

# **KNCooltainer**

A Kuehne + Nagel Company

Bill of Lading / Waybill

Conditions of Carriage

# CONDITIONS OF CARRIAGE

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## 1. **Definitions**

"Carrier" means Cooltainer - A Division of Kuehne & Nagel Limited, New Zealand

"Merchant" includes the shipper, the consignee, the receiver of 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.

"Goods" includes the cargo supplied by the Merchant and includes any Container not supplied by or on behalf of the Carrier.

"Container" includes any container, trailer, transportable tank, lift van, flat, pallet or any similar article of transport used to consolidate Goods

"Carriage" means the whole or any part of the operation and services undertaken or performed by or on behalf of the Carrier in respect of the Goods.

"Combined Transport" arises where the carriage called for by the Bill of Lading is not Port to Port.

"Port to Port Shipment" arises where the Place of Receipt and the Place of Delivery are not indicated on the front of the Bill of Lading or if both the Place of Receipt and the Place of Delivery indicated are ports and the Bill of Lading does not in the nomination of the Place of Receipt or the Place of Delivery on the front hereof specify any place or spot within the areas so nominated.

"Hague Rules" means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 and includes the amendments by the Protocol signed at Brussels on 23 February 1968, but only if such amendments are compulsorily applicable to this Bill of Lading. (It is expressly provided that nothing in this Bill of Lading shall be construed as contractually applying said Rules as amended by the said Protocol.)

"Freight" includes all charges payable to the Carrier in accordance with the applicable Tariff and Bill of Lading.

## 2. **Carrier's Tariff**

The provisions of the Carrier's applicable Tariff, if any, are incorporated herein. Copies of such provisions are obtainable from the Carrier or his agents upon request or, where applicable, from a Government 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.

## 3. **Warranty**

The Merchant warrants that in agreeing to the terms hereof he is or 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.

## 4. **Sub-Contracting and Indemnity**

(1) The Carrier shall be entitled to sub-contract the Carriage on any terms whatsoever.

(2) The Merchant undertakes that no claim or allegation shall be made against any Person whomsoever by whom the Carriage is performed or undertaken (including all sub-contractors of the Carrier), other than the Carrier, which impose upon any such person, or any vessel owned by any such Person, any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of the negligence on the part of such Person and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing every such Person shall have the benefit of every right, defence, limitation and liberty of whatsoever nature herein contained or otherwise available to the Carrier as if such provisions were expressly for his benefit, and in entering into this contract, the Carrier, to the extent of these provisions, does so not only on his own behalf but also as agent and trustee for such Persons.

(3) The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person other than in accordance with the terms and conditions of this Bill of Lading which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage of the Goods whether or not arising out of the negligence on the part of the Carrier and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

## 5. **Carrier's Responsibility – Port-To-Port Shipment**

If Carriage is Port-To-Port, the liability (if any) of the Carrier for loss or damage to the Goods occurring from and during loading onto any seagoing vessel up to and during discharge from that vessel or from another seagoing vessel into which the Goods have been transhipped shall be determined in accordance with any national law making the Hague Rules compulsory applicable to this Bill of Lading, or in any other case in accordance with the Hague Rules, Articles 1-8 inclusive.

The Carrier shall be under no liability whatsoever for loss or damage to the Goods, howsoever occurring, if such loss or damage arise prior to loading onto or subsequent discharge from the vessel. Notwithstanding the above, in case and to the extent that any applicable law provides for any additional period of responsibility,

the Carrier shall have the benefit of every right, defence, limitation and liberty in the Hague Rules as applied in the clause during that period, notwithstanding that the loss or damage did occur at sea. In the event of the Goods being discharged at a port other than the Port of Discharge nominated in this Bill of Lading and forwarded to the nominated Port of Discharge by whatsoever means, the Hague Rules as referred to in paragraph 1 of this clause shall continue to apply until delivery at the nominated Port of Discharge, notwithstanding that Carriage may not be by sea.

## **6. Carrier's Responsibility – Combined Transport**

If carriage is Combined Transport, 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, and, save as is otherwise provided for in this Bill of Lading, the Carrier shall be liable for loss or damage occurring during the Carriage only to the extent set out below.

