

# SEA WAYBILL TERMS AND CONDITIONS

1. **Definition** – “Carrier” means the party named on the face of this document being the Carrier or the person on whose behalf this document has been signed and issued and also its servants and agents.

“Merchant” includes the shipper, consignee, the receiver of the Goods, any person owning or entitled to the possession of the Goods or this Sea Waybill and anyone acting on behalf of any such persons.

“Carriage” means the whole of the operations and services undertaken by the Carrier in respect of the Goods.

“Holder” means any person for the time being in possession of this Sea Waybill to whom the Goods have passed by reason of the consignment of the Goods or the endorsement of this Sea Waybill or otherwise.

“Goods” means the cargo accepted from the shipper and includes any container not supplied by or on behalf of the Carrier.

“Container” includes any container, trailer, transportable tank, flat, or pallet or any similar article of transport used to consolidate Goods.

“Freight” includes all charges payable to the Carrier.

“Vessel” means the ocean vessel named on the face side hereof, and any substitute vessel, feeder ship, barge or any other means of conveyance by water used in whole or in part by the Carrier.

“Hague Rules” means the provisions of the International Convention for the Unification of Certain Rules relating to the Bills of Lading signed at Brussels on 25 August 1924, and includes the amendments by Protocols signed at Brussels on 23 February 1968 and on 21 December 1979.

2. **Warranty** – The Merchant warrants that in agreeing to the terms hereof it owns, is entitled to possession of or has the authority of the persons owning or entitled to the possession of the Goods and this Sea Waybill.

3. **Sub-contracting and Indemnity** – (1) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the carriage, loading, unloading, storing, warehousing, handling, and any and all duties whatsoever undertaken by the Carrier in relation to the Goods.

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

(3) The expression “sub-contractors” in this clause shall include direct and indirect sub-contractors and their respective servants and agents.

4. **Carrier’s Responsibility** – (1) The receipt, custody, carriage and delivery of the Goods are governed by the provisions of the transportation agreement which consists of (i) the terms and conditions stated on the front and back of this Sea Waybill, (ii) the terms and conditions of Carrier’s applicable freight tariffs, and (iii) the Hague Rules as defined in clause 1 above, which shall be contractually applied as if this Sea Waybill had been a bill of lading, except for live animals and Goods (not being Goods stowed in containers) which are stated herein to be carried on deck and are so carried. The transportation agreement shall govern before the Goods are loaded onto the Vessel, during the loading of the Goods to the Vessel, during the time the Goods are on the Vessel, during the discharge of the Goods from the Vessel, after the Goods have been discharged from the Vessel, during unloading, during devanning, during storage and throughout the entire time the Goods are in the Carrier’s actual or constructive custody.

(2) **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 for use and the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damages caused by delay.

(3) **Limitation of Carrier’s Liability: Ad Valorem** – Unless the Merchant has declared the nature and value of the Goods before shipment, inserted the value on the front of this Sea Waybill and paid freight at the ad valorem rate set forth in the Carrier’s tariffs, the liability of the Carrier and the Vessel for Cargo loss and damage shall not exceed the equivalent of 666.67 SDRs per package or 2 SDRs per kilo of gross weight of the Goods lost or damaged, whichever is higher. Any partial loss of damage shall be adjusted pro rata on the basis of such declared value. In no event shall the Carrier be liable for more than the amount of damage actually sustained.

(4) **Hague Rules Limitations** – Subject to sub-clause (3) above, whenever articles I – VII of the Hague Rules are applicable, otherwise than by national law, in determining the liability of the Carrier, the liability shall in no event exceed the limit provided for in the Rules.

(5) **Scope of Application** – (a) Save as otherwise provided herein, the Carrier shall in no circumstances whatsoever or howsoever arising be liable for direct or indirect or consequential loss or damage. The defences and limits of liability provided for in this Sea Waybill shall apply in any action against the Carrier for loss or damage or delay whether the action be founded in contract, in tort, or otherwise.

(b) If any provision of this Sea Waybill is held to be repugnant to any extent to any international convention, or national law which is applicable to this Sea Waybill, such provision shall be null and void to that extent but no further.

5. **Carrier’s Container(s)** – (1) The terms of this Sea Waybill shall govern the responsibility of the Carriers in connection with or arising out of the supply of a container to the Merchant whether before or after the Goods are received by the Carrier for transport or delivered to the Merchant.

