

## Magic Transport Inc. Bill of Lading Term and Conditions

### 1. DEFINITIONS

- a) "Carriage" means the whole or any part of the carriage, loading, unloading, storing, warehousing, handling, and any and all other services whatsoever undertaken by the Carrier in relation to the Goods;
- b) "Carrier" means Magic Transport, Inc., the Carrier named on the face side of the bill of lading, the vessel, her owner, Master, operator, demise charterer, and if bound hereby, the time charterer, and any substitute Carrier whether the owner, operator, charterer or Master shall be acting as carrier or bailee;
- c) "Charges" means and includes freight and all expenses and money obligations incurred and payable by the Merchant;
- d) "COGSA" means the US Carriage of Goods by Sea Act of 1936;
- e) "Container" means and includes any container, van, trailer, transportable tank, flat pallet, rail car, chassis, rolling equipment, and any other equipment used to consolidate and/or transport cargo;
- f) "Freight" includes all charges payable to the Carrier in accordance with this Bill of Lading and the applicable Tariff;
- g) "Goods" means and includes the cargo received from the shipper and described on the face side hereof and any Container not supplied by or on behalf of the Carrier;
- h) "Holder" means any Person for the time being in possession of this bill of lading to or in whom rights of suit and/or liability under this bill of lading have been transferred or vested;
- i) "Intermodal Service" – means a combined service pursuant to an applicable tariff involving ocean transportation by Carrier and air, land, water or ocean transportation by a Participating Carrier;
- j) "Merchant" means and includes the shipper, the consignee, the receiver, the holder of this bill of lading, the owner of the Goods or person entitled to the possession of the Goods or the person on whose account the Goods are shipped and the servants or agents acting on behalf of any of these including, but not limited to, freight forwarders, and their principals, all of whom shall be jointly and severally liable to the Carrier for the payment of all Charges, and for the performance of the obligations of any of them under this bill of lading;
- k) "Package" is the largest individual unit, irrespective of size, shape or weight, of partially or completely covered or contained cargo made up by or for the Shipper which is delivered and entrusted to Carrier, including palletized units and each container stuffed and sealed by the Shipper or on its behalf, although the Shipper may have furnished a description of the contents of such sealed container on this bill of lading;
- l) "Participating Carrier" means and shall include any other water, land or air carrier performing any stage of the international and/or domestic Carriage;
- m) "Person" means and includes an individual, corporation, partnership or other entity as the case may be;
- n) "Servants or Agents" includes agents, representatives, employees, owners, Master, vessel crew members, charterers, operators of vessels, stevedores, terminal operators, crane operators, road and rail transport operators, warehousemen and any independent contractors employed by the Carrier or Participating Carrier performing the Carriage or whose services or equipment have been used for the Carriage and any direct or indirect Subcontractors, servants and agents thereof whether in direct contractual privity or not;
- o) "Terms and Conditions" means all terms, rights, defenses, provisions, conditions, exceptions, limitations, and liberties hereof;
- p) "Vessel" means and includes the ocean vessel on which the Goods are shipped, named on the face hereof, or any substitute vessel, also any feeder ship, ferry, barge, lighter or any other watercraft used by the Carrier in the performance of this contract;

**2. CLAUSE PARAMOUNT:** This Bill Of lading is subject to the provisions of COGSA, 46 U.S.C. § 30701 et seq., which are incorporated herein. The rights, defenses and limitations of said Act shall apply to the goods whether carried on or under deck; whether the carriage of goods is in U.S. foreign trade, between United States ports, or between non United States ports; before the goods are loaded on and/or after goods are discharged from the Vessel, and throughout the entire time the goods are in the custody or are the responsibility of the Carrier, whether acting as ocean Carrier, motor Carrier, warehouse, or any other capacity related to the transportation of the Goods.

Carrier shall be entitled to the full benefits of all rights and immunities and all limitations of, and exemptions from, liability provided in or authorized by 46 U.S.C. Chapters 305 and 307. Carrier shall also be entitled to the full benefit of all rights and immunities and all limitations of or exemptions from liability contained in any law of the United States or any other country or place whose laws shall be applicable. This Bill of Lading shall not be deemed to give rise to a personal contract of carriage.

**3. CARRIER'S TARIFF:** The goods carried hereunder are subject to all the terms and provisions of the Carrier's applicable Tariff or Tariffs, and the terms and provisions of the said Tariff or Tariffs are hereby incorporated herein as part of the Terms and Conditions of this Bill of Lading. Copies of such provision are obtainable from the Carrier or his agents upon request, at [www.magictransport.com](http://www.magictransport.com), or, where applicable, from a government body with whom the Tariff has been filed. Attention is drawn to the terms therein relating to free storage time and to container and vehicle demurrage or detention. When the provisions of Section 46 CFR Part 532 are invoked, rates are unpublished and the Carrier's Rules Tariff, which is also found at [www.magictransport.com](http://www.magictransport.com) or upon request, applies. In the event of any conflict between the terms and provisions of such Tariff or Tariffs and the Terms and Conditions of this Bill of Lading, this Bill of Lading shall prevail. It shall be solely the responsibility of Shipper to review and comply with such tariff or tariffs.

