

## MULTIMODAL TRANSPORT OR PORT TO PORT SHIPMENT CONDITIONS

### 1. DEFINITIONS

“Carriage”	means the whole or any part of the operations and services described by this document as undertaken by Carrier in respect of the Goods.
“Carrier”	means the party on whose behalf this negotiable bill of lading or non-negotiable sea/air waybill has been issued as indicated on the face hereof. If the Goods are lost, damaged, or delayed on the sea portion of the Carriage, and the vessel owner or demise charterer seeks to limit its liability pursuant to 46 U.S. Code §§ 181 et seq. or pursuant to a similar global limitation regime of another nation, only the owner or demise charterer will be the "Carrier."
“Container”	includes any container, trailer, transportable tank, flat or pallet or any similar article used for the transportation of Goods.
“Dangerous Goods”	means any Goods that may present or are reasonably believed to present a danger to any means of transportation or place of handling or storage, whether the Goods are identified as dangerous by any authority or are not so identified. Dangerous Goods include, but are not limited to, Goods listed as dangerous in any statute, regulation or the International Maritime Dangerous Goods Code of the International Maritime Organization.
“Goods”	means the cargo described on the face hereof or on an attached or referenced manifest, whether packed in Containers or not, and includes any Container not supplied by or on behalf of Carrier.
“Merchant”	includes the consignor, shipper, consignee, the receiver of the Goods, any person, including any corporation, company or other legal entity owning or entitled to the possession of the Goods, or anyone acting on behalf of any such person.
“Package”	means the object referred to in the “No. of Pkgs.” column on the face of this document.
“Signature”	means a written signature or an electronic signature.
“Special Carriage”	means ventilated, heated, or refrigerated Carriage or any other Carriage requiring special care.
“Subcontractor”	shall include direct and indirect agents, subcontractors, and their respective servants and agents.
“Vessel”	includes any vessel, ship, craft, lighter, vehicle and other means of transport used to perform the Carriage or upon which the Goods are loaded for any purpose.

### 2. MULTIMODAL TRANSPORT OR PORT TO PORT NEGOTIABLE BILL OF LADING

If only the Bill of Lading box on the face of this document is checked, this document will constitute a multimodal transport or port to port negotiable bill of lading. If this document constitutes a negotiable bill of lading, all original bills of lading, properly indorsed, must be surrendered when the cargo is delivered. If the person receiving the Goods wishes to surrender fewer than all the

original bills of lading that were issued, and if Carrier agrees to deliver against fewer than all the originals, the person receiving the Goods agrees to indemnify Carrier against all damages which Carrier may be liable to pay as a result of delivering the Goods without surrender of all original bills of lading. If one original bill of lading is surrendered, other original bills of lading will be void. In any event, the negotiable bill of lading will become void six months after it is issued.

### **3. MULTIMODAL TRANSPORT OR PORT TO PORT NON-NEGOTIABLE SEA/AIR WAYBILL**

If only the Waybill box on the face of this document is checked, this document will constitute a multimodal transport or port to port non-negotiable sea/air waybill and Carrier is under no obligation to demand the surrender of this document before delivering the Goods. If no box is checked or if both boxes are checked, this document will constitute a non-negotiable sea/air waybill, and Carrier may, but is not required to demand its surrender before release of the Goods.

### **4. BILL OF LADING AND CARRIER'S TARIFF**

This Bill of Lading is binding upon the parties, and supersedes any prior agreement or arrangement. In agreeing and accepting the terms hereof, the shipper acts for itself and on behalf of each Merchant. The Carriage of the Goods is subject to all of the terms and provisions of Carrier's tariffs on file or published or required to be filed or published, as the case may be, with or by the Federal Maritime Commission or other regulatory body that may govern particular portions of the Carriage ("the Tariff"). The terms of the Tariff, including but not limited to applicable provisions of the Tariff relating to freight and other compensation due from Merchant, are incorporated herein. The relevant provisions of the applicable Tariff are obtainable from Carrier or its representatives upon request. In case of inconsistency between this document and the applicable Tariff, this document shall prevail except as otherwise required by law.

### **5. WARRANTY OF OWNERSHIP OR RIGHT OF POSSESSION**

Merchant warrants that, in agreeing to the terms hereof, it is, or has the authority of, the person owning or entitled to the possession of the Goods.

