

Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Carriage means the whole or any part of the operations or services (including all related documentary, customs and information technology processes used or produced) undertaken by or on behalf of the Carrier in respect of the Goods;

Carrier means Smart Solutions Line FZE, a company registered in the United Arab Emirates under Jebel Ali Free Zone Licence Number 223227, with its address at JAFZA 17, 5th Floor, Jebel Ali Free Zone, PO Box 17000, Dubai, United Arab Emirates, on whose behalf this bill of lading has been issued;

Carrier Group means the Carrier and every other Person which, from time to time, is or becomes a subsidiary, affiliate, associated or holding company of the Carrier, or a subsidiary, affiliate or associated of any such holding company or the ultimate holding company of the Carrier (and the terms **subsidiary**, **affiliate**, **associated** and **holding company** shall have the meanings given to them in section 1159 of the Companies Act 2006);

Carrier's Agents includes the company within the Carrier Group or the independent agent of the Carrier which arranged the Carriage and/or issued this bill of lading and the company within Carrier Group or the independent agent of the Carrier in the country where the Goods are discharged and/or delivered;

Charges includes freight, demurrage, detention costs and all other expenses and monetary obligations, including duties, taxes and dues, incurred by the Carrier and payable by the Merchant;

USCOGSA means the U.S. Carriage of Goods by Sea Act of the United States of America 1936;

Combined Transportation arises if the Carrier has indicated a place of receipt and/or a place of delivery that is not a port on the face hereof in the relevant spaces;

Compulsory Legislation means an international convention or national law which applies compulsorily to any element of the Carriage and which cannot be departed from, including USCOGSA in the case of US Carriage;

Consolidation includes stuffing, de-stuffing, re-stuffing, packing, re-packing, loading, unloading, re-loading or securing or re-securing of Goods on or within Containers (and **Consolidate** and **Consolidated**, shall be construed accordingly);

Container includes any container (including open top containers), trailer, transportable tank, platform, lift van, flat, flat-rack, cradle, pallet, sled or any similar article of transport used to Consolidate goods and any ancillary equipment;

Goods means the whole or any part of the cargo described on the face hereof or on an attached or referenced manifest and received by the Carrier or a Sub-Contractor from the Merchant and includes any packing and any equipment or Container not supplied by the Carrier, irrespective of whether such cargo is to be or is carried on or underdeck (but excludes any Container supplied by the Carrier);

Hague Rules means the provisions of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924;

Hague-Visby Rules means the Hague Rules as amended by the Protocol signed at Brussels on 23 February 1968 (it is expressly provided that nothing in this bill of lading shall be construed as contractually applying the Hague-Visby Rules);

Merchant includes the Shipper, the Consignee, the receiver of the Goods and the Person entitled to receive the Goods, the holder of this bill of lading, any Person owning or lawfully entitled to the possession of the Goods or this bill of lading, the Person on whose account the Goods are handed to the Carrier, any Person acting on behalf of any of the above mentioned Persons, including agents, servants and sub-contractors;

Non US Carriage means any Carriage which is not US Carriage;

Package where a Container is loaded with more than one package or unit, the packages or other shipping units enumerated in the box "Number and Kind of Packages" on the face of this bill of lading as packed in such Container are each deemed a Package;

Person includes an individual, corporation or other legal entity;

The Pomerene Act also known as the United States Federal Bill of Lading Act 1916, 49 U.S.C. §§80101-80116 or any amendments thereto;

Port to Port Transportation arises if it is not Combined Transportation;

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

SOLAS means the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the Guidelines of SOLAS, as amended from time to time;

Guidelines of SOLAS means the Guidelines regarding the verified gross mass of a container carrying cargo (MSC.1/Circ.1475) published by the International Maritime Organization, as amended or updated or replaced from time to time;

Sub-Contractor includes owners, charterers and operators of Vessels (other than the Carrier), stevedores, terminal and/or groupage operators, road, rail and air transport operators, customs brokers, warehousemen and any independent contractors, servants or agents employed by the Carrier in performance of the Carriage and including their direct and indirect sub-contractors, servants and agents;

US Carriage means Carriage to, from or through any port of the United States of America;

Vessel means any waterborne craft used in the Carriage, or upon which the Goods are loaded for any purpose, under this bill of lading, including feeder vessels, ocean vessels and inland water vessels and whether named in the bill of lading or substituted vessels; and

Waterborne Carriage means the carriage of Goods by sea or inland waterways.

1.2 Interpretation

(a) Any words following the word including shall be interpreted without limitation to the generality of the preceding words.

(b) All Persons defined as Merchant shall be jointly and severally liable to the Carrier for the fulfilment of the Merchant's obligations.

2. SUPPLY OF CONTAINERS

2.1 Where the Carrier is instructed to provide a Container, unless otherwise agreed in writing by the Carrier, the Carrier is under no an obligation to provide a Container of any particular type or quality.

2.2 This bill of lading shall govern the responsibility of the Carrier in connection with or arising out of the supply of a Container to the Merchant, whether supplied before or after the Goods are received by the Carrier or delivered to the Merchant.

2.3 The Merchant shall inspect each Container before it is filled, loaded, packed or stuffed, and the use of a Container shall be prima facie evidence of that Container being suitable and sound for use.

2.4 Any Container released into the care of the Merchant for Consolidation or for any other purpose whatsoever shall be at the sole risk of the Merchant until proper redelivery to the Carrier at the time and place prescribed by the Carrier. In the absence of the Carrier prescribing such a time or place, the Merchant should contact the Carrier or the Carrier's Agents.

