

## 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 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 having any interest in 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 and in the absence of designation in such column shall be deemed the Container.
- “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 hereof is checked, this document will constitute a multimodal transport or port to port negotiable bill of lading, provided, this Bill of Lading shall only be a negotiable document of title if consigned “to order,” or order of a named consignee. If negotiable, an original bill of lading, properly endorsed, must be surrendered when the Goods are delivered. Subject to applicable law, if the person receiving the Goods wishes to take delivery without surrender of an original endorsed bill of lading, and if Carrier agrees in its sole discretion to deliver the Goods without such surrender, 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 such surrender. Upon surrender of one original bill of lading, all other original bills of lading will be immediately void. Negotiable bills of lading will in all events become void six months after date of issuance, provided Carrier shall continue to be entitled to all rights and limitations of liability herein.

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

This document shall constitute a non-negotiable waybill if consigned directly to a nominated person or entity and not consigned "to order," or order of a named consignee; such a non-negotiable waybill should also be marked with a check in the Waybill box on the face hereof. Delivery of the Goods under a non-negotiable bill of lading or waybill may be made, at the sole discretion of the Carrier, to the nominated consignee without surrender of an original counterpart; such delivery shall constitute due delivery hereunder; Carrier may but 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, or in the event of any ambiguity, this document will constitute a non-negotiable waybill, and Carrier may, but is not required to, demand its original surrender before release of the Goods. The consignee receiving the Goods in all events represents their entitlement to such receipt and as such agrees to indemnify Carrier against all damages which Carrier may be liable to pay as a result of releasing the Goods to the consignee's custody.

### **4. THIS DOCUMENT AND CARRIER'S TARIFF**

This document is binding upon the parties, and supersedes any prior agreement or arrangement. 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 / RIGHT OF POSSESSION / AUTHORITY OF SHIPPER**

In agreeing and accepting the terms of this document, the shipper acts for itself and on behalf of each Merchant. The shipper warrants it has the authority of each Merchant and so binds each Merchant to this document.

### **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 of 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. LIMITED CLAUSE PARAMOUNT AND RESPONSIBILITY OF CARRIER**

7.1 Limited 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 (COGSA), 46 U.S.C. § 30701 (Note), 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 specifically provided in Clauses 7.1, 7.2, and 9.4 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 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. 46 U.S.C. §§ 30701 (3)(6, 8) and (4)(5) of COGSA, addressing minimum time for suit and liability of the Carrier, are excluded from incorporation by reference and shall only apply when required by force of law. 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 or superseding Conventions that apply with the force of law. 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. Unless the shipper declares a higher value as provided below, and subject to the actual value of the Goods, Carrier’s liability shall be limited as follows: (a) for loss or damage occurring during international air carriage, Carrier’s liability shall be limited in accordance with applicable international convention governing by force of law, which limitation(s) are in no event increased or otherwise waived notwithstanding any language herein to the contrary ; (b) for loss or damage occurring during any portion of the Carriage governed by COGSA by force of law, Carrier’s liability shall be limited to \$500 per Package, or for Goods not shipped in packages, per customary freight unit; (c) for loss or damage occurring during surface transportation in Mexico, Carrier’s liability shall not exceed \$0.10 per pound of the portion of Goods adversely affected; and (d) for loss or damage occurring during any portion of the Carriage when the foregoing limitation provisions are inapplicable, including periods of surface transportation in other regions and any portion of the Carriage where COGSA is otherwise incorporated herein but is not applicable by force of law, Carrier’s liability shall be limited to the lesser of \$500 per package or \$0.50 per pound of the Portion of Goods adversely affected. When it cannot be ascertained at what stage of the Carriage the loss or damage occurred, it shall be presumed to have occurred during periods of surface transportation. The liability of Carrier and its affiliates for agency and other non-carrier services, including, but not limited to, export/import-related services, consolidation and labelling, and also for fines, penalties or storage charges, however arising, is limited to circumstances of sole independent negligence and to \$50 per entry or shipment. 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 does not undertake to deliver the Goods at the port of discharge or place of delivery at any particular time or to meet any particular market or use. Notwithstanding Clause 7.2, Carrier shall have no liability for any direct or consequential damages arising from delay or failure to notify Merchant as to the actual arrival and/or delivery date of the Goods.

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 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 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 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 The place at which claims or other notices upon the Carrier must be served is set forth below in Clause 28. Merchant shall give timely notice of claim to Carrier and responsible third parties as set forth in this Clause 9. Merchant will indemnify Carrier against any damages Carrier may suffer as a result of Merchant's failure to give timely notice or other failure to preserve a timely cause of action against a responsible third party.

9.2 If arising from international air carriage, complaint and legal action must be made within the respective time parameters provided by applicable international convention governing by force of law, none of which time parameters are extended or otherwise waived notwithstanding any language herein to the contrary.

