPTIONAL STOWAGE**

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

(2) Goods stuffed in Containers, whether by the Carrier or the Merchant/Shipper may be carried on Deck or under Deck without notice to them. All such Goods (other than Live Animals), whether carried on Deck or under Deck, shall participate in General Average and shall be deemed to be within the definition of Goods for the purposes of Indian Carriage of Goods by Sea Act, 1925 &/or Multimodal Transport of Goods Act, 1993 as applicable and shall be carried subject to such Act.

17. DECK CARGO AND LIVE ANIMALS

(1) Neither the Indian Carriage of Goods by Sea Act, 1925 nor the Multi Modal Transport of Goods Act, 1993 shall apply to the Goods (not being the Goods stuffed in the Containers) which are stated herein to be carried on Deck and are so carried or to Live Animals whether or not carried on Deck.

(2) The Carrier shall have no responsibility for loss or damage of whatsoever nature arising during Carriage by Sea, whether caused by Unseaworthiness or Negligence or any other Causes whatsoever to Goods (not being Goods stowed in Containers) which are stated herein to be carried on Deck and are so carried.

(3) LIVE ANIMALS

The Indian Carriage of Goods by Sea Act, 1925, shall not apply to the Carriage of Live Animals, which are carried at the sole risk of the Merchant. The Carrier shall be under no liability whatsoever for any injury, illness, death, delay or destruction howsoever arising. Should the Master in his sole discretion consider that any Live Animals 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 & / or its Sub-Contractors. The Merchant shall indemnify the Carrier against all or any extra costs incurred whatsoever in connection with the Carriage of any live animal.

18. **METHODS AND ROUTE OF CARRIAGE**

- (1) The Carrier & / or its Agents may at any time and without notice to the Merchant/Shipper
 - (a) use any means of Carriage whatsoever.
 - (b) transfer the Goods from one Conveyance to another, including but not limited to Transshipping or Carrying the same on another Vessel that is named on the face hereof.
 - (c) unpack and remove Goods which have been stuffed into a Container and forward the same in a Container or otherwise.
 - (d) proceed by any Route in his discretion (whether or not the nearest or most direct or customary or advertised Route) at any speed and proceed to or stay at any place or Port whatsoever once or more often and in any order.
 - (e) load or unload the Goods at any Place or Port (whether or not such Port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such place or Port.
 - (f) comply with any Orders or Recommendations given by any

Government or Authority, or any person or body acting or purporting to act as on or 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.

- (g) permit the Vessel to proceed with or without Pilots.
- (h) deviate from the advertised or usual Route to pick up or land persons involved with the operation or maintenance of the Vessel.

(2) The liberties set out in sub clause (1) may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of the Goods including Bunkering, Undergoing Repairs, Towing or being Towed, Adjusting Instruments, Dry-Docking and assisting Vessels in all situations. Anything done in accordance with Sub-Clause (1) or any delay arising therefrom shall be deemed to be within the Contractual Carriage and shall not be a deviation.

(3) By tendering Goods for Carriage without any written request for Carriage in a specialized Container, or within a specific Temperature range, or subject to any particular attention, or for Carriage otherwise than in a Container, the Merchant accepts that the Carriage may properly be undertaken in a general purpose Container in the Customary manner.

19. MATTERS AFFECTING PERFORMANCE

If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Goods or any part thereof 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 Goods were accepted for Carriage, the Carrier (whether or not, the Carriage is commenced) may either :

- (a) Without notice to the Merchant/Shipper abandon the Carriage of the Goods and place the Goods or any part of them at the their disposal at any place or Port which the Carrier & / or its Sub-Contractor & / or Agents may deem safe and convenient whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full Freight on Goods received for Carriage, and they shall pay any such Additional Costs of Carriage to, and delivery and Storage at such place or Port; or
- (b) Upon Notice to the Merchant/Shipper, suspend Carriage of the Goods or any part of them and store them ashore or afloat upon the Terms hereof. The Carrier will endeavour to forward the Goods, the Carriage of which has been suspended as soon as possible after the cause of hindrance, risk, delay, difficulty or disadvantage has been removed but the Carrier makes no representations as to the maximum period between such removal and the forwarding of the Goods to the Port of Discharge / Place of Discharge. The Carrier

shall be entitled to payment of such Additional Freight as the Carrier may determine including but not restricted to charge for Storage, Port Demurrage, Container Detention Charges, Trucking & Handling Charges, etc. and any other services to Goods and for Freight from the place of suspension to the Port of Discharge / Place of Discharge without giving credit for Freight already paid in respect of the Carriage.

If the Carrier elects to suspend Carriage under (b) above this shall not prejudice his right subsequently to abandon Carriage under (a).