3. CONTAINER CONSOLIDATION AND CONTAINER STUFFING

3.1 The Carrier may Consolidate Goods in or on Containers and the Merchant agrees that Goods may be Consolidated with cargo owned by other Persons.

3.2 If a Container has been Consolidated by the Merchant the Carrier shall not be liable for loss of or damage to the Goods or any expense:

- (a) caused by the manner in which the Container has been stuffed;
- (b) caused by the unsuitability of the Goods for carriage in the Container actually used;
- (c) caused by the unsuitability or defective condition of the Container actually used, provided that where the Container has been supplied by or on behalf of the Carrier, this paragraph 3.2(c) shall only apply if the unsuitability or defective condition would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was stuffed; or
- (d) if the Container is not sealed at the commencement of the Carriage, except where the Carrier has agreed to seal the Container.

3.3 Notwithstanding the limitations set forth in Clause 3.2, if the Merchant tenders to the Carrier a Container that has been Consolidated or sealed, the relevant package and/or handling unit for purposes of calculating the Carrier's liability for loss or damage to the Goods within such Container shall be the entire Container.

4. SOLAS Verified Gross Mass Requirements

4.1 Italicised words or phrases in this Clause shall have the meaning given to them by the Guidelines of SOLAS.

4.2 The Merchant shall have the exclusive burden to provide the Carrier with the *verified gross mass* for each *packed Container* or for the total *Package* of Goods carried pursuant to this bill of lading in accordance with SOLAS and any other requirements and deadlines set by the Carrier. The Merchant acknowledges and agrees that the Carrier will rely on the accuracy and timeliness of such verified gross mass information and use this to comply with its obligations to Sub-Contractors whether in accordance with SOLAS or otherwise. Merchant authorizes Carrier, on Merchant's behalf to represent and certify weight data provided by Merchant as Carrier's own *verified gross mass* to Subcontractors, including the Vessel operator.

4.3 In the event that the Merchant does not comply with its obligations under Clause 4.2, or where the Carrier reasonably believes that the *verified gross mass* provided by or on behalf of the Merchant is inaccurate or incomplete, the Carrier may, at its absolute discretion and at the Merchant's cost, establish the verified gross mass of each *packed container* or the total *Package* of Goods carried pursuant to this bill of lading.

4.4 The Carrier shall not have any liability:

- (a) in the event that the *verified gross mass* provided by or on behalf of the Merchant is inaccurate or incomplete; or
- (b) resulting from any delay from establishing the *verified gross mass* in accordance with Clause 4.3 and the Merchant shall indemnify the Carrier from and against any and all liabilities resulting from the same.

4.5 Merchant agrees to indemnify and hold Carrier harmless from any and all claims, losses, penalties, and/or costs resulting from the incorrect *verified gross mass* or other information provided by Merchant.

5. MERCHANT'S RESPONSIBILITIES AND WARRANTIES

5.1 The Merchant warrants that:

- (a) in agreeing to this bill of lading it is, or is the agent of and has the authority of, the Person owning or entitled to the possession of the Goods and this bill of lading or any Person who has a present or future interest in the Goods and this bill of lading;
- (b) the description and particulars of the Goods and Container(s) set out on the face hereof including the verified gross mass as defined in Clause 4, weight, content, measure, quantity, quality, condition, marks, numbers and value have been checked by the Merchant and are correct;
- (c) the Goods are loaded and packed within the Container in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws, regulations and requirements which may be applicable;
- (d) the Goods contain no contraband, stolen goods, or other illegal material or substances or any goods which violate any intellectual or other property rights of any third party and the Merchant undertakes not to provide the Carrier with any instruction that will or may violate such rights;
- (e) neither the Goods nor any party with any interest in the Goods (whether as Shipper, Consignee or otherwise) are subject to any import or export prohibition, sanction or restriction imposed by any state, country, supranational or international governmental organisation or other relevant authority;
- (f) the Goods can be carried delivered, held and received, and all associated payments made and received, in each case without infringing any sanction, prohibition or restriction imposed by any state, country, supranational or international governmental organisation or other relevant authority, whether by reason of the nature of the Goods or the involvement of any party.

5.2 The Merchant shall comply with all applicable laws, regulations and requirements (including any imposed at any time before or during the Carriage relating to anti-terrorism measures, import or export prohibition, sanctions or restriction) of customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses and losses (including without prejudice to the generality of the foregoing, freight for any additional Carriage undertaken) incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

5.3 The Merchant shall be liable for the loss, damage, contamination, soiling, detention or demurrage of property (including Containers) of the Carrier or any Person (other than the Merchant) or Vessel caused by the Goods or the Merchant.

6. THE GOODS

6.1 Dangerous Goods

- (a) Goods which are or may become dangerous (whether or not so listed in any applicable law, regulations, codes or requirements), inflammable, damaging, injurious (including radioactive materials), noxious or which are or may become liable to damage any property or Person whatsoever shall not be tendered to the Carrier or Carrier's Agents for Carriage without:
 - (i) the Carrier's express consent in writing;

(ii) Merchant providing all information and documents necessary for the Carrier and / or the Carrier's Agents to safely carry the Goods and/or perform any obligation in connection with the Goods in accordance with all applicable laws, regulations, codes or requirements (or any combination of the foregoing), including information about the characteristics of the Goods, the appropriate manner and method of storage, handling and transportation of the Goods; and

(iii) Merchant placarding the Container and/or other covering in which the Goods are to be transported and/or the Goods themselves on the outside so as to indicate the nature and character of any such Goods and so as to comply with all applicable laws, regulations, codes and/or requirements.

