

SWS Terms & Conditions

THIS SEA WAYBILL IS A NON-BILL OF LADING DOCUMENT. IT IS NOT A BILL OF LADING. HOWEVER, IT IS AGREED, THAT WHENEVER THE WORDS "BILL OF LADING" ARE USED IN THIS TERMS & CONDITIONS, THEY SHALL BE READ AND UNDERSTOOD AS A MEANING "SEA WAYBILL".

1. Definitions

Carrier: Means the whole of the operations and services undertaken or performed by or on behalf of the Carrier in respect of the Goods, including but not limited to the ocean carriage of Goods.

Carrier: Means the Company stated on the front of this Bill of Lading as being the Carrier and on whose behalf this Bill of Lading has been signed by the Carrier itself or by its agent.

Charges: Means freight and all expenses and obligations incurred and payable by the Merchant.

COGSA: Means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936.

COGWA: The Carriage of Goods by Water Act 1936 of Canada.

Hague Rules: Means the provisions of the international Convention for Unification of certain Rules relating to Bills of Lading signed at Brussels on 25th August 1924.

The Hague Rules as Amended by the Brussels Protocol 1968: Means the Hague-Visby Rules.

Combined Transport: Arises where the carriage called for by this Bill of Lading is not a Port to Port shipment.

Container: Means any container, trailer, transportable tank, lift van, flat, pallet, or any similar article of transport used to consolidate goods. Container owned by the Participating Carrier shall be, for the purpose of this Terms & Conditions and/or contract for carriage, deemed as being owned by the Carrier.

Goods: Means all things, moveable or immovable, tangible or intangible, including, without limitation, howsoever described (no matter whether arising by law or by contract), which might abate, bar, defeat or diminish any recovery against the Carrier.

Freight: Means all of the following relating to or in connection with the Goods: ocean freight and other charges provided by the Carrier's applicable tariff, including but not limited to ad valorem charges, advance charges and less than full container load service charges, currency adjustment factor, bunker adjustment factor, surcharges, war risk premiums, arbitrary and accessorial charges, all charges arising as a result of changing the port of loading or discharge, and transportation charges arising in connection with additional freight or other charges, dead-freight, special freight for the carriage of special containers, return freight if the Goods are returned, as well as storage, demurrage or detention charges.

Goods: Means the cargo supplied by the Merchant and includes any Container not supplied by or for the Merchant.

Merchant: Means the shipper, the consignee, the receiver or the Goods, the holder of this Bill of Lading, any person owning or entitled to the possession of the Goods or this Bill of Lading, any person having a present or future interest in the Goods or any person acting on behalf of any of the above mentioned persons, as well as any principal of that person.

Holder: Means any Person for the time being in possession of this Bill of Lading or to whom rights of suit and/or liability under this bill of lading have been assigned or transferred.

Package: (1) The Container when the Goods are shipped in a Container

(2) The skid or pallet when Goods are shipped on a skid or pallet and stuffed in a Container, and the Container is adjudged not to be the package for the purposes of the Carrier's limitation of liability

(3) The skid or pallet when Goods are shipped on a skid or pallet but not in a Container

(4) Mopping unit which contains the greatest quantity of the Goods and to which some packaging preparation for transportation is made, including any additional freight or other charges, dead-freight, special freight. This clause does not apply to Goods shipped in bulk, and it supersedes any inconsistent provision which may be printed, stamped or written elsewhere in this Bill of Lading.

Participating Carrier: Means the ocean carrier and any other water, land or air carrier involved in the Carriage of the Goods whether it be a Port to Port or a Combined Transport movement, notwithstanding the fact that such Carrier is an agent of a contracting carrier.

Person: "Person" includes any individual, a partnership, a body corporate or any other entity.

Port to Port Shipment: Means when the port of loading and the port of discharge only are shown on the face hereof and neither the place of acceptance nor the final destination is stipulated on the face hereof.

Shipping Unit: "Shipping Unit" includes freight unit and the term "unit" as used in the Hague Rules and Hague Visby Rules.

Stuffed: "Stuffed" included filled, consolidated, packed, loaded or secured.