**4. HIMALAYA CLAUSE:** The Merchant hereby agrees that no Servants or Agents are, or shall be deemed to be liable with respect to loss, damage or delay of the Goods or the Carriage as Carrier, bailee or otherwise. If, however, it shall be adjudged that any Servants or Agents are a carrier or bailee of the Goods or under any responsibility with respect thereto, all exemptions and limitations of and exoneration from liability provided by law, tariff, or by the Terms and Conditions including the jurisdiction clause shall be available to such Servant or Agent. If any claim is made against any of the Servants or Agents, the Merchant shall indemnify the Carrier against all consequences thereof. In contracting for the foregoing exemptions, limitations and exonerations from liability, the Carrier is acting as agent and trustee for and on behalf of all Servants or Agents, all of whom shall to this extent be deemed to be a party to this contract evidenced by this Bill of Lading, it being always understood that the said beneficiaries are not entitled to any greater or further exemptions, limitations or exonerations from liability, than those that the Carrier has under this Bill of Lading in any given situation.

**5. CARRIER'S LIABILITY:** Subject to all rights, privileges and limitations of and exonerations from liability granted to Carrier under this Bill of Lading, tariff, or by law, any liability by the respective participating carriers for loss or damage to the goods or packages carried hereunder shall be governed by the following:

**(a)** If loss or damage occurs while the goods or packages are in the custody of the Carrier in this Bill of Lading, only the Carrier shall be responsible therefore, and any liability of the Carrier shall be determined by the Terms and Conditions of this Bill of Lading, the applicable tariff and any law compulsorily applicable;

**(b)** If loss or damage occurs while the Goods or packages are in the custody of a Participating domestic or foreign Carrier, only the Participating domestic or foreign Carrier(s) shall be responsible therefore, and any liability of such Participating domestic or foreign Carrier(s) shall be determined, in respective order, by the terms, conditions and provisions of the applicable Participating domestic or foreign Carrier's Bill(s) of Lading, whether issued or not, tariff(s) and law compulsorily applicable in the circumstances.

**(c)** If this Bill of Lading is issued for an Intermodal Service, the connecting air, land or water Participating Carrier's contract of carriage or Bill of Lading lawfully in effect, together with the rules and tariffs and classifications of such connecting carrier and applicable rules and regulations of government agencies with jurisdiction over such carriage, shall govern and control the possession and carriage of the goods by such carrier. For loss or damage occurring while the Goods are in a Participating Carrier's custody, only the Participating Carrier shall be responsible;

**(d)** If loss or damage occurs after receipt of the Goods or packages hereunder, and it cannot be determined from the records of the Carrier or Participating domestic or foreign Carriers whether such damage or loss occurred during ocean, air, inland, domestic or foreign carriage, it shall be presumed that the loss or damage occurred while the Goods or packages were in the custody of the Carrier;

**(e)** In making any arrangements for transportation of the Goods or packages carried hereunder by domestic or foreign Participating Carriers, either before or after ocean carriage, it is understood and agreed that the Carrier acts solely as agent of the Merchant, without any other responsibility

whatsoever, and it assumes no responsibility as Carrier for such domestic or foreign transportation;  
(f) The Carrier does not undertake that the Goods or any documents relating thereto shall arrive or be available at any point or place at any stage during the Carriage or at any particular time or to meet any particular requirement of any license, permission, sale contract, or credit of the Merchant or any market or use of the Goods and the Carrier shall under no circumstances whatsoever and howsoever arising 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 such alleged delay, such liability shall in no event exceed the Freight paid for the Carriage;

(g) Save as is otherwise provided herein, the Carrier shall under no circumstances be liable for direct or indirect or consequential loss or damage arising from any other cause whatsoever or for loss of profits.

**6. NOTICE OF LOSS (TIME BAR):** Unless notice of loss, damage, delay or misdelivery be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the Goods into the custody of the person entitled to delivery thereof under the contract of Carriage, or, if the loss or damage is not apparent within three (3) days, such removal shall be *prima facie* evidence of the delivery of the Carrier as described in the Bill of Lading. The notice must clearly specify and describe the damage. In any event, the Carrier shall be discharged from all liability whatsoever in respect of the Goods unless suit is brought within one (1) year after their delivery or the date when they should have been delivered. Suit shall not be deemed brought unless jurisdiction shall have been obtained over the Carrier and/or the vessel by service of process or by an agreement to appear.

**7. CONTRACTING PARTIES & WARRANTY:** The contract evidenced by this Bill of Lading is between the Carrier and the Merchant. Every Person defined as "Merchant" is jointly and severally liable towards the Carrier for all the various undertakings, responsibilities and liabilities of the Merchant under or in connection with this Bill of Lading and to pay the Freight and Chargers due under it without deduction or set-off. The Merchant warrants that in agreeing to the Terms and Conditions hereof, he is, or has the authority of the person owning or entitled to the possession of the Goods and/or this Bill of Lading.

**8. SUBCONTRACTING BY CARRIER:**

(a) 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.