(2) The Merchant shall assume full responsibility for and shall indemnify the Carrier against loss of or damage to the Carrier’s container(s) and other equipment which occurs while in the possession or control of the Merchant or any inland Carrier engaged by the Merchant.

(3) The Carrier shall in no event be liable for, and the Merchant shall indemnify the Carrier against loss of and against, any loss of or damage to property of other persons or injuries to other persons caused by the Carrier’s container(s) or the contents thereof during handling by or while in the possession or control of the Merchant or any inland Carrier engaged by the Merchant.

6. **Merchant – Packed Containers** – if a container has been vanned by or on behalf of the Merchant.

(1) Such container shall be deemed shipped as ‘shipper’s weight, load and count’. The Merchant agrees that the Carrier has no reasonable means of checking the quantity, weight, condition, identity or existence of the contents of such container or the manner in which the Goods are stuffed, stowed and secured within the container, and the Carrier does not represent the quantity, weight, condition, identity or existence of such contents inserted in this Sea Waybill to be accurate or the stuffing, stowing and the securing to be proper.

(2) The Carrier shall be under no liability in the event of loss, delay, detention or damage of or to the contents directly or indirectly caused by the manner in which the contents have been packed or stowed inside the container or by the unsuitability of the contents for carriage by container or by incorrect setting of any temperature controls on the container.

(3) The Merchant shall indemnify the Carrier against any loss which the Carrier may suffer, or liability to any person which the Carrier may incur on account of death or personal injury, loss, delay, detention or damage of or to any property due to the manner in which the contents have been packed or stowed inside the container or due to the unsuitability of the container.

7. **Inspection of Goods** – The Carrier shall be entitled, but under no obligation, to open any container or package at any time and to inspect the contents. If it thereupon appears that the contents or any part thereof cannot safely be carried or carried further, either at all or without incurring any additional expense or taking any measure in relation to the container of the Goods or any part thereof, the Carrier may without notice to the Merchant abandon the transport thereof and/or take any measure and/or store the same ashore or afloat under cover or in the open, at any place. This abandonment or storage shall be deemed to constitute due delivery under this Sea Waybill. The Merchant shall indemnify the Carrier against any reasonable expense so incurred.

8. **Description of Goods** – (1) This Sea Waybill 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 other packages or units shown on the face hereof.

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

(3) The Merchant warrants to the Carrier that the particulars relating to the Goods as set out on the face hereof have been checked by the Merchant on receipt of this Sea Waybill and that such particulars furnished by or on behalf of the Merchant are correct.

9. **Freight and 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.

(2) The freight has been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier may at any time open any container or other package to re-weigh, re-measure, or re-value the contents and, if the particulars furnished by or on behalf of the Merchant are incorrect, it is agreed that a sum equal to either five times the difference between the actual freight charged and the correct freight, or double the correct freight, whichever sum is the smaller, shall be payable as liquidated damages to the Carrier.

(3) Freight and liquidated damages under sub-clauses (1) and (2) of this clause may be recovered by the Carrier from any person falling within the definition of Merchant in clause 1 above.

10. **Lien** – (1) The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable by the shipper, its servants, agents, principals or associated companies to the Carrier whether under this contract or any other contract or howsoever otherwise arising and for general average contributions to 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 sale without notice to the Merchant. If on sale of the Goods, the proceeds fail to cover the amount due and the cost incurred, the Carrier shall be entitled to recover the deficit from the Merchant.

(2) If the Goods are unclaimed during a reasonable time or whenever in the Carrier’s opinion the Goods will become deteriorated, decayed or worthless, the Carrier may, in its discretion and without notice to the Merchant and without prejudice to any other rights which it may have hereunder and without any responsibility attaching to it, sell, abandon or otherwise dispose of such Goods solely at the risk and expense of the Merchant.

11. **Optional Storage** – (1) The Goods may be stowed by or on behalf of the Carrier in containers.

(2) Goods stowed in containers whether by or on behalf of the Carrier or by the Merchant may be carried on deck or under deck without notice to the Merchant. Such Goods whether carried on deck or under deck shall participate in general average and such Goods (other than live animals) shall be deemed to be within the definition of Goods for the purpose of the applicable Hague Rules.

12. **Deck Cargo and Live Animals** – (1) The applicable Hague Rules shall not apply to Goods (not being Goods stowed in 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 cause whatsoever to Goods which are stated herein to be carried on deck, and are so carried.