### **6. SUBCONTRACTING, CONSOLIDATION AND PARTIES AGAINST WHOM CLAIMS MAY BE BROUGHT**

6.1 The parties agree that part of the Carriage or all the Carriage or related services may be performed by Subcontractors. Carrier may engage any carrier in accordance with the terms and conditions such carrier's standard form bill of lading, which shall be binding upon Merchant.

6.2 Carrier shall be entitled to consolidate the Goods with other cargo and to procure the performance of the whole or any part of the Carriage by contracting with any person on any terms for the movement of a consolidated shipment that includes the whole or any part of the Goods.

6.3 In the event the Goods are lost, damaged, or delayed while onboard a Vessel and the Vessel owner or demise charterer initiates limitation proceedings as referred to in the definition of Carrier in clause 1 of this document, claims or suits may only be brought against that Vessel owner or demise charterer. In all other cases, claims or suits may be brought only against Carrier. In the event a claim or suit is brought against anyone participating in the performance of the Carriage other than Carrier, that party is entitled to all exceptions, exemptions, defenses, immunities, limitations of liability, privileges and conditions granted or provided by this document, any applicable Tariff, and any law governing it or incorporated by reference into it as if the protected party were a party to this document. These protected parties include, but are not limited to, Subcontractors, stevedores, terminals, watching services, participating land, air, or sea carriers and their direct or indirect subcontractors. Each of these parties is a third party beneficiary of this document.

## **7. CLAUSE PARAMOUNT AND RESPONSIBILITY OF CARRIER**

7.1 Clause Paramount. The contract of carriage evidenced by this document is governed with the force of law during any sea Carriage by the United States Carriage of Goods by Sea Act, 46 U.S.C. App. §§ 1300 et seq. (COGSA), which shall be deemed to be incorporated herein, and nothing contained herein shall be deemed a surrender by Carrier of any of its rights or immunities or an increase of any of its responsibilities under COGSA. Except with respect to air Carriage and as provided herein, COGSA is also incorporated by reference as terms of the contract of carriage whether the Goods are carried on or under deck, whether or not the Carriage is in U.S. foreign trade, between U.S. ports, or between non-U.S. ports, before the Goods are loaded on and/or after the Goods are discharged from the Vessel, and throughout the entire time that the Goods are in the custody or are the responsibility of Carrier in performing the Carriage hereunder, whether acting as carrier, bailee, stevedore, or terminal operator. COGSA shall not be incorporated by reference into the contract of carriage which is governed by force of law by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw 12 October 1929 ("Warsaw Convention"), and any amendments thereto that apply with the force of law. The rules relating to the Warsaw Convention shall apply to the international carriage of Goods insofar as the same is governed thereby. All the rights, privileges, defenses, immunities from and limitations of liability provided in this document shall apply in any action against Carrier for loss of or damage to the goods, or otherwise in connection with the Goods, whether such action be founded in contract, tort, or otherwise.

7.2 Limitation of Liability. Subject to the shipper's declaration of a higher value as provided below, Carrier's liability for loss or damage to the Goods shall be limited as follows: for loss or damage occurring during any air portion of the Carriage that is governed with the force of law by the Warsaw Convention, Carrier's liability shall be limited to \$20.00 per kilogram, or during Carriage governed with the force of law by the Warsaw Convention as amended by Montreal Protocol No. 4, to 17 Special Drawing Rights (SDRs) of the International Monetary Fund per kilogram; for loss or damage occurring during any portion of the Carriage that is governed by COGSA, either by force of law or by incorporation as provided herein, Carrier's liability shall be limited to \$500 per package, or for Goods not shipped in packages, per customary freight unit; and for loss or damage occurring during any portion of the Carriage when such limitation provisions are inapplicable, Carrier's liability shall be limited to \$0.50 per pound, or such lower amount as may be provided by any applicable laws. For the purposes hereof, the Goods shall be deemed on board the Vessel when loaded to Carrier's Container, whether or not such Container is loaded to the Vessel. Carrier shall also be entitled to full benefits of the laws and regulations of any country and the provisions of the contracts of any Subcontractor that may be applicable to the Goods before loading or after discharge of the vessel, including all defenses and exclusions set forth therein and any limitations that are lower than those set forth herein.