(1) If the stage of the Carriage during which loss or damage occurred is not known

(a) Exclusions

If the stage of the Carriage during which the loss or damage occurred is not known, the Carrier shall be relieved of liability for any loss or damage if such loss or damage was caused by:

- (i) an act or omission of the Merchant,
- (ii) insufficiency of or defective packing or marking,
- (iii) handling, loading, stowage or unloading to the Goods by or on behalf of the Merchant,
- (iv) inherent vice of the Goods,
- (v) strike, lock-out, stoppage or restraint of labour, from whatever cause, whether partial or general,
- (vi) a nuclear incident,
- (vii) any cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence,
- (viii) compliance with instructions of any Person entitled to give them.

(b) Burden of Proof

The burden of proof that the loss or damage was due to one or more of the causes or events specified in this Clause 6(a) shall rest upon the Carrier. Save that if the Carrier establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the causes or events specified in Clause 6(1)(a)(ii), (iii) or (iv), 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 wholly or partly by one or more of these causes or events.

(c) Limitation of Liability

Except as provided in Clauses 7(2), 7(3) and 24, if Clause 6(1) operates total compensation shall in no circumstances whatsoever and howsoever arising exceed 2 SDR's per kilo of the gross weight of the Goods lost or damaged. (SDR means Special Drawing Right as defined by the International Monetary Fund.)

(2) If the stage of the Carriage during which the loss or damage occurred is known

Notwithstanding anything provided for in Clause 6(1) and subject to Clause 15, if it is known during which stage of the Carriage the loss or damage occurred, the liability of the Carrier in respect of such loss or damage shall be determined

(a) by the provisions contained in any international convention or national law which provisions

- (i) cannot be departed from by private contract to the detriment of the Merchant; and
- (ii) would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of the Carriage during which the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable; or

(b) if no international convention or national law would apply by virtue of Clause 6(2)(a), by the Hague Rules, Articles 1-8 inclusive if the loss or damage is known to have occurred during waterborne Carriage; or

(c) by the provisions of Clause 6(1) if the provisions of Clause 6(2) (a) and (b) above do not apply.

(3) If the Place of Receipt or the Place of Delivery is not named on the face hereof

Subject to Clause 5,

(a) if the Place of Receipt is not named on the face hereof, the Carrier shall be under no liability whatsoever for loss or damage to the Goods, howsoever occurring, if such loss or damage arises prior to loading onto the vessel.

(b) If the Place of Delivery is not named on the face hereof, the Carrier shall be under no liability whatsoever for loss or damage to the Goods, howsoever occurring, if such loss or damage arises subsequent to discharge from the vessel.

- (4) 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 such loss or damage, shall have been given in writing to the Carrier or his representative at the Place of Delivery (or the Port of Discharge if no Place of Delivery is named on the face hereof) before or at the time of removal of the Goods into the custody of the Person entitled to delivery thereof under this Bill of Lading, or, if the damage or loss is not apparent, within three working days thereafter.
- (5) Time-bar  
The Carrier shall be discharged of all liability whatsoever in respect of the Goods, unless suit is brought and notice thereof given to the Carrier within nine months after delivery of the Goods or, if the Goods are totally lost, within nine months from the date on which the Goods would have been delivered.

## 7. **Sundry Liability Provisions**

- (1) Basis of Compensation  
Compensation shall be calculated by reference to the value of the Goods at the place and time that they are delivered to the Merchant, or at the place and time they should have been delivered. For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the sound value of the Goods is agreed to be the invoice value plus freight and insurance if paid.
- (2) Hague Rules Limitation  
If the Hague Rules are applicable by national law, the liability of the Carrier shall in no event exceed the limit provided in the applicable national law. If the Hague Rules are applicable otherwise than by national law, in determining the liability of the Carrier, the liability shall in no event exceed NZ\$200 per package or unit.
- (3) Ad Valorem  
The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods, and that higher compensation than that provided in this Bill of Lading may not be claimed unless, with the consent of the Carrier, the value of the Goods declared by the Shipper prior to the commencement of the Carriage is stated on this Bill of Lading and extras Freight paid, if required. In that case, the amount of the declared value shall be substituted for the limits laid down in this Bill of Lading. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.
- (4) Delay  
The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or to meet any particular market or use, and the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct, indirect or consequential loss or damage caused by delay.
- (5) Scope of Application
- (a) The terms and conditions of this Bill of Lading shall at all times govern all responsibilities of the Carrier in connection with or arising out of the supply of a Container to the Merchant, not only during the Carriage, but also during the periods prior to and/or subsequent to the Carriage.
  - (b) The rights, defences, limitations and liberties of whatsoever nature provided for in this Bill of Lading shall apply in any action against the Carrier for loss or damage or delay, howsoever occurring and whether the action be founded in contract or in tort and even if the loss, damage or delay arose as a result of unseaworthiness, negligence or fundamental breach of contract.
  - (c) Save as is otherwise provided for in this Bill of Lading, the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct or indirect or consequential loss or damage or loss of profits.
- (6) Inspection by Authorities  
If by order of the authorities at any place, a Container has to be opened for the Goods to be inspected or fumigated the Carrier will not be liable for any loss or damage incurred as a result of any opening, unpacking, inspection, repacking or fumigation. The Carrier shall be entitled to recover the cost of such opening, unpacking, inspection, repacking or fumigation from the Merchant.