(3) Live animals are carried at the sole risk of the Merchant. The Carrier shall be under no liability whatsoever for any injury, illness, death or destruction howsoever arising even though caused or contributed to by the act, neglect or default of the Carrier or by the unseaworthiness or unfitness of any vessel, craft, conveyance, container or other place existing at any time. In the event of the master, in his sole discretion, considers that any live animal is likely to be injurious to the health of any other live animal or to any person on board or to cause the vessel to be delayed or impeded in the prosecution of the voyage, such live animal may be destroyed and thrown overboard without any liability attaching to the Carrier. The Merchant shall indemnify the Carrier against all and any extra costs incurred for any reason whatsoever in connection with the carriage of such live animals.

13. **Restricted Cargo** – (1) The Merchant undertakes not to tender for carriage any Goods which require refrigeration without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a refrigerated container packed by the Merchant, further undertakes that the temperature setting on the container has been adequately set by him 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 howsoever arising.

(2) The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, derangement, breakdown, stoppage of the refrigerating machinery, plant insulation and/or any apparatus of the container, vessel, conveyance, or any other facilities, provided that the Carrier shall before or at the beginning of the carriage exercise due diligence to maintain the refrigerated machinery, plant insulation and/or apparatus of the container, vessel, conveyance or any other facilities in an efficient state.

14. **Methods and Routes of Transportation** – (1) The Carrier may at anytime and without notice to the Merchant

(a) use any means of transport or storage whatsoever;

(b) transfer or tranship the Goods from one conveyance to another or carry the same on another vessel than that named on the face hereof;

(c) unpack and remove the Goods from a container and forward the same in a container or otherwise;

(d) proceed by any route in its discretion (whether or not the nearest or most direct or customary or advertised route) and proceed to or stay at any place or port whatsoever once or more often and in any order;

(e) load or unload the Goods at any place or port (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 place or port;

(f) comply with any order 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 the Carrier the right to give orders or directions;

(g) permit the vessel to proceed with or without pilots.

(2) The liberties set out in sub-clause (1) may be taken by the Carrier for any purpose whatsoever whether or not connected with the carriage of Goods including (but not limited to) bunkering, undergoing repairs, towing or being towed, adjusting instruments, dry docking and assisting vessels in all situations, and 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 specialised container or for carriage otherwise than in a container, the Merchant accepts that the carriage may be properly undertaken in a general purpose container.

15. **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 or any other misfortune (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) and which cannot be avoided by the exercise of reasonable endeavours, the Carrier (whether or not the carriage is commenced) may either

(a) without notice to the Merchant abandon the carriage of the Goods and place the Goods or any part of them at the Merchant’s disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full freight on Goods accepted for carriage, and the Merchant shall pay additional costs of carriage to and delivery and storage at such place or port; or

(b) without prejudice to the Carrier’s right subsequently to abandon the carriage under (a), upon notice to the Merchant suspend carriage of the Goods or any part of them and store them ashore or afloat upon the terms of this Sea Waybill against payment of reasonable expenses for forwarding the Goods for which the carriage of which has been suspended, as soon as possible after the hindrance, risk, delay, difficulty or disadvantage has been ended but makes no representations as to the maximum period between

such removal and the forwarding of the Goods to the place of delivery or port of discharge, as the case may be, named in the Sea Waybill.

16. **Dangerous Goods** – (1) No Goods which are or may become dangerous, inflammable or damaging (including radioactive material(s)), or which may damage any property whatsoever, shall be tendered to the Carrier for carriage without its express consent in writing and without the container or other packaging in which the Goods are to be transported being distinctively marked on the outside to indicate the nature and character of such Goods and to comply with any applicable laws, regulations or requirements. If any such Goods are delivered to the Carrier without such 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 and without prejudice to the Carrier’s right to freight.

(2) 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 and regulations which may be applicable during carriage.

(3) Whether or not the Merchant was aware of the nature of the Goods, the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of any breach of the provisions of this clause.

(4) Nothing contained in this clause shall deprive the Carrier of any of his rights otherwise provided for.

17. **Regulations Relating to Customs** – The Merchant shall comply with all regulations or requirements of customs, ports and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses or losses incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient packing, marking, numbering or addressing of the Goods and shall indemnify the Carrier in respect thereof.

18. **Notification and Delivery** – (1) Any mention in this Sea Waybill of parties to be notified of the arrival of the Goods is solely for information of the Carrier and the Carrier shall not be liable for the failure to give such notification nor relieve the Merchant of any obligation hereunder.