2. Carrier's Tariff

The provisions of the Carrier's applicable tariff are incorporated herein. A copy of the applicable tariff is available from the Carrier upon request or obtainable from the regulatory body with whom the tariff has been filed. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

The Merchant warrants that in agreeing to the terms hereof he is or is the agent of and has the authority of the person owning or entitled to the possession of the Goods or any person who has a present or future interest in the Goods.

3. Non-Negotiability of Bill of Lading

This Bill of Lading shall constitute a title to the Goods and shall be non-negotiable unless made out "to order" in which event the title to the Goods shall be deemed to be transferred to the holder of the Bill of Lading.

5. Certain Rights and Immunities for the Carrier and Other Persons

5.1. The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage. It is expressly agreed that any and all servants, agents and independent contractors (including the Master, officers, and crew of the vessel, participating carrier, all terminal operators, warehousemen, stevedores, watchmen, husbanding agents, loading agents, gangers and ship agents, independent contractors, subcontractors and independent contractors whatsoever, as well as any officers, directors, agents or employees of any of the foregoing) used or employed by the Carrier in connection with the performance of any or all of Carrier's obligations under this Bill of Lading, in consideration of the agreement to be so used or employed, shall be express beneficiaries under this Bill of Lading, and shall have the benefit of all defences to which the Carrier is entitled to that in no circumstances shall any servant, agent or independent contractor of the Carrier be under any liability in contract, warranty, tort (including negligence) in respect of the performance of the Carriage to anyone other than the Carrier.

5.2. The Merchant shall defend, indemnify and hold harmless the Carrier against any claim or liability (and any expense arising therefrom) arising from the Carriage of the Goods insofar as such claim or liability exceeds the Carrier's liability under this Bill of Lading.

5.3. The defences and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier in respect of the Carriage of the Goods insofar as such claim or liability exceeds the Carrier's liability under this Bill of Lading.

6. Paramount Clause

6.1. To and From non-United States Ports. As far as this Bill of Lading covers the Carriage of Goods by sea to and from non-U.S. ports by the Carrier and any Participating Carrier, the contract evidenced in this Bill of Lading shall have effect subject to the Hague-Visby Rules, if and as enacted in the country of shipment and any legislation making those Rules compulsory applicable to the Carriage of Goods by sea to and from non-United States ports, and in the absence of such legislation, when no such enactment is in force in the country of shipment, the Hague-Visby Rules will apply. The Hague-Visby Rules shall also govern before the Goods are loaded on and after they are discharged from the vessel and throughout the entire time the Goods are in the actual custody of the Carrier or Participating Carrier. The Hague-Visby Rules shall also apply to the Carriage of Goods by inland waterways and reference to carriage by sea in such Rules shall be deemed to include carriage by inland waterways.

6.2. To and From United States Ports. If the Carriage called for in this Bill of Lading is a shipment to or from the United States, the liability of the Carrier shall be exclusively determined pursuant to COGSA; the Pomerene Act (49 U.S.C. 80101 et. seq.) for both export and import cargo moving to/from the United States; and Article 7-301 of the Uniform Commercial Code. The provisions cited in the Hague Rules and COGSA shall also govern before the Goods are loaded on and after they are discharged from the Vessel and throughout the entire time the Goods are in the actual custody of the Carrier or Participating Carrier.

6.3. The Carrier shall be entitled to (and nothing in this Bill of Lading shall operate to deprive or limit such entitlement) the full benefit of, and rights to, all limitation of and exclusions from liability and all rights conferred or authorized by any applicable law, statute or regulation of any country and without prejudice to the generality of the foregoing also any law, statute or regulation available to the Owner of the vessel on which the Goods are carried.

7. Carrier's Responsibility

Ocean Transport

7.1. Where the Carriage is Ocean Transport, the Carrier undertakes to perform and/or in his own name to procure performance of the Carriage from the Port of Loading to the Port of Discharge. The liability of the Carrier for loss of or damage to the Goods occurring between the time of acceptance by the Carrier of custody of the Goods at the Port of Loading and the time of the Carrier tendering the Goods for delivery at the Port of Discharge shall be determined in accordance with Articles 1-8 of the Hague Rules or as otherwise provided in these Terms and Conditions. These articles of the Hague Rules shall apply as a matter of contract.

