

Combined Transport or Port-to-Port Bill of Lading - Conditions of Carriage

1. DEFINITIONS

Whenever the term "Carrier" is used in this Bill of Lading it shall be deemed to be NYK CoolCell.

"Goods" means the cargo accepted from the Shipper and includes any Container not supplied by or on behalf of the Carrier.

"Performing Carrier" means anyone contracted to physically handle the Goods in accordance with Clause 3, below.

"Package" as used in Clause 6, below, includes any container sealed by the Shipper.

"Container" includes any Container (including an open top container), flat rack, platform, trailer, transportable tank, pallet or any other device used for the transport of Goods. "Merchant" includes the Consignor, Shipper, Holder, 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 this Bill of Lading and anyone acting on behalf of any such persons.

"Holder" means any person for the time being in possession of this Bill of Lading to whom the property in the Goods has passed on or by reason of the assignment of the Goods or the endorsement of this Bill of Lading or otherwise.

"The Internal Law of a State" shall be deemed to exclude all principles of private international law applied by such State.

2. CARRIER'S TARIFF

The terms of the Carrier's applicable Tariff are incorporated herein. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier upon request. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

3. SUB-CONTRACTING

3.1 The Carrier shall be entitled to sub-contract on any terms the whole or any part of the carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by the Carrier in relation to the Goods.

3.2 The Merchant undertakes that no claim or allegation shall be made against any servant, agent, stevedore or sub-contractor of the Carrier which imposes or attempts to impose upon any of them or any vessel owned or chartered by any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent, stevedore and sub-contractor shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit, and all limitations of and exonerations from liability provided to the Carrier by law and by the terms hereof shall be available to them, and, in entering into this contract the Carrier, to the extent of those provisions, does so not only in its own behalf, but also as agent and trustee for such servants, agents, stevedores and sub-contractors.

3.3 The expression "sub-contractor" in this clause shall include direct and indirect sub-contractors and their respective servants and agents.

4. DELIVERY OF CARGO BEYOND PORT OF DISCHARGE OR PLACE OF DELIVERY

In the event that Consignees/Receivers of cargo require the Carrier to deliver cargo at a port or place beyond the place of delivery originally designated in this Bill of Lading and the Carrier in its absolute discretion agrees to such further carriage, such further carriage will be undertaken on the basis that the Bill of Lading terms and conditions are to apply to such carriage as if the ultimate destination agreed with Consignees/Receivers had been included in the description of the transport on the reverse side of this Bill of Lading.

5. CARRIER'S RESPONSIBILITY

5.1 The Carrier undertakes responsibility from the place of receipt or port of loading to the port of discharge or place of delivery as set out below.

5.2 *Combined Transport.* If the Place of Receipt and/or the Place of Delivery box(es) are filled in on the reverse side hereof, the Carrier shall be responsible for the entire Combined Transport, including inland segments of carriage. If loss or damage to goods has occurred during carriage by water, or if it cannot be established where the loss or damage occurred, the liability of the Carrier shall be determined in accordance with 5.3 (a) and (b), below. If the goods are lost or damaged while otherwise in the custody of a Performing Carrier, the liability of the Carrier, including any limitation, shall be determined in accordance with the Performing Carrier's general conditions and/or tariffs, or in the absence of such conditions or tariffs, in accordance with the internal law of the state where the loss or damage occurred.

5.3 *Port-to-Port Transport.* If neither the Place of Receipt nor the Place of Delivery box is filled in on the reverse side hereof, this is a Bill of Lading for Port-to-Port Transport, and the liability of the Carrier shall be determined as follows:

(a) If the carriage is to or from the United States of America, the carriage of goods by Sea Act, 1936 (COGSA) shall be paramount and apply to the exclusion of any foreign law or convention. COGSA shall also apply before and after discharge while the goods remain in the custody of the Carrier.

(b) For carriage in all other trades, the International convention for the unification of certain Rules of Law relating to Bills of Lading, signed at Brussels on August 25, 1924, excluding Article IX (The Hague Rules), shall apply except when the protocol to amend the same convention, signed at Brussels on February 23, 1968 (The Hague-Visby Rules) are compulsorily applicable at the port of loading in which case those rules shall apply.

