

**<Face Clause>**

RECEIVED by the Carrier from the Shipper in apparent good order and condition unless otherwise indicated herein, the Goods or the Container(s) or package(s) said to contain the Goods herein mentioned, to be carried subject to all the terms and conditions provided for on the face and back of this Waybill, from the place of receipt or port of loading to the Port of Discharge or Place of Delivery shown herein and there to be delivered. Particulars furnished by the Merchant. All descriptions contained herein considered unknown to the Carrier. None of the terms of this Waybill can be waived by or for the Carrier except by express waiver signed by the Carrier or its duly authorized agent.

IN ACCEPTING THIS WAYBILL, the Merchant agrees to be bound by all the stipulations, exceptions, terms and conditions on the face and back hereof, and the terms and conditions contained in the Carrier's applicable Tariff, whether written, typed, stamped, printed or otherwise incorporated, as fully as if signed by the Merchant, any local custom or privilege to the contrary notwithstanding, and agrees that all representations, agreements or freight engagements for and in connection with the Carriage of the Goods are superseded by this Waybill. Moreover, the Shipper accepts the said stipulations, exceptions, terms and conditions not only on his own behalf but on behalf of the Consignee and the Owner of the Goods and the Shipper warrants that he has the authority to do so. Except as otherwise specifically provided in this Waybill, delivery of the Goods will be made only to the Consignee named on the face hereof, or his authorized agent, on production of proof of identity at the Port of Discharge or the Place of Delivery. The Consignee by presenting this Waybill and/or requesting delivery of the Goods, however, undertakes all liabilities of the Shipper hereunder. The benefit of the contract evidenced by this Waybill shall thereby be transferred to the Consignee or other person presenting this Waybill.

IN WITNESS WHEREOF, the undersigned, on behalf of the Carrier, has signed the number of original Waybill(s) stated below, all of this tenor and date.

The Agents signing this Waybill on behalf of the Carrier have only the limited authority and assume no liability and responsibility for the performance of any obligation herein and act as Agents only for the Carrier.

**GOVERNING LAW AND JURISDICTION**

The contract evidenced by or contained in this Waybill shall be governed by Japanese law except as may be otherwise provided for herein, and any action against the Carrier under this Waybill or in connection with the Carriage of the Goods shall be brought before the Tokyo District Court in Japan, to whose jurisdiction the Merchant irrevocably consents, whilst any such actions against the Merchant may be brought before the said Court or any other competent court at the Carrier's option.

**<Back Clause>**

This Waybill shall have effect subject to the "CMI Uniform Rules for Sea Waybills" (excluding Rule 4(iii) thereof), which are deemed to be incorporated herein. The CMI Uniform Rules for Sea Waybills can be accessed on the website of CMI (currently [www.comitemaritime.org](http://www.comitemaritime.org)) or are available from the Carrier on request.

**1. DEFINITIONS**

"Carrier" means "K" LINE LOGISTICS, LTD. on whose behalf this Waybill has been signed.

"Holder" means any person for the time being in possession of or entitled to this Waybill.

"Ship" means any vessel on which the Goods are shipped or substituted and any craft, lighter or other means of transportation used in whole or in part for the Carriage under this Waybill.

"Merchant" includes the shipper, the consignee, the receiver of the Goods, the Holder of this Waybill, any person owning or entitled to the possession of the Goods or this Waybill or any person acting on behalf of any of the above mentioned persons.

"Goods" includes the whole or any part of the articles of every kind and description, including their packaging, containers or shipping units or materials, tendered to the Carrier under this Waybill and described or identified on the face of this Waybill.

"Container" includes any container, trailer, transportable tank, lift van, flat rack, pallet or any similar article of transport used to consolidate the Goods and/or other item of transportation equipment.

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

"Combined Transport" means the Carriage of the Goods by more than one modes of transport under this Waybill from the Place of Receipt from the Merchant to the Place of Delivery to the Merchant.

"Hague Rules" means the provisions of the International Convention for Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

"Hague-Visby Rules" means the Hague Rules as amended by the Protocol to amend the Hague Rules done at Brussels on 23 February 1968, or, where applicable, the Protocol amending the Hague Rules as amended by the Protocol of 23 February 1968 done at Brussels on 21 December 1979.

"Japan COGSA" means the International Carriage of Goods by Sea Act, 1957 of Japan, as amended on 3 June, 1992.

"US COGSA" means the Carriage of Goods by Sea Act of the United States of America approved on 16 April 1936.

"Charges" includes freight, demurrage, equipment detention, general average and any other money obligations incurred or payable by the Merchant, or for the payment of which the Carrier has a security interest or lien on the Goods, under this Waybill or by operation of law.

"Shipping Unit" includes freight unit, each physical unit or piece of cargo not shipped in a package, including articles or things of any description whatsoever and shall include, but not limited to, a skid, cradle, pallet or unitized load, group or assemblage, and the term "unit" as used in the Hague Rules and the Hague-Visby Rules.

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

"Sub-contractor" includes owners, charterers and operators of vessels, stevedores, terminal operators, warehousemen, road, rail, sea, water and air transport operators and independent contractors and their respective servants, agents and sub-contractors, whose services the Carrier procures for the performance of the whole or any part of the Carriage.

"Verified Gross Mass" means the combined mass of a container's tare mass and the masses of all packages and cargo items including but not limited to pallets, dunnage, other packing material and securing materials packed in the container and verified by one of the methods of weighing specified in SOLAS (The International Convention for the Safety of Life at Sea) Chapter VI Regulation 2.

**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. In the case of inconsistency between this Waybill and the applicable Tariff, this Waybill shall prevail.