(b) As to through transportation, the Carrier undertakes to procure such services as necessary and shall have the right at its sole discretion to contact any mode of land, sea or air transportation and to arrange participation by other Participating Carriers to accomplish the combined transport from place of receipt to place of delivery. Whenever any stage of the combined transport is accomplished by any land or air Carrier or any other water Carrier, each such stage shall be controlled according to any law compulsorily applicable to such stage and according to the contracts, rules and tariffs of each participating Carrier, the same as if such contracts, rules and tariffs were fully set forth herein.

**9. INSPECTION OF GOODS:** The Carrier shall be entitled but under no obligation to open and/or scan any Container or Package at any time and to inspect the contents unless applicable law prohibits it. Any exercise of this right shall be without liability or responsibility on the part of the Carrier. If it thereupon appears that the 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 the Container or Package 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.

**10. ONDECK CARRIAGE.** At Carrier's option all Goods accepted under this Bill of Lading may be containerized and may be carried either under deck or on deck without notice to Merchant, notwithstanding any contrary custom or practice of the trade, and when so stowed shall be deemed for all purposes to be stowed under deck, and carriage of such good shall be governed by the terms

of this Bill of Lading and COGSA, notwithstanding Section 1(c) thereof. Merchant shall bear all risk of loss or damage by perils inherent in or incident to such carriage. Carrier's custody and carriage of such Goods shall be governed by the terms of this Bill of Lading, and the Goods shall participate in general average.

If goods are stowed on deck and not in containers, all risks of loss or damage by perils inherent in or incident to such carriage shall be borne by Merchant but in all other respects the custody and carriage of such goods shall be governed by the terms of this Bill of Lading and COGSA, notwithstanding Section 1(c).

Deck cargo (except goods carried in containers on deck) and live animals are received and carried solely at Merchant's risk (including injury or death of animals) and the Carrier shall not in any event be liable for any loss or damage therein arising or resulting from any matters mentioned in 46 USCS § 30706, of COGSA or from any other cause whatsoever not due to the fault of the Carriers and the burden of proving liability being in all respects upon the Merchant. Except as provided above, such shipments shall be deemed Goods and shall be subject to all forms and provisions of this Bill of Lading and applicable Tariff relating to Goods.

#### **11. CONTAINERS.**

**a)** Goods may be stuffed in containers by the Carrier, also with other goods not represented by the same Bill of Lading;

**b)** If a container has not been stuffed by the Carrier, this Bill of Lading shall be evidence of Carrier's receipt only of the number of Containers shown on the front of the Bill of Lading, not of any contents particularized or described by Merchant. The words "Clean on Board" and other words of similar import shall not be construed as a representation by Carrier concerning the quality, quantity, or condition of the Goods. Unless this Bill of Lading specifies special arrangements between Carrier and Merchant and Merchant's payment of all required freight, Carrier will treat all Containers, including without limitation refrigerated, heated, insulated, ventilated, and other special Containers, as dry Containers.

**c)** In no event will Carrier accept responsibility for function or condition of Containers supplied or packed by or on behalf of Merchant. Carrier shall not be responsible for safe and proper stowage of Goods in Containers not packed by Carrier and shall not be liable for loss or damage caused by shifting, overloading, or failure to label, chock, lash, block, brace, or pack Goods properly in a Container. Merchant shall inspect, clean, and properly seal each Container packed by Merchant or Merchant's agents. If a container has not been stuffed by the Carrier, the Merchant shall indemnify the Carrier against any injury, loss, damage, liability, delay or expense incurred by the Carrier if caused by: (1) the manner in which the container has been filled, packed, or stuffed; (2) the unsuitability of the contents for the carriage in container; (3) the unsuitability or defective condition of the container which would have been apparent to the Merchant upon reasonable inspection or prior to the time of filing, packing, or stuffing. Such loss, damage, expense, liability or delay shall constitute a lien on the Goods.

**d)** If Carrier supplies Containers, Merchant's acceptance and packing shall be *prima facie* evidence that the Containers were sound, clean, and suitable for use and shall relieve Carrier of responsibility for damage resulting from the condition of the Containers. Carrier's delivery of a Container with Merchant's seals intact shall be deemed complete and proper performance of Carrier's obligation under this Bill of Lading.

**e)** Carrier shall not be liable for any loss, damage, or expense arising or resulting from breaking of seals by customs or other governmental authorities or other authorized entities to inspect contents of Containers. Merchant shall be liable to and shall defend and indemnify Carrier against personal injury and property damage, including but not limited to repair or replacement of Containers and other equipment, caused by improper stowage of Goods in Containers packed by Merchant or Merchant's agents or arising out of Merchant's use of Containers and other equipment.

**12. REFRIGERATED CONTAINERS:** Special containers with heating or refrigeration units will not be furnished unless contracted for expressly in writing at time of booking and, when furnished, may entail an increased freight rate or charge. Merchant shall advise Carrier of desired temperature range when delivering Goods to Carrier, and Carrier shall exercise due diligence to maintain the temperature within a reasonable range while the containers are in its custody or control. The Carrier does not, however, accept any responsibility for the functioning of heated or refrigerated containers not owned, operated, or leased by Carrier.