(c) If the goods are damaged before loading and/or after discharge, the Carrier shall not be liable for any damage whatsoever, unless caused by the personal negligence of the Carrier.

5.4 In no event shall the liability of the Carrier exceed the amount of compensation payable under Clause 6.

6. THE AMOUNT OF COMPENSATION

6.1 For shipments to or from ports in the United States of America neither the Carrier nor the Ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of Goods in an amount exceeding \$500.00 lawful money of the United States of America per package of Goods actually lost or damaged, or in case of Goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency.

6.2 In all other trades where the Hague Rules apply the Carrier's maximum liability shall in no event exceed £100.00 lawful money of the United Kingdom per package or unit of Goods actually lost or damaged.

6.3 The Shipper may against a special surcharge declare the nature and value of the Goods and the value of the cargo and declaration inserted on the face of this Bill of Lading. In that case, and if the surcharge has actually been paid, the Carrier's maximum liability will, notwithstanding the provisions in 6.1 and 6.2 above, be the value so declared. If the actual value of the Goods per package or customary freight unit exceeds such declared value, the value shall nevertheless be deemed to be declared value. In no event shall the Carrier be liable for more than the actual value of the Goods.

7. VALUATION OF GOODS

7.1 Subject always to the Carrier's right to limit liability as provided for herein, if the Carrier is liable to pay compensation in respect of loss of or damage to the Goods, such compensation shall be calculated by reference to the FOB or FCA price (as applicable) of the Goods plus freight and insurance if paid.

7.2 If the FOB or FCA price of the Goods cannot be established, the compensation shall be calculated by reference to the value of such Goods at the place and time they are delivered or should have been delivered to the Merchant. The value of the Goods shall be fixed according to the current market price, by reference to the normal value of goods of the same kind and quality.

8. GENERAL

8.1 The Carrier does not undertake that the Goods shall arrive at port of discharge or the place of delivery at any particular time or to meet any particular market or use and the Carrier shall in no circumstances be liable for any direct, indirect or consequential loss or damage caused by delay. If the Carrier should nevertheless be held legally liable for any such direct or indirect or consequential loss or damage caused by delay, such liability shall in no event exceed the freight paid for the transport covered by this Bill of Lading.

8.2 Save as is otherwise provided herein, the Carrier shall in no circumstances be liable for direct indirect or consequential loss or damage arising from any cause.

8.3 The terms of this Bill of Lading shall govern the responsibility of the Carrier in connection with or arising out of the supplying of a Container to the Merchant whether before or after the Goods are received by the Carrier for transportation or delivered to the Merchant.

9. NOTICE OF LOSS, TIME BAR

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agents at the port of discharge or the place of delivery as the case may be before or at the time of removal of the Goods into the custody of the Merchant such removal shall be prima facie evidence of the delivery by the Carrier of the Goods as described in this Bill of Lading. If the loss or damage is not apparent, then notice must be given within three days of the delivery in any case, or within one year after delivery of the Goods or the date when the Goods should have been delivered.

10. SHIPPER-PACKED CONTAINERS

10.1 If a container has not been stuffed by the Carrier, this Bill of Lading shall be a receipt only for the Container and the Carrier shall not be liable for loss of or damage to the contents and the Merchant shall indemnify the Carrier against any injury, loss, damage, liability or expense incurred by the Carrier if such injury, loss, damage, liability or expense has been caused by:

(a) the manner in which the Container has been filled, packed, stuffed or loaded;

(b) unsuitability of the contents for carriage in Containers; or (c) unsuitability or defective condition of the Container that would have been apparent upon reasonable inspection by the Merchant at or prior to the time the Container was filled, packed, stuffed or loaded.

10.2 The Shipper shall inspect the Container before stuffing it and the use of the Container shall be prima facie evidence of it being sound and suitable for use.

11. INSPECTION OF GOODS

11.1 The Carrier shall be entitled, but under no obligation, to open any Package or Container at any time and to inspect the contents. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried or carried further, either at all or with any additional expense or taking any measures in relation to such Package or Container or its contents or any part thereof, the Carrier may abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue the carriage or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any reasonable additional expense so incurred.