(b) Merchant acknowledges and agrees that the Carrier shall have no obligation to comply with any special handling instructions unless expressly agreed to by the Carrier in writing by receipt. If any such Goods are delivered to the Carrier or the Carrier's Agents in breach of Clause 6.1(a), or if, at any time in the opinion of the Carrier, Carrier's Agents, or any Sub-Contractor, the Goods are, or are liable to become, of a dangerous, inflammable and/or damaging nature, or a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation to the Merchant and without prejudice to the Carrier's rights to the Charges, and the Merchant shall be liable for all loss, damage, delay or expenses arising from the Carriage. The Carrier shall have no liability in such circumstances. The burden of proving the Carrier knew and accepted the exact nature of the danger and hazard constituted shall be upon Merchant.

(c) If the Goods become a danger to life or property, they may, in like manner be unloaded or landed at any place at any place or destroyed and rendered harmless. If such danger was not caused by the fault and neglect of the Carrier, it shall have no liability and the Merchant shall indemnify the Carrier of all damages and liabilities arising therefrom.

6.2 Cargo requiring temperature control

The Merchant undertakes not to tender for Carriage any Goods which require temperature control without previously giving written notice (and filling in the box on the front of this bill of lading) of their nature and particular temperature range to be maintained and, in the case of a temperature controlled Container Consolidated by the Merchant, further undertakes that both the Goods and the Container have been properly pre-cooled and that all thermostatic controls have been properly set by the Merchant before receipt of the Goods by the Carrier. In particular, the Merchant acknowledges and accepts that Containers

(a) requiring temperature control are not designed to monitor and control humidity levels and the Carrier does not guarantee the maintenance of any particular levels of humidity inside of any Container. In the event that the above requirements are not complied with, the Carrier shall not be liable for loss of or damage to the Goods howsoever arising.

(b) The Merchant acknowledges and agrees that, unless the Carrier confirms in writing the receipt and acceptance of the notice referred to in Clause 6.2, the contractual Carriage shall not include a requirement that the Goods be maintained at any particular temperature.

(c) The Carrier shall not be liable for any loss of or damage to the Goods arising from: (i) defects, derangement, breakdown or stoppage of the temperature controlling machinery, plant, insulation or any apparatus of the Container; or (ii) failure to properly set thermostatic controls or otherwise ensure pre-cooling or malfunctioning temperature controlling machinery with respect to any Container provided by or on behalf of Merchant, or any Container that has been loaded outside of the presence of Carrier or any of its Sub-Contractors.

6.3 Inspection of Goods

The Carrier shall be entitled, but under no obligation, to open or scan or both any Container or package or both at any time and to inspect the contents for any reason whatsoever and to inquire and verify the accuracy or sufficiency of information provided and to seek assurances. Any discrepancies may result in shipment delay, cancellation, and/or additional charges assessed by the Carrier. If by the order of the proper authorities at any point of the Carriage, the Goods or a Container has to be opened, the Carrier will not be liable for any loss, damage or delay incurred either to the Goods, the Carriage or to the carrying vessel as a result of such inspecting including the cost of opening, unstuffing, inspection or repackaging, which cost shall be recoverable by the Carrier from the Merchant.

7. COLLECTION AND DELIVERY AT THE MERCHANT'S PREMISES

7.1 When collection or delivery takes place at the Merchant's premises, the place of collection or delivery shall be the usual place of loading or unloading the Goods or the Container into or onto or from the Container or the vehicle as the case may be and:

(a) the Carrier shall not be under any obligation to provide any plant, power or labour which may be required for the loading or unloading at such premises, and this shall be the responsibility of the Merchant at its own risk and expense; and

(b) any guidance, information or assistance given by the Carrier additional to the foregoing is given entirely at the Merchant's risk as to damage to or loss of Goods or injury to Persons.

8. ISSUING OF BILLS AND WAYBILLS

8.1 This bill of lading shall be presumed to be non-negotiable, unless made out "to order" or order of a named consignee, in which case the bill of lading shall be a negotiable document.

8.2 This bill of lading shall be prima facie evidence only of the Carrier taking the Goods described in the bill of lading under its control, provided that, and only to the extent the Carrier had, reasonable means of checking the Goods.

8.3 If negotiable, an original bill of lading, properly endorsed, is required to be surrendered when the Goods are delivered. If the person receiving the Goods wishes to take delivery without surrender of an original endorsed bill of lading, and if the Carrier agrees in its exclusive discretion to deliver the Goods without such surrender, the person receiving the Goods agrees to fully indemnify the Carrier against all damages and liabilities which the Carrier may incur as a result of delivering the Goods without such surrender. Upon surrender of one original bill of lading, all other original bills of lading will be immediately void. Negotiable bills of lading will in all events become void as a document of title six months after date of issuance, provided the terms of this document shall still apply and the Carrier shall continue to be entitled to all rights and limitations of liability herein.

8.4 If this bill of lading is non-negotiable, delivery of the Goods may be made, at the sole discretion of the Carrier, to the nominated consignee without surrender of an original counterpart; such delivery shall constitute due delivery hereunder. The Carrier may nevertheless in its exclusive discretion, but shall not be required to, demand surrender of an original endorsed non-negotiable bill of lading before release of the Goods.