**13. SCOPE, METHODS AND ROUTES OF CARRIAGE; LIBERTIES:** The Carrier may at any time and without notice to the Merchant:

- a) use any means of transport or storage whatsoever;
- b) call or sail from customary or advertised ports whether named in this Bill of Lading or not, also ports in or out of the advertised, geographical or usual route or order even though in proceeding thereto the vessel may sail beyond the port of discharge named herein or in a direction contrary thereto or return to the original port, or depart from the direct or customary route and includes all canals, straits, and other waters;
- c) proceed or return directly or indirectly to any port or place, call at any port for purposes of the current voyage or a prior or subsequent voyage, omit calling at any scheduled port or ports, and call at the same port more than once;
- d) before, during, or after loading the Goods, adjust compasses, dry-dock with or without Goods onboard, go on ways or to repair yards, shift berths, make trial trips or tests, take fuel or stores in any quantity at Carrier's discretion, remain in port, sail with or without pilots, tow and be towed, and assist vessels in distress to save or attempt to save lives or property;
- d) carry contraband, explosives, munitions, warlike stores, hazardous cargo, and sail armed or unarmed, and with or without convoy;
- f) change sailing schedules without notice as to both the sailing date and date of arrival;
- g) carry the Goods in a single shipment or in several shipments by vessel or other means of transport to accomplish the carriage;
- h) substitute another vessel for the named Vessel at any time prior to or during the contracted carriage and may subcontract on any terms all or part of the contracted carriage, including but not limited to loading, unloading, storing, warehousing, handling, and transporting Goods;
- i) for through and Intermodal Transport, procure necessary services and, in its sole discretion, may select any mode of land, sea, or air transport and arrange with Participating Carriers to perform all or part of the contracted carriage, including Intermodal Transport. In contracting with Participating Carriers, Carrier act solely as Merchant's agent and assumes no responsibility for such carriage.

The liberties set out in this clause may be invoked by the Carrier for any purpose whatsoever whether or not connected with the Carriage of the Goods, including but not limited to loading or unloading other goods, bunkering or embarking or disembarking any person(s), undergoing repairs and/or dry docking, towing or being towed, assisting other vessels, making trial trips and adjusting instruments. Anything done or not done by the Carrier in accordance with this clause or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation.

If this is a Through Bill of Lading, no Carrier is bound to transport the shipment by any particular train, truck, aircraft, vessel or other means of conveyance, or in time for any particular market or otherwise. The Carrier does not promise or undertake to load, carry or discharge the Goods on or by any particular Vessel, date or time. No Carrier or Participating Carrier shall be liable for delay and any Carrier shall have the right to forward the goods by substitute Carrier. Carrier makes no warranties as to the time of delivery of the Goods or delivery of the Goods for any particular use or market. If Merchant does not claim Goods within fifteen (15) days after discharge from the Vessel, or Carrier determines in its sole discretion that Goods will deteriorate, decay, or decline in value, Carrier may sell, abandon, or otherwise dispose of such Goods at Shipper's and the Goods' sole risk and expense.

**14. SPECIAL CIRCUMSTANCES:** 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, seizure, damage, loss, or disadvantage of whatsoever kind which cannot be avoided by the exercise of reasonable endeavors, the Carrier (whether or not the Carriage 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 place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. Goods discharged from the Vessel under this Clause shall be at Merchant's risk and expense, and Merchant shall pay all charges incurred, including but without limitation to any additional costs of carriage to and delivery and storage at such places or ports. Discharge of Goods under this Clause shall constitute complete delivery and performance pursuant to this Bill of Lading, and Carrier shall have no further responsibility. The Carrier shall nevertheless be entitled to full freight and charges on Goods received for transportation. When Carrier carries Goods from the port at which they are discharged under this

Clause to the place of delivery named in this Bill of Lading, Merchant shall pay all additional charges and transportation costs and the Carrier shall have a lien on the Goods for such carriage. Goods shut out from the vessel named herein for any cause may be forwarded on a subsequent vessel of this type or at Carrier's option, on a vessel of another type or by other mode of transportation.

**15. ARRIVAL, DISCHARGE & DELIVERY:** The port authorities are hereby authorized to grant a general order for discharging immediately upon arrival of the vessel and the Carrier, without giving notice either of arrival or discharge, may, immediately upon arrival of the vessel at the designated destination, discharge the goods continuously. Sundays and holidays included, at all such hours by day or by night as the Carrier may determine no matter what the state of the weather or custom of the port may be. The Carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharge or any part of the time that the Goods are upon the wharf, craft or other loading or discharging place. Landing and delivery charges and pier dues shall be at the expense of the Goods unless included in the freight herein provided for. If the Goods are not taken away by the consignee by the expiration of the next working day after the Goods are at his disposal, the Goods may, at Carrier's option and subject to Carrier's lien, be sent to store or warehouse or be permitted to lie where landed, but always at the expense and risk of the Goods. The responsibilities of the Carrier in any capacity shall altogether cease and the Goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of Customs or other Authorities, or into that of any municipal or governmental concessionaire or depository. The Carrier shall not be required to give any notification of disposition of the Goods, except as may be otherwise provided in this Bill of Lading.