20. DANGEROUS GOODS

(1) No Goods which are or may become Dangerous, Inflammable or Damaging (including Radio Active materials), or which are or may become liable to damage any property whatsoever shall be tendered by the Merchant for Carriage without (a) the express Disclosures of such nature and Consent in writing and (b) without the Container or other covering in which the Goods are to be carried and the Goods 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 Disclosures as to the Nature & Character of the Goods and without written Consent and Marking or if in the opinion of the Carrier, the Goods are or are liable to become of a Dangerous Inflammable or Damaging nature, the same may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant/Shipper and without prejudice to the Carrier's right to Freight and all other charges as per Paras 13 & 14 and Consequential Losses.

(2) The Merchant/Shipper undertakes that such 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 or Regulations which may be applicable during Carriage.

(3) Whether or not the Merchant/Shipper was aware of the nature of the Goods, the Merchant/Shipper shall Indemnify without any demur the Carrier against all Claims, Losses, Damages or Expenses arising in Consequence of any breach of the provisions of the Clause.

(4) The Merchant undertakes not to tender to the Carrier any Goods for Carriage which require maintaining of Temperature / Refrigeration without giving prior written notice of their nature and the particular Temperature range to be maintained. In case of Refrigerated Containers packed by or on behalf of the Merchant, the Merchant undertakes that (i) the Container has been Pre-Cooled to the Temperature required for the Carriage of the Goods; (ii) the Goods have been properly stowed in the Container; and (iii) the Thermostat Controls have been properly set by the Merchant before the Container is handed over to the Carrier for Carriage.

(5) The Carrier shall not be liable for loss or damage to the Goods arising out of latent defect of the Goods, Stoppage or Breakdown of the Refrigeration Machinery (or any connected apparatus) howsoever caused, stoppage of the Vessel or conveyance, provided that at the beginning of the Carriage, the Carrier exercised due diligence to maintain the Refrigerated Container in an efficient state.

(6) Nothing contained in this Clause shall deprive the Carrier of any of his rights provided for elsewhere.

21. NOTIFICATION OF DELIVERY

(1) Any mention herein of Parties to be notified on the arrival of the Goods is solely for information of the Carrier and failure to give such Notification shall neither involve the Carrier in any liability nor relieve the Merchant/Shipper of any obligation hereunder.

(2) The Carrier shall be at liberty to discharge the Goods or any part thereof at the Port of Discharge without Notice, directly at or on to any Wharf, Craft or place on any day and at any time, whereupon the liability of the Carrier (if any) in respect of the Goods or that part thereof discharged as aforesaid shall wholly cease notwithstanding any Custom of the Port to the contrary and notwithstanding that any charges, dues or other expenses may be or become payable unless and to the extent that any compulsory applicable Law provides for contrary (in which case the Terms & Conditions of this Transaction document shall continue to operate during such additional compulsory period of responsibility). The Merchant shall be obliged to take delivery of the Goods upon their discharge. All expenses incurred by reason of the Merchant's failure to take delivery of the Goods as aforesaid shall be for the Merchant's account.

(3) if the 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 unpack the Goods or that part thereof if packed in Containers and/or to Store the Goods or part thereof ashore, afloat in the open or under cover at the Sole Risk of the Merchant. Such Storage shall constitute due delivery hereunder and therefore the obligation / liability of the Carrier in respect of the Goods or that part thereof stored as aforesaid (as

the case may be) shall wholly cease and the cost of such Storage (if paid or payable by the Carrier or any Agent or Sub-Contractor of the Carrier) shall forthwith upon demand without any demur be paid by the Merchant to the Carrier.

(4) If the Merchant fails to take delivery of the Goods, or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for Storage or otherwise in excess of their value, the Carrier may without prejudice to any other rights which he may have against the Merchant, without notice and without any responsibility whatsoever attaching to him, Open and Destuff / Unstuff the Containers, Destroy, Sell or Dispose of the Goods and apply the proceeds of the Sale, if any, in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.

(5) If at the place where the Carrier is entitled to call upon the Merchant to take delivery of the Goods, the Carrier is obliged to hand over the Goods into the custody of any Customs, Port or other Authority, such hand-over shall constitute due delivery to the Merchant.

(6) Refusal by the Merchant to accept delivery of the Goods in accordance with the Terms of the Clause shall constitute an absolute waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or Carriage thereof.

22. FORCE MAJEURE

Without in any manner limiting rights / remedies available to the Carrier under any other clause, in case of occurrence of a Force Majeure event such as Fire, Flood, Earthquake, Typhoon, Storm, any other Act of God, War, Riots, Civil Unrest, Political Disturbance, Strike and other such natural calamities and events, the Carrier's obligations to carry and / or discharge and / or deliver the Goods shall remain suspended for the duration of the Force Majeure event.