8.5 Whether a negotiable bill of lading or a non-negotiable bill of lading, the person receiving the Goods in any and all events warrants their entitlement to such receipt and agrees to indemnify the Carrier against all damages and liabilities which the Carrier may incur as a result of releasing the Goods.

9. CONTAINER STOWAGE

9.1 Goods of any description (whether containerised or not) may be stowed on or under deck without notice to the Merchant, unless on the front of this bill of lading it is specifically stipulated that the Containers or Goods will be carried under deck, and any deck stowage shall not be a deviation of whatsoever nature or degree. If carried on deck, the Carrier shall not be required to note, mark or stamp on the bill of

lading any statement of such on deck carriage. Subject to Clause 9.2, such Goods whether carried on deck or under deck shall participate in General Average and such Goods shall be deemed to be within the definition of Goods for the purposes of any Compulsory Legislation and the Hague-Visby Rules.

9.2 Goods which are stated on the front of this bill of lading to be carried on deck, and which are actually carried on deck (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 unseaworthiness or negligence or any other cause whatsoever. The Merchant shall indemnify the Carrier against all and any extra cost incurred for any reason whatsoever in connection with carriage of livestock.

10. METHODS AND ROUTE OF TRANSPORTATION

10.1 The Carrier may at its sole discretion or at the sole discretion of its Sub-Contractor, and at any time and without notice to the Merchant:

- (a) use any route whatsoever and any means of transport or storage whatsoever;
- (b) load or carry the Goods on any Vessel whether named on the front hereof or not;
- (c) transfer the Goods from one conveyance to another including transshipping and/or substitute any mode of transport at any time;
- (d) at any place Consolidate Goods which have been stuffed in or on a Container and forward the same in any manner whatsoever;
- (e) load or unload the Goods from any conveyance at any place (whether or not named on the front hereof);
- (f) comply with any orders, instructions 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.

10.2 For Waterborne Carriage, the Carrier or its Sub-Contractor may sail with or without pilot, proceed, return to and stay at any port or place whatsoever, once or more and in any order (whether towards or away from the port or place of discharge), proceed at any speed, undergo repair, adjust equipment, dry dock, tow or be towed, assist other vessels in any situation, deviate for the purpose of saving life or property or of landing ill or injured persons, and call for fuel at any port(s) or place(s).

10.3 Anything done in accordance with this Clause 10 or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation of whatsoever nature or degree.

10.4 Hindrances or delay

If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including the condition of the Goods and any of the Merchant or Sub-Contractors becoming insolvent) not arising from any fault or negligence of the Carrier, its Sub-Contractors, or Carrier's Agents, or if it appears at any time that the Goods, or any part of them, cannot safely or properly be carried, or carried further, either at all or without incurring any additional expense or taking measures in relation to the Container or Goods whenever and howsoever arising (whether or not the Carriage has commenced) the Carrier may without notice to the Merchant:

- (a) treat the performance of the Carriage as terminated and place the Goods at the disposal and responsibility of the Merchant at any place or port that the Carrier may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Carrier in respect to such Goods shall cease; or
- (b) without prejudice to the Carrier's right to subsequently abandon the Carriage under Clause 10.4(a) above, continue the Carriage and (as the Merchant's agent only) take any measures and/or incur any reasonable additional expense to carry or continue the Carriage thereof.

In any event the Carrier shall be entitled to the full Charges on Goods received for Carriage and the Merchant shall pay and / or indemnify the Carrier in respect of any additional costs resulting from the above mentioned circumstances.

11. DELIVERY OF GOODS

11.1 The Goods shall be deemed delivered:

- (a) as soon as they have:
 - (i) been unloaded from the Vessel at the port of discharge (where there is no place of delivery indicated on the face hereof that is not the port of discharge); or
 - (ii) arrived at the place of delivery indicated on the face hereof and in accordance with Clause 7; or
 - (iii) where the Carrier is required or permitted by law or custom to release the Goods to port or other authorities of that port or delivery place) as soon as the Goods have been released or are in the control (physical or legal or both) of the port or other authorities, at any location, at which point the Carriage and the Carrier's responsibility for the Goods ends.

11.2 Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.

11.3 If the Merchant does not take delivery of the Goods or any part thereof at the time and place stated in Clause 11.1, the Carrier shall be entitled, without notice and without prejudice to any other rights that it may have against the Merchant, to remove from a Container the Goods or that part thereof if Consolidated in or on a Container and to store the Goods or that part thereof ashore, afloat, in the open or under cover at the sole risk and expense of the Merchant and the costs of such storage (if paid or payable by the Carrier or any agent or Sub-Contractor of the Carrier) shall be due and payable upon demand by the Merchant to the Carrier. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods or that part thereof shall cease.

12. RETURNING CONTAINERS

12.1 If Containers supplied by or on behalf of the Carrier are delivered to the Merchant's premises, the Merchant is responsible for returning the Containers empty, with clean interiors that are brushed, odour free and undamaged to the point or place designated by the Carrier, its servants or agents, within the time prescribed by the Carrier.

12.2 Should a Container not be returned within the time so prescribed, the Merchant shall be liable for any detention, demurrage, loss or expenses (as set out in the agreement between the Carrier and the Merchant if any, or where there is no such agreement, the detention, demurrage, loss or expenses payable under this Clause will be as charged to the Carrier by the relevant Sub-Contractor) which may arise from such non-return.