**16. SPECIAL DISCHARGE/UNLOADING:** At ports or places where, by local law, authorities, or custom, the Carrier is required to discharge cargo to lighters or other craft, or where it has been so agreed, or where wharves are not available which the ship can get to, lie at, or leave, always safely afloat, or where conditions prevailing at the time render discharge at a wharf dangerous, imprudent, or likely to delay the vessel, the Merchant shall promptly furnish lighters or other craft to take delivery alongside the ship, at the risk and expense of the Goods. If the Merchant fails to provide such lighters or other craft, Carrier, acting solely as agent for the Merchant, may engage such lighters or other craft at the risk and expense of the Goods and Merchant. Carrier shall have no further responsibility, including without limitation responsibility for choice, condition, seaworthiness, manning, or loading of such lighter or craft or for loss or damage while the Goods are onboard such lighter or craft or in the custody of lightermen, who shall be Merchant's agents. If Carrier elects to lighter the Goods in lighters or craft operated or controlled by it, Carrier shall have the benefit of all liberties, rights, exemptions, immunities, and limitations in this Bill of Lading with respect to such lighterage and may collect the lighterage cost from Shipper. Discharge of the goods into such lighters or other craft shall constitute proper delivery and any further responsibility of Carrier with respect to the goods shall thereupon terminate.

**17. GOVERNMENTAL OR OTHER ORDERS:** Carrier, Participating Carriers, the Vessel, and the master shall have liberty to comply with any direction, recommendation, order, requirement, or suggestion as to the Vessel, her voyage, employment, movement, disposition, and other matters relating to the Goods or goods owned and/or controlled by third parties stuffed and/or packed in containers with the Goods described in the Bill of Lading, including without limitation loadings, departures, arrivals, routes, zones, ports of call, stoppages, discharges, destinations, or deliveries, given by the government of the nation under which flag the Vessel sails, any other government or local authority, or any person perceived by Carrier as having the right to give directions or recommendations under terms of the war-risk insurance on the Vessel. In addition to all other liberties, Carrier shall have the right to withhold delivery of, re-ship, deposit, or discharge Goods at any place, surrender or dispose of the Goods in accordance with any direction, condition, or agreement imposed on or exacted from Carrier by any government, governmental agency, or person purporting to act with governmental authority. Carrier shall have no further responsibility for the Goods, which shall be at Merchant's risk and expense; and Carrier shall have a lien on the Goods pending Merchant's payment of all expenses and charges. Any act or omission by Carrier, Participating Carrier, the Vessel, or the master in complying shall not be a deviation; and Carrier shall have but shall not be limited to the liberties as to disposition of the Goods under the terms of this Bill of Lading and applicable Tariff. Delivery or disposition of the Goods in accordance with such direction, recommendation, order, requirement, or suggestion shall be deemed in accordance with and fulfillment of the contracted carriage. Carrier and the Vessel may carry Goods declared by any

belligerent as contraband, persons belonging to or intending to join any belligerent's armed forces or government service, explosives, munitions, warlike stores, and hazardous cargo and may sail armed or unarmed with or without convoy.

**18. TRANSSHIPMENT:** Whenever the Carrier, Participating Carrier or Master may deem it advisable, or in any case where goods are destined for ports or places at which the vessel or Participating Carriers will not call, the Carrier may, without notice, forward the whole or any part of the shipment, before or after loading at the original port of shipment, or any other place or places even though outside the scope of the voyage or the route to or beyond the port of discharge or the destination of the Goods, by water, by land or by air or by any combination thereof, whether operated by the Carrier or others and whether departing or arriving or schedule to depart or arrive before or after the ship expected to be used for the transportation of the shipment. The Carrier may delay forwarding awaiting a vessel or conveyance in its own service or with which it has established connections in all cases where the shipment is delivered to another Carrier or to a lighter, Port Authority, warehouseman or other bailee for transshipment, the liability of this Carrier shall absolutely cease when the Goods are out of its exclusive possession and shall not resume until the Goods again come into its exclusive possession, and the responsibility of this Carrier during any such period shall be that of an agent of the Merchant, and this Carrier shall be without any other responsibility whatsoever. The Carriage by any transshipping or on-Carrier and all transshipment or forwarding shall be subject to all the terms whatsoever in the regular form of Bill of Lading, consignment note, contract or other shipping document used at the time by the Participating Carrier performing such transshipment or forwarding.

**19. DESCRIPTION AND PACKING OF GOODS:** When containers, vans, trailers, transportable tanks, flats, palletized units, and all other packaged (all hereinafter referred to generically as "cargo units") are not packed or loaded by Carrier such cargo units shall be deemed shipped as "Shipper's weight, load and count." Carrier has no reasonable means of checking the quantity, weight, condition or existence of the contents thereof, does not represent the quantity, weight, condition of the existence of such contents, as furnished by the Merchant or its agents and inserted in this Bill of Lading, to be accurate, and shall not be liable for nonreceipt or misdescription of such contents. Carrier shall have no responsibility or liability whatsoever for the packing, loading, securing and/or stowage of contents of such cargo units, or for loss or damage caused thereby or resulting therefrom, or for the physical suitability or structural adequacy of such cargo units properly to contain their contents.