## 8. **Containers Packed or Unpacked by Merchant**

If a Container is packed or unpacked other than by or on behalf of the Carrier:

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- (1) The Carrier shall not be liable for loss or damage to the Goods caused by:
- (a) the manner in which the Container has been packed, or
  - (b) the unsuitability of the Goods for Carriage in the Container supplied, or
  - (c) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereof, provided that, if the Container has been supplied by or on

- behalf of the Carrier, this unsuitability or defective condition could have been apparent upon inspection by the Merchant at or prior to the time when the Container was packed, or
- (d) packing refrigerated Goods that are not at the correct temperature for Carriage.
  - (e) failure on the part of the Merchant to properly set or monitor the Container's temperature controlling and recording mechanism while in his custody or to notify the Carrier promptly of any apparent temperature irregularity or container malfunction.

- (2) The Shipper is responsible for the packing and sealing of all Shipper-Packed Containers and, if a Shipper-Packed Container is delivered by the Carrier with its original seal affixed by the Shipper intact, the Carrier shall not be liable for any shortage of Goods ascertained at delivery.
- (3) The Merchant shall indemnify the Carrier against any loss, damage, liability or expense whatsoever and howsoever caused by one or more of the matters referred to in Clause 8(1), save that, if the loss, damage, liability or expense was caused by a matter referred to in Clause 8(1)(c), the Merchant shall not be liable to indemnify the Carrier in respect thereof unless the proviso in that Clause applies.

**9. Inspection of Goods**

The Carrier or any Person to whom the Carrier has sub-contracted the Carriage or any Person authorized by the Carrier shall be entitled, but under no obligation, to open any Container or package at any time and to inspect the Goods.

**10. Carriage affected by Condition of Goods**

If it appears at any time that, due to their condition, the Goods cannot safely or properly be carried or carried further, either at all or without incurring additional expense or taking any measure(s) in relation to the Container or the Goods the Carrier may without notice to the Merchant (but as his agent only) take any measure(s) and/or incur any additional expense to carry or to continue the Carriage thereof, and/or sell or dispose of the Goods, and/or abandon the Carriage and/or store them ashore or afloat, under cover or in the open, at any place, whichever the Carrier, in his absolute discretion, consider most appropriate, which abandonment, storage, sale or disposal shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any additional expense so incurred and the Carrier shall account to the Merchant for the disposal of the Goods.

**11. Description of Goods**

- (1) This Bill of Lading shall be prima facie evidence of the receipt by the Carrier from the Shipper in apparent good order and condition, except as otherwise noted, of the total number of Containers or other packages or units indicated in the box on the face hereof entitled "Total No of Containers/Packages received by the Carrier
- (2) Except as provided in Clause 11(1), no representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods, and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.
- (3) If any particulars of any Letter of Credit and/or Import Licence and/or Sale Contract and/or Invoice or Order number and/or details of any contract to which the Carrier is not a party are shown on the face of this Bill of Lading, such particulars are included solely at the request of the Merchant for his convenience. The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of the value and in no way increases the Carrier's liability under this Bill of Lading. The Merchant further agrees to indemnify the Carrier against all consequences of including such particulars in this Bill of Lading. The Merchant acknowledges that, except when the provisions of Clause 7(3) apply, the value of the Goods is unknown to the Carrier.

**12. Shipper's/Merchants Responsibility**

- (1) All the Persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the due fulfilment of all obligations undertaken by the Merchant in this Bill of Lading.
- (2) The Shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars furnished by or on behalf of the Shipper, are adequate and correct. The Shipper also warrants that the Goods are lawful goods and contain no contraband.