23. LCL SHIPMENTS

(1) Goods will only be delivered in a Container to the Merchant if all Bills of Lading relating to the contents of the Container are surrendered, authorizing delivery to a single Merchant at the Place of Delivery / Port of Discharge. If this requirement is not fulfilled, the Carrier & / or their Sub-Contractor / Agents may unpack the Container and in respect of Goods for which Bills of Lading have been surrendered, deliver those Goods to the Merchant on an LCL basis. Such delivery shall constitute due delivery hereunder but will only be effected against payment by the Merchant of LCL Service Charges and all other charges appropriate to LCL Carriage together with actual costs incurred for any Additional Services rendered.

(2) Discharge of FCL Container Cargo with Original Seal intact shall constitute Good Delivery and the Carriers & its Sub-Contractor / Agents shall not be liable for any Loss & / or Damage found on opening of such Container. Further, Carrier & its Agents shall be at liberty to Desuff / Unstuff / Unstore such

FCL Container Cargo, if delivery of the same is not taken within the time prescribed herein.

24. **BOTH - TO - BLAME COLLISION**

To Both-to-Blame Collision as published by the Baltic and International Maritime Conference is hereby incorporated.

25. **GENERAL AVERAGE**

(1) In the event of any Accident, Danger 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 consequence 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 incurred and shall pay Salvage and Special Charges incurred in respect of the Goods. All expenses in connection with Salvaging / G.A. Act to avoid damage to environment shall be considered as G.A. expenses.

(2) Notwithstanding the provisions of any National Law to the contrary, General Average shall be adjusted according to the **York Antwerp Rules of 1994 as recommended by BIMCO in March 2005** at any Port or place at the option of the Carrier whether declared by the Carrier or a Sub-Contractor of the Carrier. The Merchant shall give such Deposit or provide other Security as the Carrier may deem sufficient and required to recover the estimated General Average Contribution of the Goods before the Goods can be delivered and until this requirement is complied with by the Merchant, the

Carrier / Sub-Contractor shall have Lien on the Goods. The Carrier shall be under no obligation to exercise any Lien for General Average Contribution due to the Merchant.

(3) Conversion into the Currency of the G.A. Adjustment shall be calculated at the Rate prevailing on the date of payment for Disbursements and on the date of completion of Discharge of the Vessel for allowances, Contributory Values, etc.

26. VARIATION OF THE CONTRACT

No Servant or Agent of the Carrier shall have the power to waive or vary any Term of this Bill of Lading or any Special / Independent Agreement signed unless such waiver or variation is in writing and is specifically Authorized or Ratified in writing by the Carrier & intimated to the Merchant.

27. LAW AND JURISDICTION

(1) Any claim or dispute arising under this Bill of Lading or Special / Independent Agreement signed shall be governed exclusively by Indian Law only and determined by the High Court of Justice in Bombay (India) only to the exclusion of the Jurisdiction of the other Courts of any other Port / City.

(2) Notwithstanding the above, the Carrier is also entitled to bring the Claim or action before the Court of the Place where the Defendant has his Registered Office / Place of Business.

28. **VALIDITY**

In the event anything herein contained is inconsistent with any applicable National Law which cannot be departed from by Private Contract, the provisions hereof shall to the extent of such inconsistency, but no further be null and void.

29. **ARBITRATION**

(A) Any dispute arising under this Bill of Lading or Agreement executed shall be adjudicated upon by a Sole Arbitrator exclusively in Mumbai only. Arbitration shall be conducted in accordance with the provisions of the Indian Arbitration & Conciliation Act 1996 or as amended and Mumbai shall have exclusive Jurisdiction over such Arbitration proceedings. The Sole Arbitrator shall be a person conversant with Shipping Law from the Shipping Industry or an Advocate practicing Shipping Law. If Sole Arbitrator cannot be agreed upon by the parties to dispute, then by Arbitral Tribunal of Three, one to be named by each party and so appointed Arbitrators shall appoint Third / Presiding Arbitrator. Seat of Arbitration shall be in Mumbai only and Arbitration Award shall be Final & Binding upon all the Parties.

OR IN THE ALTERNATIVE

(B) Any dispute arising under this Bill of Lading or Agreement executed shall be adjudicated upon by the Sole Arbitrator either at the place of Delivery for Carriage / Port of Loading or at Port of Discharge / Place of Delivery where the Carrier has their own Office. However, Arbitration shall be conducted in accordance with the provisions of Indian Arbitration & Conciliation Act, 1996 or

as amended at one of the aforesaid 4 places as provided hereinabove, which shall have exclusive Jurisdiction over such Arbitration proceedings and in case the Carriers do not have their own Office at either of the aforesaid 4 places, then the Seat of Arbitration shall be Mumbai, India, only. The Sole Arbitrator shall be a person conversant with Shipping Law from the Shipping Industry or an Advocate practicing Shipping Law. If the Sole Arbitration cannot be agreed upon by the parties to the dispute then by Arbitral Tribunal of Three – one to be named by each party and the so Appointed Arbitrators shall appoint a Third / Presiding Arbitrator and the Award issued by the Arbitrator(s) shall be Final & Binding upon all the Parties.