9.3. If arising from Carriage governed by COGSA by force of law, any claim shall be made exclusively by giving written notice to Carrier or its agent which includes the nature of the loss or damage. If loss or damage is apparent, said notice must be given before or at the time of delivery on the receipt for the Goods; if loss or damage is not apparent, said notice must be given within three (3) consecutive days of delivery. In any event, any right to damages against Carrier shall be extinguished if such notice is not provided and an action is not brought within (1) year from the date the Goods were delivered or should have been delivered.

9.4 With respect to all other Carriage, including Carriage where COGSA does not apply by force of law, any claim must be served on Carrier within one-hundred and eighty (180) days from the date the Goods were delivered or should have been delivered. Any right to damages against Carrier shall be extinguished if such notice is not provided and an action is not brought within one (1) year from the date the Goods were delivered or should have been delivered.

## **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, defend, and hold harmless 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; (d) the unsuitability or defective condition of any Container not supplied by or on behalf of Carrier; (e) the lack of proper description or preparation or packing of the Goods for transportation, or (f) inaccurate or allegedly inaccurate weight, verified gross mass, or other information or documentation of Container and Goods supplied by Merchant or its Subcontractor.

## **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 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.

### **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 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 restow or repack 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 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 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 acknowledges that it is required to provide a certificate of verified gross mass obtained on

calibrated, certified equipment for all Goods and containers to be tendered to Vessel operator. Carrier and its Subcontractors are entitled to rely on the accuracy of such gross mass for all purposes, including compliance with the verified gross mass requirement under the Safety of Life at Sea Convention (SOLAS). Carrier shall be entitled to tender, counter-sign or endorse such certificates or weight tickets provided by Merchant as Carrier's own certified weight to subcontractors, including the Vessel operator carrying the Goods. Merchant acknowledges that Carrier may refuse to accept or load any of the Goods for which the information: (i) does not comply with all such regulations of relevant authorities or requirements of Vessel operator or other carriers or is not accurate and complete; or (ii) is not provided to Carrier at least seventy-two (72) hours prior to Vessel loading. Merchant agrees to defend, indemnify, and hold harmless Carrier for any and all costs (including, but not limited to, claims, losses, fines, penalties, inspection, storage and/or delivery, re-routing or other costs) incurred by Carrier as a consequence of: (i) Merchant's failure to provide information that complies with all such regulations of relevant authorities, including verified accurate certificate of gross weight of container and Goods; (ii) Merchant's failure to provide the information to Carrier on a timely basis; 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 defend, indemnify, and hold harmless Carrier completely for any other damage (including any penalties, liquidated damages or other sanctions imposed by CBP or other relevant authority) or additional charges by Vessel operator or subcontractors caused in whole or part by any breach of this warranty and responsibility or any alleged non-compliance of the Goods or information provided by Merchant.

## **17. FREIGHT AND CHARGES**

17.1 Freight shall be payable, at Carrier's option, on any 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 document, 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. Merchant authorizes Carrier to endorse or negotiate drafts or checks drawn to the order of Merchant or its Subcontractor.

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. 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 by Carrier as set forth in Carrier's Tariff, including, but not limited to, bunker adjustment factor, currency adjustment factor, peak season, and port congestion surcharges.

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 and/or its corporate affiliates from Merchant arising from the Goods, a prior shipment(s), and/or both. 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 general and continuing 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 and/or its corporate affiliates by the Merchant on prior accounts or delivered shipments, whether or not related to the Goods or carried under a different document, 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, Merchant shall remain responsible for the deficit.

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, waybill 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 at the exclusive risk and expense of Merchant.

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

Superficial rust, mold, oxidation or condensation inside the Container or any like condition due to moisture is inherent and therefore not a liability of Carrier.. Superficial rust, mold, oxidation, condensation, or moisture on steel or lumber constitutes good order and condition for which Carrier shall have no liability.

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

The Goods may be transhipped and will likely be subject to several modes of transportation. Merchant agrees the Carrier may, without notice to the Merchant: use any route, direct or indirect; use any means to perform the Carriage, including, but not limited to, one or more vessels, trucks, trains and/or airplanes; freely interrupt Carriage and use substitute modes, means, vessels, and routes of transportation from that which is noted on the face hereof; and/or destroy, abandon or discharge the Goods at any place and declare the Goods delivered if circumstances so justify in Carrier's reasonable discretion at Merchant's cost. Merchant further agrees any vessel used hereunder may proceed with liberty to sail without pilots and at any speed, to proceed return to and stay at any ports whatsoever in any order or out of the route or in a contrary direction to or beyond the port of destination once or more often for whatever reason.

## **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 they may 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 document 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 California, notwithstanding that law's choice of law rules, provided, if this document 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 Central District of California, 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 Central District of California does not have subject matter jurisdiction over the dispute, the dispute will be determined in a Superior Court of California, County of Los Angeles. All claims hereunder must be filed against Carrier care of UPS Cargo Claims Dept., 35 Glenlake Parkway, Suite 320, Atlanta, GA 30328. 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 Drive, Suite 100, Sacramento, CA 95833.

[Rev. 5-2-16]