- (3) The Merchant shall indemnify the Carrier against all claims, loss, damage, fines and expenses arising or resulting from any breach of any of the warranties in Clause 12(2) hereof or from any other cause in connection with the Goods for which the Carrier is not responsible.
- (4) The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing. Freight for any additional Carriage undertaken) incurred or suffered by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof.

- (5) If Containers supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty Containers, with interiors clean, to the port or place designated by the Carrier, his servants or agents, within the time prescribed. Should a Container not be returned within the time prescribed in the Tariff, the Merchant shall be liable for any detention, loss or expenses which may result from such non-return.
- (6) Containers released into the care of the merchant for packing, unpacking or other purpose whatsoever are at the sole risk of the Merchant whilst in his control. The Merchant shall indemnify the Carrier for all loss or damage to such Containers. Merchants are deemed to be aware of the dimensions of any Containers released to them.

**13. Freight**

- (1) Freight shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.
- (2) Freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. If the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that the liquidated damages shall be payable to the Carrier in accordance with the applicable Tariff.
- (3) Freight has been calculated on the basis of the Carrier's costs as known at the time the contract of Carriage is made. Should there be any subsequent substantial change in these costs, the Carrier may recover additional Freight from the Merchant, whether or not Freight is prepaid or collect and whether or not Carriage has commenced.
- (4) All Freight shall be paid without any set-off, counter-claim, deduction or stay of execution before delivery of the Goods.

**14. Lien**

The Carrier shall have a lien on the Goods any documents relating thereto for all sums payable to the Carrier under this contract and for general average contributions, to whomsoever due. The Carrier shall also have a lien against the current holder on the Goods and any documents relating thereto for all sums due from him to the Carrier under any other contract. In any event any lien shall extend to cover the cost of recovering the sums due, and for that purpose the Carrier shall have the right to sell the Goods by public auction or private treaty, without notice to the Merchant.

**15. Optional Stowage and Deck Cargo**

- (1) The Goods may be packed by the Carrier in Containers and consolidated with other Goods in Containers.
- (2) Goods, whether or not packed in Containers, may be carried on deck or under deck without notice to the Merchant. All such Goods whether carried on deck or under deck, shall participate in general average and shall be deemed to be within the definition of Goods for the purpose of the Hague Rules and shall be carried subject to these Rules.
- (3) Notwithstanding Clause 15(2), in the case of Goods which are stated on the face hereof as being carried on deck and which are so carried the Hague Rules shall not apply and the Carrier shall be under no liability whatsoever for loss, damage or delay, howsoever arising.

**16. Methods and Routes of Carrier**

- (1) The Carrier may at any time and without notice to the Merchant:
  - (a) use any means of Carriage whatsoever,
  - (b) transfer the Goods from one conveyance to another, including but not limited to transshipping or carrying them on another vessel than that named on the face hereof,
  - (c) unpack and remove the Goods which have been packed into a Container and forward them in a Container or otherwise,
  - (d) proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or port whatsoever, once or more often and in any order,

- (e) load or unload the Goods at any place or port (whether or not such port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such place or port.
- (f) comply with any orders or recommendations given by any government or authority, or any Person acting or purporting to act as or on behalf of such government or authority, or having under the terms of any insurance on any conveyance employed by the Carrier the right to give such orders or directions,
- (g) permit the vessel to proceed with or without pilots, to tow or be towed, or to be dry-docked.
- (2) The liberties set out in Clause 16(1) may be invoked by the Carrier for any such purpose whatsoever, whether or not connected with the Carriage of the Goods, including loading or unloading other goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing any persons, including but not

limited to persons involved with the operation or maintenance of the vessel and assisting vessels in all situations. Anything done in accordance with Clause 16(1) or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation.