(2) The Merchant shall take delivery of the Goods at the port of discharge within customary receiving times at such port, and in any event without cost to the Carrier for storage, wharfage, demurrage or otherwise. When the Carrier and the Merchant arrange for the Merchant to take direct delivery of the Goods from alongside or onboard a sea-going vessel at the port of discharge, the Merchant shall do so as the vessel is ready to discharge them at any wharf or place in that port on any day and at any time.

(3) If the Merchant fails to take delivery of the Goods or any part of them in accordance with sub-clause (2), the Carrier may without notice unstow the Goods or that part thereof and/or store the same ashore, afloat, in the open or under cover. Such storage shall constitute due delivery hereunder and thereupon all liability whatsoever of the Carrier in respect of such Goods shall cease.

19. **Special Delivery** – (1) The special arrangements for receiving the Goods as Full Container Load and delivering them as less than Container Load (FCL/LCL) and/or for split delivery of the Goods to more than one receiver shall be undertaken by the Carrier at its absolute discretion and on condition that the Carrier shall not be liable for any shortage, loss, damage or discrepancies of the Goods, which are found upon unpacking the container. The Merchant shall be liable for an appropriate adjustment of Freight and shall pay any additional costs incurred.

(2) The special arrangement for receiving the Goods as Less than Container Load and delivering them as Full Container (LCL/FCL) shall be undertaken by the Carrier at its absolute discretion and on condition that the Carrier shall not be liable for any shortage, loss, damage or discrepancies of the Goods, which are not apparent at the time of such delivery, provided that the Carrier shall have exercised ordinary care in packing the container.

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

21. **General Average** – (1) General Average shall be adjusted at any port of place at the option of the Carrier in accordance with the York-Antwerp Rules 1974 as amended 1990.

(2) In the event of accident, danger 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 consequence of which the Carrier is not responsible by statute, contract or otherwise, the Goods and the Merchant shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, loss or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Goods. If a salvaging ship is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if such salvaging ship belonged to strangers.

(3) If the Carrier delivers the Goods without obtaining security for general average contributions, the Merchant, by taking delivery of the Goods, undertakes personal responsibility to pay such contributions and to provide such cash deposit or other security for the estimated amount of such contributions as the Merchant shall be required to pay to the Carrier.

(4) The Carrier shall be under no obligation to exercise any lien for general average contribution due from the Merchant.

22. **Fire** – Save as provided otherwise herein the Carrier shall not be responsible for any loss of or damage to the Goods arising or resulting from fire occurring at any time, unless caused by the actual fault or privity of the Carrier.

23. **Iron or Steel** – The terms “apparent good order and condition” when used in this Sea Waybill with reference to iron, steel or metal products does not mean that the Goods, when received, were free of visible rust or moisture. If the Merchant so requests, a substitute Sea Waybill will be issued omitting the above definition and selling forth any notations as to rust and moisture which may appear on the mate’s or tally clerk’s receipts.

24. **Notice of Loss or Damage, Time Bar** – (1) Unless notice of loss or damage to the Goods and the general nature of it is given in writing to the Carrier or its agent at the port of discharge or the place of delivery before or at the time or removal of the Goods into the custody of the person entitled to delivery thereof under this Sea Waybill, or if the loss or damage is not apparent, within seven (7) consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Carrier of the Goods as described in this Sea Waybill.

(2) The Carrier shall be discharged from all liability under this Sea Waybill unless suit is brought within one year after delivery of the Goods or the date when the Goods shown hereon have been delivered.

25. **Law and Jurisdiction** – An suit to recover on any claim for loss or damage to the Goods carried hereunder shall be brought only in the country where the Goods are received for carriage or in the country where this contract calls for delivery, provided that nothing in this Sea Waybill shall operate to deprive the Carrier of any statutory protection or any defence, immunity, exemption, limitation of or exoneration from liability contained in the laws of New Zealand or any other country whose laws may be compulsorily applicable. Alternatively, if all the parties agree, the claim may be referred to arbitration at a place to be agreed by the parties.

26. **NOT A DOCUMENT OF TITLE** – It is the intent of the parties that this Sea Waybill evidencing the transportation agreement shall not operate as a document of title. The shipper retains control over the designation of the party entitled to take possession of the Goods upon delivery and may change to designation from time to time by timely and adequate notice to and the agreement of the Carrier. The Carrier may deliver the Goods to the designated consignee without taking up a copy of the sea waybill, whether or not denominated as an “original” copy.