The weight or quantity of any bulk cargo inserted in this Bill of Lading is the weight or quantity as ascertained by a third party other than the Carrier and Carrier makes no representation with regard to the accuracy thereof. This Bill of Lading shall not be deemed evidence against the Carrier of receipt of goods of the weight or quantity so inserted in the Bill of Lading.

The Merchant, whether principal or agent, by packing or loading the cargo unit and/or by allowing the cargo unit to be so packed or loaded represents, guarantees and warrants:

(a) that the Goods are properly described, marked and safely packed in their respective cargo units, that such cargo units are physically suitable, sound and structurally adequate properly to contain and support the Goods during handling and on the transport and that the cargo units may be handled in the ordinary course without damage to themselves or to their contents, or to the vessel or conveyance or to their other cargo or property or persons;

(b) that all particulars with regard to the cargo units and their contents and the weight of each said cargo unit are in all respects correct; and

(c) that they have ascertained and fully disclosed in writing to the Carrier and all participating Carriers on or prior to shipment, any condition, ingredient or characteristic of the Goods which might indicate that they are inflammable, explosive, corrosive, radioactive, noxious, hazardous or dangerous in nature, or which might cause damage injury or detriment to the Goods, or to the vessel, conveyance or other cargo or to property or persons and that they have complied fully with all statutes, ordinances and regulations of the Department of Transportation of the United States of America and all other regulatory bodies with respect to labeling, packing and preparation for shipment of all such Goods.

The Merchant, shipper, consignee, receiver, holder of this Bill of Lading owner of the Goods and person entitled to the possession of the Goods jointly and severally agrees fully to protect and indemnify Carrier and to hold it harmless in respect to any injury or death of any person, or loss or damage to cargo or cargo unit of any other property or to the vessel or conveyance or expense or line

arising out of damage to cargo or cargo unit or any property or to the vessel or conveyance or expense or line arising out of or in any way connected with breach of any of the foregoing representations or warranties, howsoever occurring even without fault of shipper, consignee and/or owner of the Goods, and even though such injury, death, loss or damage is caused in whole or in part by fault of the Carrier or unseaworthiness.

**20. DANGEROUS GOODS, CONTRABAND.**

(a) Carrier undertakes to carry Goods of an explosive, inflammable, radioactive, corrosive, damaging, noxious, hazardous, poisonous, injurious, or dangerous nature only after Carrier's written acceptance of Merchant's application for carriage. Such application must be in writing and accurately state the nature, name, label, and classification of the Goods, the method of rendering them innocuous, and the full names and addresses of Shipper and Consignee.

(b) Merchant shall ensure that the nature of the Goods referenced in subparagraph (a) above is distinctly and permanently marked and manifested on the outside of each Container and all individual Packages, cartons or wrappings. In addition Merchant shall submit all certificates and other documents required by Carrier and applicable treaties, statutes, and regulations.

(c) Whenever Carrier receives Goods which are not in compliance with subparagraphs (a) and (b) above or Goods which are contraband or prohibited by laws or regulations of any port of loading, discharge, or call or any place or waters where the Vessel sails during transport, Carrier shall have absolute discretion to render innocuous, throw overboard, discharge, or dispose of such Goods without compensation to any party. Merchant shall be liable for and indemnify Carrier against liability, loss, and damage, including without limitation loss of freight and all expenses and fines directly or indirectly arising out of or resulting from such Goods.

(d) Carrier may exercise the right delineated in subparagraph (c) above whenever goods received in compliance with subparagraphs (a) and (b) above become dangerous to Carrier, Vessel, cargo, persons, or other property.

(e) With respect to Goods subject to this Clause, Carrier has the right to inspect the contents of all cartons or wrappings at any time and in any place without Merchant's agreement and at Merchant's risk and expense.

(f) Nuclear fuels, radioactive waste, and their products are specifically excluded from Goods permitted to be loaded or carried as cargo under this Bill of Lading. This exclusion does not apply to radio isotopes used or intended to be used for any industrial, commercial, agricultural, medical, or scientific purposes, provided Merchant has obtained Carrier's written approval prior to loading.

**21. LIEN, COOPERAGE & FINES:** The Merchant and the Goods themselves shall be jointly and severally liable for and shall indemnify the Carrier, and the Carrier shall have a lien on the Goods for all Charges and expenses of mending, repairing, fumigating, repacking, coopering, baling, reconditioning of the Goods and gathering of loose contents of packages, also for expenses for repairing containers damaged while in the possession of the Merchant. Merchant also shall be liable for demurrage on containers and any payment, expense, fine, dues, duty, tax, impost, loss, damage or detention sustained or incurred by or levied upon the Carrier, vessel or conveyance in connection with the Goods or Goods of different Merchants on different bills of lading issued by the Carrier for consolidated shipments, howsoever caused, including any action or requirement of any government or governmental authority or person purporting to act under the authority thereof, seizure under legal process or attempted seizure, incorrect or insufficient marking, numbering or addressing of containers, packages or description of the contents, failure of the Merchant to procure consular, Board of Health or other certificates to accompany the Goods or to comply with laws or regulations or any king imposed with respect to the Goods by the authorities at any port or place or any act or omission of the Merchant. The Carrier's lien shall survive delivery of the Goods and may be enforced by private or public safe and without notice. Carrier's lien hereunder also covers any charges payable to Carrier by Merchant under any past or future bills of lading issued by Carrier.