The shipper or Merchant may avoid these limitations, or any other limitation imposed by applicable law to the extent permitted thereby, by declaring a higher value per kilogram, package, customary freight unit or entire shipment, as the case may be, by inserting such higher value on the face of this document, and paying a higher freight. In any event, Carrier shall not be liable for special, incidental or consequential damages, lost profits or revenues or loss of merchantability of the Goods, whether or not Carrier had knowledge that such may occur. Merchant shall indemnify Carrier against any third-party claim which imposes or attempts to impose upon Carrier any liability in connection with the Goods other than as provided herein, whether or not arising from negligence of Carrier.

7.3 Delay. Carrier shall not be liable for delay unless the parties have agreed in writing that the Goods will be delivered by a certain date and that damages of a certain amount will be incurred by Merchant if the Goods are not delivered by a such date and the Goods are not delivered by such date, subject to exceptions herein.

7.4 Exceptions. Carrier shall not be liable for any loss, damage, delay or failure in performance hereunder occurring at any time, including before loading on or after discharge from the Vessel or during any Carriage, arising or resulting from the happening and/or threat and/or effects of one or more of the following: act of God, act of war, terrorism, force majeure, quarantine restrictions, embargo, acts of public enemies, thieves, pirates, assailing thieves, arrest or restraint of princes, rulers or people, seizure under legal process, act or omission of Merchant, its agent or representative, strikes or lockouts, or stoppage or restraint of labor from whatever cause, partial or general, riots or civil commotions, act, neglect or fault of the master, mariner, pilots or the servants of Carrier in the navigation or management of the Vessel, barratry, ice, explosion, collision, stranding, perils, dangers or accidents of the sea or other navigable waters, wastage in bulk or weight, or any other loss or damage arising from inherent defect, quality, or vice of the Goods, insufficiency of packing, insufficiency or inadequacy of marks, bursting of boilers, breakage of shafts or any latent defect in hull, equipment, machinery, hawsers or lines, unseaworthiness unless caused by want of due diligence by Carrier to make the Vessel seaworthy or to have her properly manned, equipped and supplied, and to make the holds, refrigerating and cooling chambers and all of other parts of the Vessel fit and safe for the reception, Carriage and preservation of the Goods, saving or attempting to save life or property at sea or any deviation in rendering such service, loss of or material damage to the Vessel, or any similar or dissimilar cause beyond the control of Carrier.

7.5 Assignment and Subrogation. Merchant agrees that in consideration for any payment to Merchant by Carrier for any lost, damaged, or delayed Goods, Merchant will be deemed to have assigned its entire claim and cause of action to Carrier and that Carrier will be assigned and subrogated to Merchant's rights. Merchant agrees to execute papers required by Carrier to proceed as assignee and/or subrogee against third parties and to cooperate fully in any action brought by Carrier against other parties.

7.6 Ad Valorem. In the event that the Merchant declares a value higher than the limitation amount as provided herein, any partial loss or damage to the Goods shall be adjusted pro rata on the basis of such declared value. Such value shall not exceed the actual value.

## **8. EVIDENCE OF DELIVERY IN GOOD CONDITION**

Receipt by or delivery to the person entitled hereunder to delivery of the Goods without complaint or notice of loss or damage, in the manner and within the time periods as applicable and set forth below, shall be *prima facie* evidence that the Goods have been delivered in good condition and in accordance with this document.

## **9. COMPLAINT AND NOTICE OF LOSS OR DAMAGE, AND STATUTES OF LIMITATION**

9.1 Air Carriage. With respect to air Carriage, any complaint regarding loss or damage must be made by the person entitled to delivery in writing to Carrier forthwith after discovery of the damage or delay, or at least within the following time periods: in the case of damage, no later than fourteen (14) days from the receipt of the Goods; in the case of delay, no later than twenty-one (21) days from the date when the Goods should have been delivered, provided that: if any other time periods for submitting complaints are set forth in the Warsaw Convention or any amendment thereto that applies with force of law, such time periods shall apply. Except in case of fraud, no action for loss or damage to the Goods or delay may be brought against Carrier unless such a complaint has been made in accordance with the aforesaid time periods. In any event, any right to damages against Carrier shall be extinguished if an action is not brought within two (2) years after delivery of the Goods or, in the case of a claim for delay, the date on which delivery should have occurred.