11.2 The Carrier in exercising the liberties contained in this clause shall not be under any obligation to take any particular measures and the Carrier shall not be liable for any loss, damage or delay howsoever arising from any action or lack of action under this clause.

12. SHIPPER'S RESPONSIBILITY

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

12.2 The Shipper shall indemnify the Carrier against all loss, damage or expenses arising or resulting from inaccuracies or inadequacy of such particulars.

12.3 The Shipper shall furthermore be liable to the Carrier for injury and all damage and all consequences thereof that the Goods may cause to the vessel or other means of transportation, or to any other object or person whatsoever.

13. FREIGHT AND CHARGES

13.1 Full freight hereunder shall be due and payable by the Shipper in cash without deduction on receipt of the Goods or part thereof by the Carrier for shipment and shall be deemed to have been fully earned upon such receipt of Goods. All charges due hereunder together with freight shall be due from and payable by the Shipper, Consignee or Owner of the Goods or Holder of this Bill of Lading (all of whom shall thus be jointly and severally liable to the Carrier) on demand at such port or place as the Carrier may require, vessel or other means of transportation or cargo lost or not lost from any cause whatsoever.

13.2 The freight stated herein to be paid or payable has been ascertained and is based on the particulars of the Goods furnished by the Shipper to the Carrier. The Carrier shall be entitled at any time to open and re-classify or re-weight or re-measure or re-value any Goods, and freight shall be paid on the proper classification or the excess weight or measurement or value.

13.3 The Merchant's attention is drawn to the stipulations concerning currency in which the freight and charges are to be paid, rate of exchange, devaluation and other contingencies relative to freight and charges in the applicable Tariff.

14. LIEN

14.1 The Carrier shall have a lien on the Goods and any documents relating thereto for:

(a) all freight, demurrage, general average contributions, and any of the sums whatsoever payable by the Merchant under this or any other contract, and the cost of recovering the same; and

(b) all expenses and charges incurred in proceeding or caring for the Goods, whether they be damaged or not, and for any payment or liability of whatsoever nature including by the Carrier in connection with the Goods, including legal fees incurred through attachments or interpleader or other proceedings in respect to the Goods.

14.2 The Carrier may enforce its lien by all available means including public and private sale, with or without notice to the Merchant. The net proceeds in any such sale, after first deducting all costs and expenses in executing the lien, shall be applied towards settlement of amounts due the Carrier. If the proceeds of such sales fail to cover the amount due of the cost and expenses incurred, the Carrier shall be entitled to recover the deficit from the Merchant.

15. DECK STORAGE AND LIVESTOCK

15.1 The Carrier shall have the right to stow break bulk

cargo in containers and to carry such containers, as well as Yachts and heavy vehicles on deck.

15.2 Goods whether stowed in Containers or not, may be carried on deck or under deck without notice to the Merchant unless on the face hereof it is specifically stipulated that the Containers or Goods will be carried under deck, and 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. Such Goods (other than livestock) whether carried on or under deck and whether or not stated to be carried on deck shall participate in general average and shall be deemed to be within the definition of Goods for the purpose of the Carriage of Goods by Sea Act 1936 of the United States of America (COGSA) or similar provisions of any other Act or Convention which may be applicable.

15.3 Goods (not being Goods stowed in Containers other than flats or pallets) which are stowed herein to be 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 whether caused by unseaworthiness or negligence or any other cause whatsoever.

16. METHODS AND ROUTES OF TRANSPORTATION

16.1 The Carrier may at any time and without notice to the Merchant:

(a) use any means of transport or storage whatsoever; (b) transfer the Goods from one conveyance to another including transhipping or carrying the same on another vessel than the vessel named overleaf or on any other means of transport whatsoever even though transhipment or forwarding of the Goods may not have been contemplated or provided for herein; (c) sail without pilots, proceed via any route, proceed to, return to and stay at any port or place whatsoever (including the port of loading herein provided) in any order in or out of the order of the contract or direction to or beyond the port of discharge once or often for bunkering or loading or discharging cargo or embarking or disembarking any person(s) whether in connection with the present or subsequent voyage or any other purpose whatsoever, and before giving delivery of the Goods at the port of discharge or the place of delivery herein provided and with liberties as aforesaid leave and then return to and discharge the Goods at such port, low or be towed, make trial trips, attend compasses, or repair or fix-dock, with or without cargo onboard;

(d) load and unload the Goods at any port or place (whether or not any such port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such port or place;

(e) comply with any orders or recommendations given by any government or authority and any body and any authority or agent 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 of directions.