**22. EARNED FREIGHT AND OTHER CHARGES:** Freight shall be payable, at Carrier's option, on actual gross intake weight or measurement or on actual gross discharge weight or measurement or on a value or other basis. Freight may be calculated on the basis of the particulars of the Goods furnished by the Merchant herein, but the Carrier may, as previously stated herein, at any time open the packages or containers and examine, weigh, measure and value the Goods unless applicable law prohibits same. In case Merchant's particulars are found to be erroneous and additional freight payable, the Merchant and the Goods shall be jointly and severally liable for any expense incurred for examining, weighing, measuring and valuing the Goods. Full freight shall be paid on damaged or



unsound goods.

Full freight hereunder to place of delivery named herein and advance charges (including on-Carrier's shall be considered completely and irrevocably earned on receipt of the Goods by the Carrier, whether the freight be stated or intended to be prepaid or to be collected at destination, and the Carrier shall be entitled to all freight and charges, extra compensation, demurrage, detention, General Average, claims and any other payments made and liability incurred with respect to the Goods, whether actually paid or not, and to receive and retain them irrevocably under all circumstances whatsoever, vessel, conveyance and/or cargo test, damaged or otherwise, or the combined transport changed, frustrated or abandoned. Payment of freight to freight forwarders, NVOCCs, consolidators, brokers, or any persons other than Carrier or Carrier's specifically authorized agents is not considered payment to Carrier and is at Merchant's or payer's sole risk.

In case of forced abandonment or interruption of the Carriage for any cause, any forwarding of the Goods or any part thereof shall be at the risk and expense of the Goods and Merchant. All unpaid charges shall be paid in full, without any offset, counterclaim or deduction in the currency of the place of receipt, or, at Carrier's option, in the currency of the place of delivery at the demand rate of New York exchange as quoted on day of arrival of the Goods at the place of delivery.

All of the Persons coming within the definition of Merchant in clause 1, including any principal of such Person, shall be jointly and severally liable to the Carrier for the payment of all freight charges and the amount due to the Carrier and for any failure of either or both to perform his or their obligations under the provisions of this Bill of Lading and they shall indemnify the Carrier against and hold it harmless from, all liability, loss, damage and expense which the Carrier may sustain or incur arising or resulting from any such failure of performance by the Merchant. Any person, firm or corporation engaged by any party to perform forwarding services with respect to the cargo shall be considered the exclusive agent of the Merchant for all purposes and any payment of freight to such person, firm or corporation shall not be considered payment to the Carrier in any event. Failure of such person, firm or corporation to pay any part of the freight to the Carrier shall be considered a default by the Merchant in the payment of the freight.

The Carrier shall have a lien on the Goods and any documents relating thereto, which shall survive delivery, for all freight charges and damages of any kind whatsoever, and for the costs of recovering same, including expenses and attorneys' fees incurred in preserving this lien, and may enforce this lien by public or private sale or auction and without notice. Carrier's lien hereunder also covers any charges payable to Carrier by Merchant under any past or future bills of lading issued by Carrier. The shipper, consignee, receiver, holder of this Bill of Lading, owner of the Goods and person entitled to the possession of the Goods shall be jointly and severally liable to the Carrier for the payment of all freight charges and damages as aforesaid and for the performance of the obligations of each of them hereunder.

**23. NO CONSEQUENTIAL DAMAGES:** Carrier shall not be liable for any consequential or special damages and shall have the option of replacing lost Goods or repairing damaged Goods.

**24. BOTH-TO-BLAME COLLISIONS:** If the vessel comes into collision with another vessel as a result of the fault or negligence of the other vessel and any act, neglect or default of the Carrier, Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the vessel, the Merchant will indemnify the Carrier against all loss or liability to the other or non-carrying vessel 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 vessel or her owners to the Merchant and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying vessel or Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to the colliding vessels or objects are at fault in respect of a collision contact, stranding or other accident. This provision is to remain in effect in other jurisdictions even if unenforceable in the Courts of the United States of America.

**25. GENERAL AVERAGE:** General average shall be adjusted, stated and settled according to York Antwerp Rules 1974, except Rule XII thereof, at such port of place as may be selected by the Carrier and as to matters not provided for by these Rules, according to the laws and usages of New York. In

such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for 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 the Carrier must be furnished before delivery of the goods. Such cash deposit as the Carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon shall, if required, be made by the Goods, shippers, consignees or owners of the goods to the Carrier before delivery of the Goods.