12.3 The Merchant shall be responsible for any loss of, damage to, contamination or soiling of any Container supplied by or on behalf of the Carrier.

12.4 If the Carrier assumes responsibility to return the empty Containers, the Merchant shall indemnify the Carrier for any charges, costs and expenses of whatsoever nature incurred by the Carrier in returning the empty Containers caused by any act, omission and/or delay on the Merchant's part.

13. CHARGES

13.1 The provisions of the Carrier's applicable tariff, if any, are incorporated herein. Particular attention is drawn to the provisions therein, if any, relating to free storage time and to Container and vehicle demurrage. Copies of such provisions are obtainable from the Carrier or his agents upon request or, where applicable, from a government body with whom the tariff has been filed. In the case of inconsistency between this bill of lading and the applicable tariff, this bill of lading shall prevail. Pursuant to the U.S. Federal Maritime Commission authority, the Carrier may enter into Negotiated Rate Agreements with Merchant from time to time in lieu of publishing rates and charges in a tariff. Where there is no such applicable tariff or Negotiated Rate Agreement, the Carrier shall be entitled to claim reasonable charges

which shall be no less than any amounts it has to pay to its Sub-Contractors. This bill of lading supersedes and negates any claimed, alleged, or asserted oral or written contract, promise, representation, or understanding between the parties with respect to the shipment. The Carrier's liability with respect to its undertaking to file or submit any information, in any format, to any government regulatory agency, organization, or similar entity on Merchant's behalf and written authorization, whether in conjunction with the bill of lading or the Carriage contemplated herein, shall be governed by the Carrier's General Trading Terms and Conditions of Service, as amended, available at www._____.com.

13.2 Charges shall be deemed fully earned upon receipt of the Goods by the Carrier, the Goods lost or not, and shall be paid and be non-returnable in any event.

13.3 The Merchant's attention is drawn to the stipulations concerning currency in which the Charges are to be paid, rate of exchange, devaluation and other contingencies relative to the Charges in the relevant tariff conditions. If no such stipulation as to devaluation exists or is applicable and if the currency in which the Charges are quoted is devalued or revalued between the date of the Charges agreement and the date when the Charges are paid, then all Charges shall be automatically and immediately changed in proportion to the extent of the devaluation or revaluation of the said currency. Payment shall be made in the currency named in the bill of lading, or, at the option of the Carrier, in another currency specified by the Carrier.

13.4 The Charges have been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier shall be entitled to production of the commercial invoice for the Goods or true copy thereof and to inspect, re-weigh, re-measure and re-value the Goods and if the particulars are found by the Carrier to be incorrect, it is agreed that the Merchant shall pay the Carrier the Charges that would have been applicable had the correct particulars been provided (credit being given for the Charges charged) and the costs incurred by the Carrier in establishing the correct particulars.

The Carrier reserves all rights to recover from the Merchant other damages caused by Merchant's breach of its warranty as to the accuracy and completeness of the description and the marks, numbers, quantities and weight of the Goods.

13.5 All Charges and any other amounts owed in respect of the Goods, including any amounts owed pursuant to the Carrier's tariffs, shall be paid without any set-off, counter-claim, deduction or stay of execution, whether prepaid or payable at detention.

13.6 Despite the acceptance by the Carrier of instructions to collect Charges or other expenses from any other Person in respect of the transport under this bill of lading, the Merchant shall remain responsible for such moneys and shall pay these to the Carrier on receipt of evidence of demand and the absence of payment for whatever reason.

13.7 All dues, taxes, demurrage, detention, and charges levied on the Goods and other expenses in connection therewith, or arising from any breach of warranty by the Merchant hereunder, or from any cause or reason not exclusively attributable to a liability of the Carrier, Carrier's Agents, Sub-Contractors, or the servants or agents of the Carrier, shall be paid by the Merchant. If, notwithstanding and without prejudice to this Clause, the Carrier is required or elects to pay such dues, taxes and charges, the Merchant will defend, indemnify, and hold harmless the Carrier in respect of such amounts. Shipper, consignee and bill-to parties are jointly and severally liable for all charges and expenses related to the Carriage. Charges may be reversed to the responsible parties if the Goods are refused delivery or in the event payment is not made by the original bill-to party.

13.8 The Merchant shall reimburse the Carrier for any costs for deviation or delay or any other increase of costs of whatever nature caused by war, warlike operations, epidemics, strikes, government directions or Acts of God.

14. LIEN

14.1 The Carrier shall have a general and continuing lien on any and all of the Merchant's property for all advances, claims, costs, freight charges, duties, surcharges, general average expenses, salvage expenses, taxes, demurrage, money due and payable to the Carrier, the Carrier's Agents, or any member of the Carrier Group by Merchant, including any lien and collection-related costs, whether or not related to the Carriage of Goods under this document, a prior transaction / an unrelated claim and/or any combination of the foregoing. The lien on the Goods shall survive delivery. The Carrier may sell the Goods privately or by public auction without notice to the Merchant. If upon sale of the Goods the proceeds fail to satisfy the amount due Carrier, together with the cost and expenses incurred, the Carrier shall be entitled to recover any difference from the Merchant.

14.2 The Carrier may exercise its lien at any time and at any place in its sole discretion, whether the Carriage is completed or not with or without further notice. In any event any lien shall:

- (a) survive the delivery of the Goods and/or the Other Goods; and
- (b) extend to cover the cost of exercising its lien and recovering any sums due.