9.2 All Other Carriage. With respect to all other Carriage, any claim for loss or damage to Goods, or delay, occurring during any Carriage when COGSA does not apply with the force of

law must be served on Carrier within nine (9) months of the date the Goods were delivered or should have been delivered. The place at which claims or other notices must be served is set forth below. A failure to serve a claim within the nine (9) month period will prevent Merchant from later filing suit or other proceedings to recover for the loss, damage or delay. If the loss or damage were caused during the United States portion of the move, and if a claim were filed within nine (9) months, suit must be filed within two (2) years after the time Carrier declines the claim, in whole or in part, or the claim will be time-barred. Merchant will indemnify Carrier against any damages Carrier may suffer as a result of Merchant's failure to give timely notice or otherwise fail to preserve a timely cause of action against a responsible third party. Any claim for loss or damage to Goods, or delay, occurring during any Carriage when COGSA applies by force of law shall be made by giving notice of loss or damage in writing to Carrier or its agent, or endorsed on the receipt for the Goods. Said notice must include the general nature of loss or damage and may be endorsed on the receipt for the Goods given by the person taking delivery thereof. If loss or damage is apparent, said notice must be given before or at the time of the removal of the Goods into the custody of the person entitled to delivery of them under this document; if loss or damage is not apparent, said notice must be given within three (3) consecutive days of delivery. If COGSA governed with the force of law at the time of the loss, damage, or delay, a claim need not be filed within nine (9) months of the date the Goods were delivered or the date on which they should have been delivered. Suit must, however, be commenced within one (1) year of the date the Goods were delivered or should have been delivered. Failure to commence suit within one year will eliminate the cause of action as untimely.

#### **10. FIRE**

Carrier shall not be liable for any loss or damage to the Goods arising or resulting from fire occurring at any time or at any place unless caused by the actual fault or privity of Carrier or any servant, agent or Subcontractor thereof.

#### **11. CONTAINERS NOT PACKED BY CARRIER**

If a Container has not been packed or filled, or the Goods, whether or not in a container, have not been prepared or packaged for transportation by or on behalf of Carrier, the provisions of this Clause shall apply. Carrier shall not be liable for loss of or damage to the contents and Merchant shall indemnify Carrier against any loss, damage, liability or expense incurred by Carrier if such loss, damage, liability or expense has been caused by: (a) the manner in which the Container has been packed or filled; or (b) the unsuitability of the Goods for Carriage in Containers or for importation or delivery at destination; or (c) the unsuitability or defective condition of any Container supplied by or on behalf of Carrier, (i) arising without any want of due diligence on the part of Carrier to make the Container reasonably fit for the purpose for which it is required, or (ii) which would have been apparent on a reasonable inspection by Merchant at or prior to the time when the Container was packed or filled; or (d) the unsuitability or defective condition of any Container not supplied by or on behalf of Carrier; or (e) the lack of proper description or preparation or packing of the Goods for transportation.

#### **12. OPTIONAL STOWAGE**

Goods may be packed by Carrier in Containers or in similar articles of transport used to consolidate Goods. Goods in enclosed Containers, including but not limited to Containers with a tarpaulin top, whether packed by the Shipper or Carrier, may be carried on deck. The stowage position on a vessel of Containers and Goods is decided by Carrier or persons other than Merchant. Stowage position of Containers may not, therefore, be indicated on this document. COGSA will govern Container deck cargo as if the Goods were carried under deck. Goods not packed in enclosed Containers may be stowed in any covered, but not necessarily enclosed, space commonly used for the Carriage of Goods and such Goods so carried shall be deemed for all purposes to be stowed under deck. Goods not packed in Containers may be stowed on deck

if such stowage of the Goods is customary or is mandated by any authority. If deck stowage is not customary for the Goods, the Goods may be stowed on deck with Merchant's agreement. In that event, the face of this document will be claused to indicate the on deck stowage. All defenses and limitations of COGSA, including but not limited to the per-package liability limitation, are incorporated by reference herein as to deck cargo. The burden of proof rules attributed to COGSA will not apply to such deck Carriage. The person claiming damages for loss, damage, or delay to Goods must prove the specific breach of the contract that caused the loss, damage, or delay.