7.2. The Carrier shall have no liability whatsoever for any loss or damage to the Goods, howsoever caused, if such loss or damage arises before acceptance by the Carrier of custody of the Goods or after the Carrier tendering the cargo for delivery. Notwithstanding the above, to the extent any applicable compulsory law provides to the contrary, the Carrier shall have the benefit of every right, defence, limitation and liability in the Hague Rules as applied by clause 7.1 during such additional compulsory period of responsibility, notwithstanding that the loss or damage did not occur at sea.

7.3. If the Carrier is requested by the Merchant to procure Carriage by an inland carrier and the inland carrier in his discretion agrees to do so, such Carriage shall be procured by the Carrier as agent only to the Merchant and Carrier shall have no liability for such carriage or the acts or omissions of such inland carrier.

Carrier's Responsibility Multimodal Transport

Where the Carriage is Multimodal Transport and the inland carriage is an international one, the Carrier undertakes to perform and/or in his own name to procure performance of the Carriage from the Place of Receipt or the Port of Loading, whichever is applicable, to the Port of Discharge or the Place of Delivery, whichever is applicable. The Carrier shall have no liability whatsoever for loss or damage to the Goods occurring before acceptance by the Carrier of custody of the Goods or after the Carrier tendering the Goods for delivery at the applicable points, and, the Carrier shall be liable for loss or damage occurring during the Carriage only to the extent set out below:

a) Where the stage of Carriage where loss or damage occurred is not known.

(i) The Carrier shall be relieved of liability for any loss or damage where such loss or damage was caused by, among other things:

(i) an act or omission of the Merchant or Person acting on behalf of the Merchant other than the Carrier, his servant, agent or subcontractor;

(ii) compliance with instructions of any Person entitled to give them;

(iii) insufficient or defective condition of packing or marks;

(iv) handling, loading, stowage or unloading of the Goods by the Merchant or any Person acting on his behalf;

(v) inherent vice of the Goods;

(vi) strike, lock-out, stoppage or restraint of labour, from whatever cause, whether partial or general;

(vii) a nuclear incident;

(viii) any cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence.

(b) The burden of proof that the loss or damage was due to a cause(s) or event(s) specified in clause 7.1 shall rest on the Carrier, or if there is any evidence that the loss or damage was caused by one or more cause or event specified in clause 8.1(a)(ii), (iv) or (v), it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by one or more of these causes or events.

8.2. Where the stage of Carriage where the loss or damage occurred is known notwithstanding anything provided for in clause 8.1 and subject to clause 19 (livestock), the liability of the Carrier in respect of such loss or damage shall be determined.

8.3. Where the loss or damage is known to have occurred during Carriage by sea for shipments not to or from the United States of America or waterborne Carriage not in the U.S. by the Hague Rules Articles 1-8. These articles of the Hague Rules shall apply as a matter of contract; or

(b) if the loss or damage is known to have occurred during any inland carriage not in the U.S. in accordance with the contract of carriage or that of any inland carrier in whose custody the loss or damage occurred or in accordance with clauses 7.1 and clause 7.2(a), whichever imposes lesser liability on the Carrier.

9. General Provisions

9.1. Delay, Consequential Loss. Save as otherwise provided herein, the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the Carriage.

9.2. Package or Shipment Unit Limitation where the Hague Rules or Hague-Visby Rules or any legislation making either Rules compulsorily applicable to this Bill of Lading, the Carrier shall not unless a declared value has been noted in accordance with (C) below, be or become liable for any loss or damage to or in connection with the Goods in an amount per package or shipping unit in excess of the package or shipping unit limitation as laid down by either of the Rules or legislation. Such limitation amount according to COGWA and Hague-Visby is 666.67 SDP per package or 2 SDP

per kilogram of gross weight of the Goods and the value whichever is the higher. In no limitation amount is applicable under either of the Rules or other legislation the limitation shall be US\$500 per Package or customary freight unit of 2 SDP per kilo of the Goods damaged or lost, whichever is less.

9.3. Where the loss or damage to the Goods is caused by fire, the Carrier's liability may be increased to a higher value by a declaration in writing of the value of the Goods by the shipper upon delivery to the Carrier of the Goods for shipment, such higher value being inserted on the front of this Bill of Lading in the space provided and, if required by the Carrier, extra freight paid. In such case, if the actual value of the Goods shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Carrier's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjudged pro rata on the basis of such declared value.