14.3 To enforce and satisfy the Carrier's lien, the Carrier shall have the right, at the Merchant's expense, to sell the aforementioned Goods, Other Goods and documents by public auction or private treaty, without notice to the Merchant and without any liability towards the Merchant.

15. LIABILITY of carrier

15.1 Non-US Carriage

(a) In the event of loss of or damage to the Goods, where it is either known that the loss of or damage occurred during Waterborne Carriage, or where it is not known whether the loss or damage occurred during, before or after the Waterborne Carriage element of the Combined Transportation:

- (i) where any Compulsory Legislation applies, the liability of the Carrier howsoever occurring will be determined and limited in accordance with such Compulsory Legislation with the package limitation, where applicable, being determined by the number of Packages;
- (ii) where no Compulsory Legislation applies, the liability of the Carrier howsoever occurring will be determined and limited in accordance with the Hague-Visby Rules Article 1-8 inclusive (excluding Article 3 rule 8);
- (iii) the Carrier shall be under no liability whatsoever for loss or damage to the Goods while in its actual or constructive possession before loading or after discharge, howsoever caused. Notwithstanding the foregoing, in case and to the extent that any Compulsory Legislation provides to the contrary, the Carrier shall have the benefit of every right, defence, limitation and liberty in the Hague Rules, Hague-Visby Rules, or any other regime as applied by Clause 15.1(c) during such additional compulsory period of responsibility, notwithstanding that the loss or damage did not occur at sea.

(b) In the event of loss or damage to the Goods, the following provisions shall apply in relation to Combined Transportation, where it is known that the loss or damage did not occur during the Waterborne Carriage element of the Combined Transportation (that is, where it is known that the loss or damage occurred prior or subsequent to the Waterborne Carriage element of the Combined Transportation):

- (i) the Carrier shall procure Carriage by an inland carrier as an agent only to the Merchant;
- (ii) the liability of the Carrier, if any, shall be determined in accordance with the inland carrier's contractual conditions and tariff, except that in no event shall the Carrier's liability exceed the limitations of liability set forth under the Hague-Visby Rules, unless mandated by other Compulsory Legislation that the Carrier cannot waive.

(c) Subject to 15.1 (a) and (b), in the event of any loss or damage to the Goods or any other losses arising out of the Carriage, the Carrier shall (subject to any Compulsory Legislation) be relieved of any liability whatsoever for any loss of or damage to the Goods if, and to the extent that, such loss or damage is caused by:

- (i) strike, lockout, stoppage or restraint of labour, the consequences of which the Carrier is unable to avoid by the exercise of diligence;
 - (ii) any cause or event which the Carrier is unable to avoid, and the consequences of which the Carrier is unable to prevent by the exercise of reasonable diligence.
- (d) Compensation and Limitation
- (i) The Carrier's liability for any loss or damage to the Goods shall be limited to the lesser of:
 - (A) the FOB/FCA invoice value plus freight and insurance if paid. If there is no such invoice value, the value of the Goods shall be determined according to the value of the Goods at the place and time of delivery to the Merchant or the place and time when they should have been so delivered; and
 - (B) if any Compulsory Legislation applies, the amount set out in such Compulsory Legislation; or
 - (C) in all other cases, US\$2 per kilo of gross weight of the Goods lost, damaged or in respect of which the claim arises.

15.2 US Carriage

(a) For US Carriage, where it is either known that the loss of or damage occurred during Waterborne Carriage, or where it is not known whether the loss or damage occurred during, before or after the Waterborne Carriage element of the Combined Transportation, this bill of lading shall have effect subject to the provisions of USCOGSA and to The Pomerene Act regardless of whether said Act would apply of its own force. The provisions of USCOGSA are incorporated herein and save as otherwise provided herein shall apply the entire time the Goods are in the Carrier's custody, including before loading and after discharge as long as the Goods remain in the custody of the Carrier or its Sub-Contractor, including Goods carried on deck. Nothing contained herein is to be deemed as surrender by the Carrier of its rights, immunities, exemptions or limitations or an increase of any of its responsibilities or liabilities under USCOGSA. Except for Clause 15.1, every other term, condition, limitation, defence and liberty whatsoever contained in this bill of lading shall apply to US Carriage.

(b) In the event of loss or damage to the Goods, the following provisions shall apply in relation to Combined Transportation, where it is known that the loss or damage did not occur during the Waterborne Carriage element of the Combined Transportation (that is, where it is known that the loss or damage occurred prior or subsequent to the Waterborne Carriage element of the Combined Transportation); such Carriage shall be procured by the Carrier as agent only to the Merchant and such Carriage shall be subject to the inland carrier's own contractual conditions and tariff. If, for any reason, the Carrier is denied the right to act as agent only at these times, its liability for loss, damage or delay to the Goods shall be determined in accordance with Clause 15.2(a) hereof.

(c) Neither the Carrier nor the Vessel shall in any event be or become liable in an amount exceeding US\$500 per package or customary freight unit. For limitation purposes under USCOGSA, it is agreed that the meaning of the word "package" shall be any palletised and/or unitised assemblage of cartons which has been palletised and/or unitised for the convenience of the Merchant, regardless of whether said pallet or unit is disclosed on the front hereof.

15.3 Liability applicable to both Non-US Carriage and US Carriage

(a) 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 full benefit of all laws, statutes or regulations as if it were the owner of any carrying Vessel.