### **13. SPECIAL CONTAINERS OR CARRIAGE**

13.1 Special Containers. Merchant warrants that, unless Special Carriage is requested and paid for, the Goods are fit to be carried in an unventilated, unheated, unrefrigerated Container or other stowage space. Carrier shall not, unless agreed in writing and in consideration for a higher freight rate, undertake to carry the Goods in refrigerated, heated, insulated, ventilated or any other special Container(s) or other stowage space(s), or to carry special Container(s) packed by or on behalf of Merchant. Carrier will treat such Goods or Container(s) only as ordinary Goods or dry Container(s) respectively, unless special arrangements are noted on the face of this document and all special freight has been paid. Carrier shall not be liable for any loss or damage to the Goods caused by latent defects in the special Container or its equipment, and does not warrant the suitability or performance thereof. Carrier shall not be responsible for the control and care of the operating equipment of such Container(s) when not in the actual possession of Carrier. If the particular temperature range requested by Merchant is inserted in this document, Carrier will set the thermostatic controls with the requested temperature range. The parties agree that the temperature will vary when a refrigerated Container or other refrigerated space is defrosted and when moved from and to various means of transportation or storage locations, and the temperature of heated Containers may vary when moved from and to various means of transportation or storage locations. If contents have been packed by or on behalf of Merchant, Merchant shall pre-cool or pre-heat the Goods and to stow them properly and to set the thermostatic controls properly. Carrier shall not be liable for loss of or damage to the Goods due to Merchant's failure in such obligations.

13.2 Live Animals. Live animals are carried at the sole risk of Merchant. Carrier shall be under no liability for any injury, illness, death, delay or destruction howsoever arising, even if it were caused or contributed to by the act, neglect or default of Carrier or by the unseaworthiness or unfitness of any Vessel, Container or other means of transportation or storage. In the event the Master or other person in charge of a Vessel, Container or other means of transportation or storage, in his or her sole discretion, considers that any animal is likely to be injurious to the health of any other animal or any person on board or to cause the Carriage to be delayed or impeded, such animal may be destroyed without any liability attaching to Carrier. Merchant shall indemnify Carrier against the cost of veterinary services and of providing forage for any period during which the Carriage is delayed for any reason whatsoever, and of complying with the regulations of any authority of any country whatsoever.

### **14. INSPECTION OF GOODS**

Carrier shall be entitled, but under no obligation, to open any Package or Container at any time and to inspect the contents. If it appears that contents or any part thereof cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measures in relation to such Package or Container or its contents or any part thereof, Carrier may abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expense to cooper the Goods, carry or to continue the Carriage or to store the Goods ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under this document. Merchant shall indemnify Carrier against any reasonable additional expense so incurred. Carrier in exercising the liberties contained in this Clause shall not be under any obligation to take any particular measures and Carrier shall not

be liable for any loss, damage or delay howsoever arising from any action or lack of action under this Clause. The authority of Carrier to inspect the Goods and/or any inspection of the Goods by Carrier does not lessen Merchant's warranties set forth in Clauses 16, 21, 22 and 24 hereunder. Carrier relies solely on Merchant not to ship any Dangerous Goods. Unless expressly agreed, Carrier has no obligation to verify or report to Merchant any information regarding the Goods, including weight, count, condition, quality or conformity with any contractual or regulatory requirements.

## **15. DESCRIPTION OF GOODS**

This document constitutes a receipt only for the external condition of the Packages or other units delivered to Carrier and the number of Packages or other units that were visible to Carrier. It does not act as a receipt for the number of Packages or items not readily and reasonably visible to Carrier at the time of delivery to Carrier.