16.2 Anything done or not done in accordance with 16.1 or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.

17. MATTERS AFFECTING PERFORMANCE

17.1 If at any time the performance of the contract evidenced by this Bill of Lading is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind which cannot be avoided by the exercise of reasonable endeavours, the Carrier (whether or not the transport has commenced) may without notice to the Merchant treat the performance of this contract as terminated and place the Goods or any part of them at the Merchant's disposal at any port or place whatsoever which the Carrier or Master considers safe, and advisable in the circumstances, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full freight and charges on Goods received for transportation, and the Merchant shall pay any additional costs of carriage to and delivery and storage at such port or place.

17.2 The circumstances referred to in 17.1 shall include, but shall not be limited to, those caused by the existence or apprehension of war declared or undeclared, hostilities, warfare or belligerent acts or operations, riots, civil commotions or other disturbances, closure of, obstacles in or danger to any canal, blockade of port of place or interdiction or prohibition of or restriction on commerce or trading; quarantine, sanitary regulations or restrictions; strikes, lockouts or other labour troubles whether partial or general and whether or not involving employees of the Carrier or his sub-contractors; congestion of port, wharf, sea terminal or any other place; shortage, absence or obstacles of labour or facilities for loading, discharge, delivery or other handling of the Goods; epidemics or diseases; bad weather, shallow water, ice, landside or other obstacle in navigation or haulage.

18. PERISHABLE CARGO

18.1 Goods of a perishable nature shall be carried in bulk or in ordinary Containers without special protection, services or other measures unless it is noted on the reverse side of this Bill of Lading that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specially equipped hold or Container or are to receive special attention in any way.

18.2 The Merchant undertakes not to tender for export any goods which require refrigeration without giving the Carrier before shipment written notice of their nature and desired carrying temperature. It is understood that it is impossible to maintain exact temperature continuously and that the Carrier shall exercise due diligence to carry goods at plus or minus 2°C of the designated carrying temperature.

18.3 In case of refrigerated Containers packed by or on behalf of the Merchant, the Merchant undertakes that the Goods have been properly stowed in the Container and that the thermostatic controls have been adequately set by him before receipt of the Goods by the Carrier. The Merchant's attention is drawn to the fact that refrigerated Containers are not designed to freeze down cargo which has not been presented for stuffing at or below its designated carrying temperature and the Carrier shall not be responsible for the consequences of cargo presented at a higher temperature than that required for transportation.

18.4 If the above requirements are not complied with, the Carrier shall not be liable for any loss of or damage to the Goods howsoever arising.

19. DANGEROUS GOODS

19.1 The Merchant undertakes not to tender for transportation any Goods of a dangerous, inflammable, radioactive or damaging nature without previously giving written notice of their nature to the Carrier and marking the Goods and the Containers or other packaging with the markings required by any laws or regulations which may be applicable during the carriage. The Carrier or the Master may however, in its absolute discretion reject any such cargo.

19.2 If the requirements of 19.1 are not complied with or if the Goods which were tendered in compliance with 19.1 shall become a danger to the vessel, cargo or any other property or person, such Goods may be unloaded, destroyed or rendered harmless without compensation and the Merchant shall indemnify the Carrier against all loss, damage or expense which the Carrier could not avoid by the exercise of reasonable diligence but incurred as a result of the carriage of such Goods.

20. REGULATIONS RELATING TO GOODS

The 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 incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods; and indemnify the Carrier in respect thereof.