(b) Ad Valorem

If the value of the Goods has been declared by the Merchant in writing before shipment and inserted on the front face hereof, and extra freight rate, in an amount quoted by the Carrier, has been paid thereon and the Carrier has consented in writing to such declared value, the amount of the declared value shall be substituted for the liability limits laid down in this bill of lading. The Carrier's knowledge of the value of Goods and/or the Merchant's declaration of the value of the Goods to the Carrier in regular course or for any other purpose, such as for Customs purposes, shall in no event constitute a declared value of the Goods to the Carrier for liability purposes.

(c) Delay

Save as otherwise provided herein, the Carrier does not undertake that the Goods or any documents shall arrive at any place at any particular time and shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the Charges applicable to the relevant stage of the transport.

(d) General liability

Notwithstanding any other provision of this bill of lading but subject to any Compulsory Legislation:

- (i) THE CARRIER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSS, LOSS OF PROFITS OR SALES, BUSINESS INTERRUPTION, LOSS OF MARKET, LOSS OF CONTRACT, LOSS OF REPUTATION OR GOODWILL, LOSS OF REVENUE OR USE CLAIMS, PUNITIVE OR EXEMPLARY DAMAGES, THE CONSEQUENCES OF DELAY OR DEVIATION HOWSOEVER CAUSED, ANY DAMAGE OR DELAY CAUSED BY THE MERCHANT, THIRD PARTY CLAIMS AGAINST THE MERCHANT OR ANY DAMAGE OCCURRING OUTSIDE THE CUSTODY OF THE CARRIER OR ITS SUBCONTRACTORS. THE FOREGOING EXCLUSIONS AND LIMITS OF LIABILITY SHALL APPLY WHETHER OR NOT CARRIER HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. THE DEFENSES AND LIMITS OF LIABILITY PROVIDED FOR HEREIN SHALL APPLY IN ANY ACTION AGAINST THE CARRIER WHETHER FOUNDED ON CONTRACT, TORT, EQUITY, INDEMNITY, BAILMENT OR ANY OTHER BASIS WHATSOEVER AND EVEN IF THE LOSS OR DAMAGE AROSE AS A RESULT OF NEGLIGENCE, RECKLESSNESS OR FUNDAMENTAL BREACH.
- (ii) THE CARRIER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, MISDELIVERY, DELAY, OR NON-DELIVERY NOT CAUSED BY ITS OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT, OR ANY LOSS, DAMAGE, DELAY, MISDELIVERY, OR NON-DELIVERY CAUSED BY THE ACT, DEFAULT OR OMISSION OF MERCHANT, THE CONSIGNEE, OR ANY OTHER PARTY THAT CLAIMS AN INTEREST IN THE SHIPMENT; THE NATURE OF THE SHIPMENT OR ANY DEFECT, CHARACTERISTIC, OR INHERENT VICE OF THE GOODS; OR ACT OF GOD, PERILS OF THE AIR, PUBLIC ENEMIES, PUBLIC AUTHORITIES ACTING WITH ACTUAL OR APPARENT AUTHORITY OF LAW, ACTS, OR OMISSIONS OF CUSTOMS OR QUARANTINE OFFICIALS, RIOTS, STRIKES, CIVIL COMMOTIONS, HAZARDS INCIDENT TO A STATE OF WAR, WEATHER CONDITIONS, OR DELAY OF AIRCRAFT OR OTHER VEHICLES USED IN PROVIDING TRANSPORTATION SERVICES, OR ANY OTHER CAUSE OR EVENT WHICH THE CARRIER IS UNABLE TO CONTROL OR AVOID AND THE CONSEQUENCES OF WHICH THE CARRIER IS UNABLE TO PREVENT BY THE EXERCISE OF REASONABLE DILIGENCE. In no event shall the Carrier's maximum aggregate liability for all events which occur under the bill of lading (other than for loss of or damage to the Goods) exceed the actual value of any loss or damage or the replacement value of the Goods adversely affected, whichever is lower.

(e) Notice of Loss or Damage

The Goods, as described in this bill of lading, shall be deemed prima facie to have been delivered by the Carrier unless notice of loss of, or damage to, the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier or to his representative at the place of delivery before or at the time of removal of the Goods into the custody of the Person entitled to delivery thereof under this bill of lading or, if the loss or damage is not apparent, within three consecutive days thereafter.

(f) Time-bar

(i) Where Compulsory Legislation applies, the time limit for bringing claims will be as prescribed by the applicable rules.

(ii) In all other cases, the Carrier shall be discharged of all liability whatsoever unless suit is brought and written notice thereof is given to the Carrier within one year after the delivery of the Goods or the date when the Goods should have been delivered.

(g) The defences, limits and exclusion of liability provided for in this bill of lading shall apply in any action against the Carrier whether the action be found in contract, bailment, tort, breach of express or implied warranty or otherwise.

(h) Save as set out in this bill of lading the Carrier shall not be liable for loss of or damage to any Goods howsoever arising (whether caused by negligence or otherwise).