## **16. MERCHANT'S WARRANTY AND RESPONSIBILITY**

Merchant, not Carrier, has furnished the description of the Goods and the name and address of the shipper/exporter and consignee on the face of this document. Merchant warrants that the description and the marks, numbers, quantities, weight of the Goods or their packages, and the name and address of the shipper/exporter and consignee, are accurate and that they comply with all regulations of relevant authorities, including but not limited to dangerous or hazardous cargo descriptions and advance manifests required by various authorities such as the U.S. Bureau of Customs & Border Protection ("CBP.") Merchant warrants that it will provide this information to Carrier at least seventy-two (72) hours prior to Vessel loading and acknowledges that Carrier may refuse to load any of the Goods for which the information: (i) does not comply with all such regulations of relevant authorities; or (ii) is not provided to Carrier at least seventy-two (72) hours prior to Vessel loading. Merchant agrees to indemnify Carrier for any and all costs (including, but not limited to, inspection, storage and/or delivery costs) incurred by Carrier with respect to any of the Goods that are not loaded as a consequence of: (i) Merchant's failure to provide information that complies with all such regulations of relevant authorities; (ii) Merchant's failure to provide the information to Carrier at least seventy-two (72) hours prior to Vessel loading; or (iii) the instructions of CBP, or other relevant authority (regardless of whether the information complies with applicable regulations or is furnished seventy-two (72) hours prior to Vessel loading). Merchant furthermore agrees to indemnify Carrier completely for any other damage (including any penalties, liquidated damages or other sanctions imposed by CBP or other relevant authority) caused in whole or part by any breach of this warranty and responsibility.

## **17. FREIGHT AND CHARGES**

17.1 Freight shall be payable, at Carrier's option, on any of the following bases: gross intake weight or measurement; gross discharge weight or measurement; ad valorem; per Package or lump sum; or any other applicable rate as set forth in Carrier's applicable Tariff. Freight may be calculated on the basis of the description of the Goods furnished by Merchant, but Carrier may at any time, weigh, measure and value the Goods and open Packages to examine contents in case Merchant's description is found to be erroneous and additional freight is payable. Merchant and the Goods shall be liable for any additional freight and expense incurred in examining, weighing, measuring, fumigating and valuing the Goods. If Carrier agrees to "Freight Collect" terms, and so marks this Bill of Lading, Carrier acts as agent for shipper with respect to collection of freight and charges, costs of collection are for Merchant's account, Carrier assumes no risk of collection and shipper remains obligated to pay all freight and charges if Carrier is not able to collect the same from any party upon request, without necessity of resort to legal process.

17.2 Full freight to the place of delivery named herein and all advance charges against the Goods shall be considered completely earned on receipt of the Goods by Carrier or by its Subcontractor,

whether the freight or charges be prepaid or be stated or intended to be prepaid or to be collected at port of discharge or destination or subsequently, and Carrier shall be entitled absolutely to all freight and charges, whether actually paid or not, and to receive and retain them under all circumstances whatsoever, the Goods lost or not lost, or the voyage changed, broken up, frustrated or abandoned. Full freight shall be paid whether the Goods be damaged or lost, or Packages or customary freight units be empty or partly empty. Merchant shall be responsible for all freight and costs of returning Goods to point of origin or disposition and/or destruction of Goods if Goods are refused entry or unclaimed at destination.

17.3 All freight and charges shall be paid in full and without any offset, counterclaim or deduction, in the currency named in this document or, at Carrier's option, in its equivalent in local currency at bank demand rates of exchange in New York as of the date payment of freight shall be due hereunder. Any error in freight or in charges or in the classification herein of the Goods is subject to correction, and if, on correction, the freight or charges are higher, Carrier may collect the additional amount and the expenses of determining the correct classification of the Goods, correcting the freight rate and collecting the correct freight. Payment to any forwarder, broker or other third party, other than carrier's agent, shall not be deemed payment to Carrier.

17.4 Surcharges may be imposed for increased expenses incurred by Carrier as set forth in Carrier's Tariff. Such charges include, but are not limited to, bunker adjustment factor, currency adjustment factor, peak season, port congestion or other destination surcharges, war risk insurance premium, and charges necessary to cover other expenses or general rate increases of Subcontractors.

17.5 Merchant and the Goods *in rem* shall be jointly and severally liable to Carrier for the payment of all freight, demurrage, General Average, salvage and other charges, including but not limited to court costs, expenses and reasonable attorneys' fees incurred in collecting sums due Carrier under this document or any contract preliminary hereto. Merchant agrees to pay any payment on account that is requested by a General Average Adjuster without regard to Merchant's view of Carrier's entitlement to General Average. Payment of ocean freight and charges to a freight forwarder, broker or anyone other than Carrier or its authorized agent, shall not be deemed payment to Carrier and shall be made at payer's sole risk.