21. NOTIFICATION AND DELIVERY

21.1 Any mention in this Bill of Lading 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.

21.2 The Merchant shall take delivery of the Goods immediately upon discharge or arrival (as applicable), or within the time provided for in the Carrier's applicable Tariff, as the case may be.

21.3 If the Merchant fails to take delivery of the Goods or part of them in accordance with this Bill of Lading, the Carrier may without notice unstuff the Goods or that part thereof and/or store the Goods or that part thereof ashore, afloat, in the open or under cover. Such storage shall constitute due delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the Goods or that part thereof shall cease.

21.4 The Merchant's attention is drawn to the stipulations concerning free storage time and demurrage contained in the Carrier's applicable Tariff, which is incorporated in this Bill of Lading.

21.5 The Carrier may in its absolute discretion receive the Goods as Full Container Load and deliver them as less than Full Container Load and/or as break bulk cargo and/or deliver of the Goods to more than one receiver. In such event, the Carrier shall not be liable for any shortage, loss, damage or discrepancies of the Goods, which are found upon unpacking of the Container.

21.6 If the Goods are unclaimed during a reasonable time, or whenever in the Carrier's opinion the Goods will become deteriorated or decayed or worthless, the Carrier may at his discretion and subject to his lien and without any responsibility attaching to him, sell, abandon or otherwise dispose of the Goods at the sole risk and expense of the Merchant.

21.7 Unless otherwise specifically agreed and always subject to the restrictions in clause 8.1 hereof, the time for delivery of the goods shall be six months from the date of shipment.

22. DEFENCES AND LIMITS FOR THE CARRIER

22.1 The defences and limits of liability provided for in this Bill of Lading shall apply to the Carrier whether the loss of or damage to the Goods whether the action be founded in contract or in tort.

22.2 The liability of the Carrier may, notwithstanding anything in this Bill of Lading that may be construed to the contrary, be limited pursuant to law or convention relating to maritime claims, including but not limited to the International convention on limitation of liability for maritime claims signed at London on November 19, 1967 and any subsequent amendments thereto, and for the purposes of which the Merchant for the avoidance of any doubt agrees that the Carrier qualifies as a person entitled to limit liability.

23. DESCRIPTION OF THE GOODS

23.1 This Bill of Lading shall be prima facie evidence of the receipt by the Carrier in apparent good order and condition except as otherwise noted of the total number of Containers or packages or units enumerated overleaf.

23.2 No representation is made by the Carrier as to weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars. The Merchant's attention is drawn to the fact that this Bill of Lading thus in no way contains any statements as to the internal condition of the Goods at the time they were received by the Carrier.

24. BOTH-TO-BLAME COLLISION CLAUSE

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

25. GENERAL AVERAGE

25.1 General average shall be adjusted at any port or place in the option of the Carrier in accordance with the York-Antwerp Rules 1994, this covering all Goods, whether carried on or under deck.

25.2 If the Carrier delivers the Goods without obtaining security for general average contributions, the Merchant, by taking delivery of the Goods, undertakes personal responsibility to pay such contributions and to provide a cash deposit or other security for the estimated amount of such contribution as the Carrier shall reasonably require.

26. NEW JASON CLAUSE

26.1 In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Carrier is not responsible, by statute, contract or otherwise, the Goods and the Merchant shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Goods.

26.2 If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving ship belonged to strangers.

27. VARIATION OF THE CONTRACT ETC.

No servant or agent of the Carrier shall have power to waive or vary any terms of this Bill of Lading unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

28. ARBITRATION CLAUSE

Any dispute arising out of or relating to this Bill of Lading shall exclusively be referred to Arbitration in London before a panel of three Arbitrators, one Arbitrator to be nominated by the Carrier and the other by the Merchant, and a third by the two so nominated. The procedure and timetable for the appointment of the Arbitrators shall be that set out at section 16(3) and section 17 of the Arbitration Act 1996. The said Arbitration shall be conducted in accordance with the Arbitration Act 1996 or any subsequent statutory modification or re-enactment and in accordance with the London Maritime Arbitrators' Association terms current at the time when the Arbitration proceedings are commenced. The proper and exclusive law of this Bill of Lading shall be English law.