Notwithstanding anything hereinbefore contained, such deposit shall at the option of the Carrier be payable in United States currency, and be remitted to the adjuster pending settlement of the General Average and refunds of credit balances, if any shall be paid in United States currency. Notwithstanding Rule 10(b) of said York-Antwerp Rules, however, it is expressly agreed that the cost of handling, discharge, reloading, and restowing cargo shall be admitted as general average when reasonably necessary for the safe Prosecution of the voyage, even though the handling of cargo is not necessary for the purpose of effecting repairs to the vessel, as well as under the circumstances set forth in said rule.

In the event of accident, danger or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not for which or for the consequence of which, the Carrier is not responsible by statute, contract or otherwise, the Goods, the shipper, consignee, receiver, holder of this Bill of Lading, owner of the Goods and person entitled to the possession of the Goods, any person within the meaning of Merchant in Clause 1 and their principals, jointly and severally shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Goods. If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships were owned or operated by strangers. Cargo's contribution in General Average shall be paid to the ship owner even when such average is the result of fault, neglect or error of the Master, pilot, officers or crew. The Merchant expressly renounces any and all codes, statutes, laws or regulations that might otherwise apply.

**26. INSURANCE: Shipper must consult Carrier's tariffs to determine whether Carrier has provided cargo insurance for the trade and type of Goods described in this Bill of Lading and what the terms, conditions, and limits of such insurance are.** If the tariffs are silent on the subject, no insurance is included in Carrier's charges. If this Bill of Lading specifies an Insured Value given by Shipper for the Goods, Carrier will provide Shipper's Interest cargo insurance in accordance with the terms, conditions, and limitations of Carrier's tariffs, which specify rates for such insurance. Carrier will have no other responsibility to Shipper regarding insurance.

**27. LIMITATION OF LIABILITY:** In case of any delay, misdelivery, loss or damage to or in connection with Goods exceeding in actual value the equivalent of \$500.00 lawful money of the United States per Bill of Lading, the value of the Goods shall be deemed to be \$500.00 per Package or customary freight unit. The Carrier's liability, if any, shall be determined on the basis of a value of \$500.00 per Package or customary freight unit unless, before shipment, the nature and value of such goods have been declared by the shipper, inserted in this Bill of Lading and extra freight paid if required. In such case, if the actual value of the Goods per package or per shipping unit shall exceed such declared value, the value shall nevertheless be deemed to be declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

The words "shipping unit" shall mean each physical unit or piece of cargo not shipped in a package, including articles or things of any description whatsoever, except goods shipped in bulk and irrespective of the weight or measurement unit employed in calculating freight charges. Where containers, vans, trailers, transportable tanks, flats, palletized units and other such packages are not packed by the Carrier, each individual such container, van trailer, transportable tank, palletized unit and other such package including in each instance its contents, shall be deemed a single COGSA package and Carrier's liability limited to \$500 with respect to each such Package or customary freight unit.

In no event shall Carrier be responsible for incidental or consequential damages, including without limitation extra expense, loss of profits, loss of use of property, or delay, whether resulting from Carrier's negligence, breach of this Bill of Lading, or otherwise, even if Carrier could have foreseen or was advised by Shipper as to the possibility of such damages.

**28. VALUABLES:** Gold, silver, specie, bullion or other valuables, including those named or described in 46 USC § 30503, will not be received by the Carrier unless their true character and value are disclosed to the Carrier and a special written agreement therefore has been made in advance, and will not, in any case, be loaded or landed by the Carrier. No such valuables shall be considered received by or delivered to the Carrier until brought aboard the ship by the shipper and put in the actual possession of and a written receipt therefore is given by the Master or other officer in charge. Such valuables will only be delivered by the Carrier aboard the ship on presentation of bills of lading properly endorsed and upon such delivery on board the Carrier's responsibility shall cease. If delivery is not so taken promptly after the ship's arrival at the port of discharge, the goods may be retained aboard or landed or carried on, solely at the risk and expense of the goods.

**29. RUST:** It is agreed that superficial rust, oxidation or any like condition due to moisture, is not a condition of damage but is inherent to the nature of the cargo, and acknowledgement of receipt of the Goods in apparent good order and condition is not a representation that such conditions of rust, oxidation and the like did not exist on receipt.

**30. APPLICABLE LAW – SEVERABILITY:** The terms of this Bill of Lading shall be separable, and if any part or term hereof shall be held invalid, such holding shall not affect the validity or enforceability of any other part or term hereof. Nothing in this Bill of Lading shall operate to deprive the Carrier of any statutory protection or exemption from, or limitation of, liability, contained in the laws of the United States, or in the laws of any other country that may be applicable. This Bill of Lading shall be construed according to the laws of the United States and the Merchant agrees that any suits against the Carrier shall be brought in the United States District Court for the District of Puerto Rico. The Merchant agrees that it shall not institute suit in any other court and agrees to be responsible for the reasonable legal expenses and costs of the Carrier in removing a suit filed in another forum. The Merchant waives any objection to the personal jurisdiction over the Merchant of the above agreed fora.

In the case of any dispute relating to Freight or other sums due from the Merchant to the Carrier, the Carrier may, at its sole option, bring suit against the Merchant in the fora agreed above, or in the countries of the Port of Loading, Port of Discharge, Place of Delivery or in any jurisdiction where the Merchant has a place of business.