## **18. LIEN, ABANDONED CARGO, CARRIER'S RIGHT TO HOLD OR SELL GOODS**

18.1 Carrier shall have a lien on the Goods, which shall survive delivery, for all freight, dead freight, demurrage, damage, loss, costs and charges, General Average contributions to whosoever due, expenses and any other sums whatsoever payable by or chargeable to or for the account of Merchant under this document and any contract preliminary hereto and any sums owed to Carrier by the person requesting delivery of the Goods on prior accounts or delivered shipments, whether or not related to the Goods or carried under a different bill of lading, and the cost and expenses of recovering the same, and may hold the Goods until all such charges and costs are fully settled, or sell the Goods privately or by public auction without notice to Merchant. If sale proceeds fail to cover the amount due and expenses incurred, Carrier may recover the deficit from Merchant.

18.2 If the Goods are unclaimed after a reasonable time not to exceed fourteen (14) days after notice of arrival, or the time set forth in any applicable warehouse receipt or bill of lading, or whenever in Carrier's opinion the Goods will become deteriorated, decayed or worthless, Carrier may, at its discretion and subject to its lien and without any responsibility attaching to Carrier, sell, abandon or otherwise dispose of such Goods solely at the risk and expense of Merchant.

## **19. RUST, CONDENSATION, ETC.**

Superficial rust, oxidation or condensation inside the Container or any like condition due to moisture is not the responsibility of Carrier, unless arising from Carrier's failure to provide a

seaworthy container and a reasonable inspection by Merchant would not have disclosed the condition. Superficial rust, oxidation, or condensation on steel or moisture on lumber constitutes good order and condition, and that no exception will be taken on this document for such conditions, unless Merchant so instructs Carrier in writing within a reasonable time before the Goods are delivered to Carrier.

## **20. METHODS AND ROUTE OF TRANSPORTATION**

The Goods will probably be carried on several modes of transportation and on several different means within each mode. Carrier may use any means, including but not limited to, one or more Vessels, trucks, trains, and airplanes, to perform the Carriage. Merchant agrees that Carrier may use any route, direct or indirect, without giving Merchant notice of such route. The Carriage may also be interrupted without notice to Merchant. Carrier may, if, in Carrier's sole discretion, circumstances justify, destroy the Goods, abandon them, or discharge the Goods at any place and declare the Goods delivered and at the risk and cost of Merchant.

## **21. DANGEROUS, HAZARDOUS OR NOXIOUS CARGO**

Goods of a flammable, explosive, corrosive, radioactive, noxious, hazardous, unstable or dangerous nature will be properly identified, packaged and otherwise prepared for transportation by Merchant. Carrier may accept or reject at its option any dangerous Goods offered for transportation. Merchant shall give Carrier proper and timely written warning that such Goods will be shipped and give Carrier instructions for the proper handling and care of such Goods. Any such Goods shipped without full disclosure in writing to Carrier as to their nature and character, may at any time be landed at any place, thrown overboard, destroyed or rendered innocuous without liability on the part of Carrier or other shippers or consignees. Even if such disclosure is made, the same disposition of such Goods is warranted if Carrier, in its sole discretion, considers that they shall be or become dangerous or noxious to the Vessel or other means of transportation or other cargo, or persons. Merchant shall indemnify Carrier for all costs, losses, damages, liabilities, fines, civil penalties and expenses (including attorneys' fees) incurred by Carrier, arising in connection with or caused in whole or in part by the Goods. Merchant agrees to so indemnify Carrier even if Merchant did not know nor had reason to know of the dangerous propensity of the Goods shipped.

## **22. REGULATIONS RELATING TO GOODS**

Merchant shall comply with all regulations or requirements of customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses or losses, whether imposed on the Goods or any Vessel or other conveyance carrying the Goods, incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient description, marking, numbering or addressing of Goods, and shall indemnify Carrier in respect thereof.

## **23. NOTIFICATION AND DELIVERY**

Carrier will notify the party identified as the notify party or the consignee on the face hereof or the attached manifest when the Goods are ready for delivery.