**17. Matters affecting Performance**

If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Goods safely or properly to be carried or carried further) and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time this contract was entered into or the Goods were received for Carriage), the Carrier (whether or not the Carriage is commenced) may without prior notice to the Merchant and at the sole discretion of the Carrier, either:

(a) Carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, by an alternative route to that indicated in this Bill of Lading or that which is usual for Goods consigned to that Port of Discharge or Place of Delivery. If the Carrier elects to invoke the terms of this Clause 17(a) then, notwithstanding the provisions of Clause 16 hereof, he shall be entitled to charge such additional Freight as the Carrier may determine.

or

(b) Suspend the Carriage of the Goods and store them ashore or afloat upon the terms of this Bill of Lading and endeavour to forward them as soon as possible, but the Carrier makes no representations as to the maximum period of suspension. If the Carrier elects to invoke the terms of this Clause 17(b) notwithstanding the provisions of Clause 16 hereof he shall be entitled to charge additional Freight as the Carrier may determine.

or

(c) Abandon the Carriage of the Goods and place them at the Merchants 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. The Carrier shall nevertheless be entitled to full Freight on the Goods received for Carriage, and the Merchant shall pay any additional costs of the Carriage to, and delivery and storage at, such port or place.

If The Carrier elects to use an alternative route under Clause 17(a) or to suspend the Carriage under Clause 17 (b) this shall not prejudice his right subsequently to abandon the Carriage.

**18. Notification and Delivery**

- (1) Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not invoke the Carrier and any liability nor relieve the Merchant of any obligation hereunder.
- (2) The Merchant shall take delivery of the Goods within the time period provided for in the Carrier's Tariff. If the Merchant fails to do so the Carrier shall be entitled, without notice, to unpack the Goods ashore, afloat, in the open or under cover, at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods stored as aforesaid shall wholly cease, and the costs of such storage shall upon demand be paid by the Merchant to the Carrier.
- (3) If the Merchant fails to take delivery of the Goods within thirty days of delivery becoming due in terms of sub clause (2) above, or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, without prejudice to any other rights which he may have against the Merchant, without notice and without any responsibility whatsoever attaching to him, sell, destroy or dispose of the Goods and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.

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- (4) Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this Clause and/or to mitigate any loss or damage hereto shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.

**19. General Average and Salvage**

- (1) The Carrier may declare general average which shall be adjustable according to the York/Antwerp Rules of 1974 at any place at the option of the Carrier and the amended Jason clause as approved by BIMCO is to be considered as incorporated herein and the Merchant shall provide such security as may be required by the Carrier in this connection.
- (2) Notwithstanding (1) above the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claims (and any expense arising therefrom) of a general average nature which may be made on the Carrier and shall provide such security as may be required by the Carrier in this connection.

**20. Variation of the Contract**

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

**21. Law and Jurisdiction**

At the option of the Merchant, any claim by the Merchant in respect of the Goods carried under this Bill of Lading may be referred either to the Courts of the State of Victoria or to the Courts of the country where the Carrier has his principal place of business. The Carrier may bring claims against the Merchant in the Courts of the place where the Merchant has his principal place of business and according to the laws of that country. If the parties agree, any claim or dispute may be referred to arbitration.

**22. Validity**

In the event that anything herein contained is inconsistent with any applicable international convention or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of such inconsistency but no further be null and void.

**23. Both-To-Blame Collision**

The Both-To-Blame collision clause published by the Baltic and International Maritime Council is hereby incorporated into this Bill of Lading.

**24. USA Clause Paramount (if applicable)**

- (1) If Carriage includes Carriage to, from or through a port in the United States of America, this Bill of Lading shall be subject to the United States Carriage of Goods by Sea Act 1936 (US COGSA), the terms of which are incorporated herein and shall be paramount throughout Carriage by sea and the entire time that the Goods are in the actual custody of the Carrier or his Sub-Contractor at the sea terminal in the United States of America before loading onto the vessel or after discharge therefrom, as the case may be. As thus applied other than at sea, US COGSA is applied to determine the liability of the Carrier who shall be entitled to the benefits of the defences and limitation therein, notwithstanding that the loss or damage did not occur at sea.
- (2) The Carrier shall not be liable in any capacity whatsoever for loss, damage or delay of or to the Goods while the Goods are in the United States of America away from the sea terminal and are not in the actual custody of the Carrier. At these times the Carrier acts as agent only to procure Carriage by Persons under the usual terms and conditions and those Persons. If, for any reason, the Carrier is denied the right to act as agent only at these times, his liability for loss, damage or delay to the Goods shall be determined in accordance with Clause 6 hereof.
- (3) If US COGSA applies the liability of the Carrier and/or the vessel shall not exceed US\$500 per package or customary freight unit (in accordance with Section 1304(5), unless the value of the Goods has been declared on the face hereof, in which case Clause 7(3) shall apply.