15.4 The Merchant shall promptly defend the Carrier from all claims, and indemnify the Carrier against all costs (including the costs of investigating and defending any claims), expenses, claims, losses, liabilities, orders, awards, fines, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered by the Carrier, the Sub-Contractors or any member of the Carrier Group (and their respective employees, servants, agents, insurers or reinsurers) as a result of or in connection with any of the following:

(a) any breach by the Merchant of any of the warranties given or obligations undertaken by the Merchant under this bill of lading, including the provisions of Clauses 6.1 or 6.2;

(b) the Carrier becoming liable to any other party (including to any authority having legal jurisdiction over the Carriage and/or the Goods) and/or incurring additional costs by reason of the Carrier carrying out the Merchant's instructions;

(c) any cause arising from or with respect to the Goods for which the Carrier is not responsible, including under Clauses 3.2, 11.1, 15.1, 15.2, and 15.3;

(d) the Carrier incurring liability in excess of its liability expressly assumed under the provisions of this bill of lading regardless of whether such liability arises from, or in connection with a breach of contract, negligence or breach of duty by the Carrier, its agents, servants or the Sub- Contractor;

(e) delayed, inaccurate or incomplete information including verified gross mass information provided by the Merchant on which the Carrier relies.

16. LIMITED CLAUSE PARAMOUNT

16.1 (US Carriage) Whether or not applicable by force of law, and except as specifically provided in this Clause 16 and in Clause 15, USCOGSA is incorporated by reference as terms of this contract for Carriage whether the Goods are carried on or under deck, before the Goods are loaded on and/or after the Goods are discharged from the Vessel, and throughout the entire time the Goods are in the custody or are the responsibility of the Carrier in performing the Carriage hereunder, whether acting as carrier or bailee. Nothing contained herein shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities under USCOGSA. Notwithstanding the foregoing, the provisions of 46 U.S.C. §§ 30701 (3)(8) and (4)(5) of USCOGSA addressing minimum liability of the Carrier are excluded from incorporation by reference and shall only apply when required by force of law.

16.2 (Non US Carriage) Whether or not applicable by force of law, and except as specifically provided in this Clause 16 and in Clause 15, the Hague-Visby Rules are incorporated by reference as terms of this contract for Carriage whether the Goods are carried on or under deck, before the Goods are loaded on and/or after the Goods are discharged from the Vessel, and throughout the entire time the Goods are in the custody or are the responsibility of the Carrier in performing the Carriage hereunder, whether acting as carrier or bailee. Nothing contained herein shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities under the Hague-Visby Rules. Notwithstanding, provisions the Hague-Visby Rules addressing minimum liability of the Carrier are excluded from incorporation by reference and shall only apply by force of law.

17. GENERAL AVERAGE

17.1 General Average shall be adjusted, stated, and settled in accordance with the policies and procedures adopted by the Carrier.. The New Jason Clause as approved by BIMCO at the date of this bill of lading is deemed to be incorporated herein and is available on request.

17.2 Notwithstanding Clause 17.1, the Merchant shall indemnify the Carrier in respect of any claims of a General Average nature which may be made against the Carrier and shall provide to the Carrier prior to delivery of the Goods such security as may be required by the Carrier in this connection.

17.3 The Merchant shall, if required by the Carrier and prior to delivery of the Goods, promptly provide such security, including a cash deposit, as the Carrier deems sufficient to cover the estimated contribution of the Goods and any salvage and special charges in relation to the Goods. The Carrier's lien at Clause 14 shall extend to such security and the Merchant shall indemnify the Carrier against all consequences of failing to comply with this obligation.

17.4 The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant or to notify the Merchant of any event that could give rise to General Average being declared.

18. SUB-CONTRACTING AND INDEMNITIES

18.1 The Carrier shall be entitled to sub-contract on any terms whatsoever the whole or any part of the Carriage and the Merchant agrees (without prejudice to Clause 18.2 and to the extent that the Merchant is entitled to bring claims against Sub-Contractors) that any Sub-Contractor can, at its option, apply its own terms of contract with the Carrier to defend claims brought by the Merchant.

18.2 The Merchant undertakes:

(a) that no claim or allegation shall be made against any Sub-Contractor whatsoever, whether directly or indirectly, which imposes or attempts to impose upon any Sub-Contractor any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising in contract, bailment, tort, negligence, breach of express or implied warranty or otherwise; and

(b) if any claim or allegation should nevertheless be made against a Sub-Contractor, to indemnify the Carrier against all consequences thereof.

18.3 Without prejudice to the other provisions in this Clause 18, every Sub-Contractor shall have the benefit of all terms, rights, defences, provisions, conditions, exceptions, limitations and liberties herein benefiting the Carrier, including Clause 21 (Governing Law and Jurisdiction) hereof, as if this bill of lading (including Clause 21 hereof) were expressly for its 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 or trustee for such Sub-Contractor and such Sub-Contractor shall to this extent be or be deemed to be parties to this contract.

19. PARTIAL INVALIDITY

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

20. VARIATION OF THE CONTRACT

20.1 No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorised or ratified in writing by a director or officer of the Carrier who has the actual authority of the Carrier to waive or vary.

21. GOVERNING LAW AND JURISDICTION

21.1 US Carriage

(a) this bill of lading is governed by United States law and the United States District Court for the Southern District of New York has exclusive jurisdiction to hear all disputes hereunder.

21.2 For Non US Carriage

(a) Subject to Clause 21.2 (b) disputes arising under this bill of lading shall be determined by the courts of England and in accordance with the laws of England. No proceedings may be brought before other courts, unless both parties expressly agree the choice of the other court or arbitration tribunal and the law to be then applicable.

(b) The Carrier shall have the right to bring any claim in connection with or arising out of the Carrier against the Merchant in the courts of the jurisdiction where the Merchant has its principal place of business.

4895-5445-9563, v. 4

4895-5445-9563, v. 4