9.4. Rust, etc. 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 Goods and the acknowledgement of the receipt of the Goods in apparent good order and condition is not a representation that such conditions of rust, oxidation or the like did not exist on receipt.

10. Notice of Loss or Damage

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

11. Time-bar

11.1. Unless notice of loss and the general nature of such loss be given in writing to the Carrier at the port of discharge or place of delivery before or at the time of delivery of the Goods or if the loss is not apparent, within three (3) consecutive days after that delivery, the Goods shall be presumed to have been delivered as described in this Bill of Lading.

11.2. Where the loss occurred in the custody of a Participating Carrier, the Carrier shall be discharged from all liability in respect of loss unless notice of claim is filed and suit is brought within one (1) year after delivery of the Goods or the date when the Goods should have been delivered or the time period prescribed by the Participating Carrier's contract of carriage, tariff or by law covering such Participating Carrier or overland carriage whichever is less.

11.3. In any event, the Carrier shall be discharged from all liability in respect of loss unless suit is brought within one (1) year after delivery of the Goods or the date when the Goods should have been delivered.

12. Merchant's Responsibility

12.1. The description and particulars of the Goods set out on the face hereof are furnished by the Merchant and the Merchant warrants to the Carrier that the description and particulars including, but not limited to, weight, content, measure, quantity, quality, condition, marks, numbers and value are correct.

12.2. The Merchant shall comply with all applicable laws, regulations and requirements of customs, port and other authorities and shall bear and pay all duties, taxes, fees, imposts expenses and losses incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

12.3. The Merchant undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of transport and the Goods being distinctly marked on the outside so as to indicate the nature and character of any such articles and so as to comply with all applicable laws, regulations and requirements. If any such articles are delivered to the Carrier without such written consent and marking or if in the opinion of the Carrier the articles are or are liable to become of a dangerous, inflammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned, or rendered harmless without compensation to the Merchant and without liability on the part of the Carrier.

12.5. The Merchant shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Carrier or any person or vessel (other than the Merchant) caused by the Merchant or any person acting on his behalf or for which the Merchant is otherwise responsible.

12.6. The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, claim, liability or expense whatsoever arising from any breach of the provisions of this clause 12 or from any cause in connection with the Goods for which the Carrier is not responsible.

12.7. 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 due fulfillment of all obligations undertaken by the Merchant in this Bill of Lading.

12.8. Containers supplied by or on behalf of the Carrier are unpacked by or for the Merchant, the Merchant is responsible for returning the empty Containers, with interiors clean, odour free and in the same condition as received, to the point or place designated by the Carrier, within the time prescribed in the Tariff, the Merchant shall be liable for any detention, loss or expense incurred as a result thereof.

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12.46. Containers supplied by or on behalf of the Carrier are unpacked by or for the Merchant, the Merchant is responsible for returning the empty Containers, with interiors clean, odour free and in the same condition as received, to the point or place designated by the Carrier, within the time prescribed in the Tariff, the Merchant shall be liable for any detention, loss or expense incurred as a result thereof.

12.47. Containers supplied by or on behalf of the Carrier are unpacked by or for the Merchant, the Merchant is responsible for returning the empty Containers, with interiors clean, odour free and in the same condition as received, to the point or place designated by the Carrier, within the time prescribed in the Tariff, the Merchant shall be liable for any detention, loss or expense incurred as a result thereof.

12.48. Containers supplied by or on behalf of the Carrier are unpacked by or for the Merchant, the Merchant is responsible for returning the empty Containers, with interiors clean, odour free and in the same condition as received, to the point or place designated by the Carrier, within the time prescribed in the Tariff, the Merchant shall be liable for any detention, loss or expense incurred as a result thereof.

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12.51. Containers supplied by or on behalf of the Carrier are unpacked by or for the Merchant, the Merchant is responsible for returning the empty Containers, with interiors clean, odour free and in the same condition as received, to the point or place designated by the Carrier, within the time prescribed in the Tariff, the Merchant shall be liable for any detention, loss or expense incurred as a result thereof.

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