## **24. CARRIER'S CONTAINERS**

Merchant shall assume full responsibility for and shall indemnify Carrier against any loss of or damage to Carrier's Container(s) and other equipment which occurs while in the possession or control of Merchant, its agents or any carrier (other than Carrier) which is engaged by or on behalf of Merchant. Merchant will promptly return empty Containers to Carrier or its Subcontractor. Carrier shall in no event be liable for and Merchant shall indemnify and hold Carrier harmless from and against any loss of or damage to property of other persons or injuries to other persons caused by Carrier's container(s) or the contents thereof during handling by, or

while in the possession or control of, Merchant, its agents or any carrier (other than Carrier) which is engaged by or on behalf of Merchant.

## **25. BOTH-TO-BLAME COLLISION**

If a Vessel on which the Goods are being carried collides with another vessel as the result of the negligence or fault of both vessels, and Merchant collects payment for loss or damage to the Goods from the other vessel, and the other vessel obtains a contribution toward that damage payment from Carrier, Merchant will reimburse Carrier for that contribution.

## **26. GENERAL AVERAGE**

General Average shall be adjusted, stated and settled, according to York/Antwerp Rules, 1994, except Rule XXII thereof, at such port or place in the United States as may be selected by Carrier, and as to matters not provided for by said Rules, according to the laws and usages at a port designated by Carrier. In connection with such adjustment, disbursements in foreign currencies shall be exchanged into legal tender of the United States at the rate prevailing on the dates made and allowances for loss of or damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security as may be required by Carrier must be furnished before delivery of the Goods. Such cash deposit as Carrier may deem sufficient as additional security for the contribution of the Goods and for any salvage and special charges thereon, shall, without prejudice to the ultimate liability of the parties, be made by the Goods, the shipper or the consignee to Carrier before delivery. Merchant agrees to pay any and all requests by the General Average Adjuster for payments on account. Such deposits shall, at the option of Carrier, be payable in legal tender of the United States. In the event of accident, danger, damage, or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to Carrier's or its Subcontractor's negligence or not, for which, or for the consequence of which, Carrier is not responsible to the Goods, the shipper or the consignee by statute, contract, or otherwise, the Goods, the shipper and consignee shall contribute with Carrier in General Average to the payment of any sacrifices, losses, or expenses of a General Average nature that may be made or incurred and shall pay salvage, general and special charges incurred in respect of the Goods. If a salving ship is owned and operated by Carrier or another water carrier transporting the Goods, salvage shall be paid as fully as if such salving ship belonged to strangers. Merchant appoints Carrier to act on behalf of the Goods in any salvage proceeding, unless Merchant arranges for separate representation.

## **27. ENTIRE AGREEMENT, VARIATION OF THE CONTRACT, ETC.**

This Bill of Lading constitutes the entire agreement of the parties. No servant or agent of Carrier shall have power to terminate, waive or vary any term of this document unless such termination, waiver or variation is in writing and is specifically authorized or ratified in writing signed by Carrier. If any part of this document is rendered void by any law, the remainder of this document will remain in force.

## **28. LAW AND JURISDICTION**

This document shall be governed by the federal law of the United States, or, if federal law is not applicable, by the law of the State of New York, notwithstanding that law's choice of law rules, provided, if this Bill of Lading is held to be subject to the laws of any other jurisdiction, then except to the extent barred by or inconsistent with such laws, the terms and conditions hereof shall continue to apply. All claims or disputes or questions arising from this document, including those relating to limitation of liability, shall be determined in the United States District Court for the Southern District of New York, which shall have exclusive jurisdiction over all disputes arising from this document to the exclusion of the jurisdiction of any and all other courts. If the United States District Court for the Southern District of New York does not have subject matter

jurisdiction over the dispute, the dispute will be determined in a New York State court within the Borough of Manhattan, County of New York. All claims hereunder must be filed against Carrier care of UPS Supply Chain Solutions, 12380 Morris Road, Alpharetta, Georgia 30005, Attention: Claims Department. Service of process for suits must be served upon Carrier care of, and will be deemed served upon receipt at, Corporation Service Company CSC - Lawyers Incorporating Service, 2730 Gateway Oaks, Suite 100, Sacramento, CA 95833.

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