**3. WARRANTY**

The Merchant warrants that in agreeing to the terms hereof it is or is the agent of and has the authority of the Person owning or entitled to the possession of the Goods and/or this Waybill.

## 4. NON-NEGOTIABILITY

(1) This Waybill shall be non-negotiable.

(2) This Waybill shall be prima facie evidence of the taking in charge by the Carrier of the Goods as herein described between the Shipper and the Carrier, unless a contrary indication such as "said to contain", "shipper's weight, load and count", "shipper-packed container" or similar expression has been made on the face hereof.

## 5. GENERAL RESPONSIBILITY, EXCLUSIONS AND IMMUNITIES OF THE CARRIER

The Carrier shall be liable for loss of or damage to the Goods occurring from the time when the Carrier receives the Goods for the Carriage until the time of delivery, only to the extent set out below.

(1) In addition to every exemption or immunity whatsoever that the Carrier is entitled to be benefitted under this Waybill, any applicable National Law and International Convention, the Carrier shall in any event and in all cases whatsoever be relieved of liability for any loss or damage or delay in delivery if such loss or damage or delay in delivery was caused by or resulted from but not limited to:

- (A) The wrongful act or neglect of the Merchant;
- (B) Compliance with the instructions of the Merchant or any Person entitled to give them;
- (C) Wrongful, false, incorrect or inaccurate description of the Goods or other particulars declared by the Merchant of the Goods;
- (D) The lack of, insufficiency of, or defective condition of packing in case of the Goods, which by their nature, are not properly packed;
- (E) Handling, loading, stowage, or unloading of the Goods by or on behalf of the Merchant;
- (F) Inherent vice of the Goods;
- (G) Lack of, insufficiency or inadequate of, marks or numbers of the Goods covering or unit loads;
- (H) Pre-shipment loss or damage;
- (I) Riots, piracy, terrorism, civil commotions, strike, lock-out, stoppages or restraint of labour from whatsoever cause, whether partial or general;
- (J) Military actions;
- (K) A nuclear incident;
- (L) Force majeure;
- (M) Fire, unless caused by the actual fault or privity of the Carrier;
- (N) Saving or attempting to save life or property at sea;
- (O) Any cause or event which the Carrier could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

(2) Where under the above subclause 5(1), if loss or damage or delay is caused partly by a cause for which the Carrier is liable and partly by a cause specified under subclause 5(1), it shall only be liable to the extent that those factors for which it is liable under this clause 5 have contributed to the loss or damage or delay.

(3) The burden of proving prima facie that the loss or damage or delay was due to one or more of the causes, or events, specified in subclauses from 5(1)(A) to 5(1)(O) shall rest upon the Carrier.

(4) When the Carrier establishes prima facie that in the circumstances of the case, the loss or damage or delay could be attributed to one or more of the causes or events specified in the abovementioned subclause 5(1), it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage or delay was not, in fact, caused either wholly or partly by one or more of the causes or events.

(5) If the stage of the Carriage during which the loss or damage or delay occurred is known, notwithstanding anything provided for otherwise herein, the liability of the Carrier shall be determined by the provisions contained in any international convention or mandatory national law which provisions:

- (a) cannot be departed from by private contract to the detriment of the Merchant, and
- (b) 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 or delay occurred and received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable. Where either (a) or (b) above does not apply, any liability of the Carrier shall in no event exceed SDR 2.00 per kilogram of gross weight of the Goods lost or damaged or delayed.

(6) If it can be proved that the loss or damage or delay occurred during other carriage than by sea but while the Goods were in custody of the Sub-Contractor, the liability of the Carrier and the limitation thereof shall be determined in accordance with the Sub-Contractor's contract of the Carriage or tariff. However, the liability of the Carrier shall in no event exceed the limits provided in subclause 8(2)(c) hereunder.

(7) If it cannot be proved where the loss or damage or delay occurred, the loss or damage or delay shall in no event exceed SDR 2.00 per kilogram of gross weight of the Goods lost or damaged or delayed.

## 6. CERTAIN RIGHTS AND IMMUNITIES FOR THE CARRIER AND OTHER PERSONS

(1) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage, including liberty to further sub-contract.

(2) The Merchant undertakes that no claim or allegation shall be made against any Person or the Ship whatsoever, other than the Carrier, including, but not limited to, the Carrier's servants or agents, any independent contractor and his servants or agents, and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken, which imposes or attempts to impose upon any such Person or the Ship any liability whatsoever in connection with the Goods or the Carriage; and if any claim or allegation should

nevertheless be made, to defend, indemnify and hold harmless the Carrier against all consequences thereof. Without prejudice to the foregoing every such Person and the Ship shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for its benefit and in entering into the contract evidenced by this Waybill the Carrier, to the extent of these provisions, does so not only on its own behalf but also as agent or trustee for such Persons and Ships and such Persons and Ships shall to this extent be or be deemed to be parties to such contract.

(3) 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 Waybill.

(4) The defences and limits of liability provided for in this Waybill shall apply in any action against the Carrier whether the action be found in contract or in tort or otherwise.

## 7. CARRIER'S RESPONSIBILITY

### (1) CLAUSE PARAMOUNT

(A) The receipt, custody, carriage and delivery of the Goods are governed by the provisions of the transportation agreement evidenced by this Waybill and incorporated by this reference, including:

(i) the terms and conditions of the Carrier's applicable Tariff;

(ii) the terms and conditions stated on the front and back of this Waybill; and

(iii) the provisions of the Japan COGSA, as far as this Waybill covers the Carriage of the Goods by sea and/or inland waterways, this Waybill shall have effect subject to the provisions of the Japan COGSA, unless it is adjudged that any other legislation of a nature similar to the Hague Rules, or to the Hague-Visby Rules, mandatorily applies to this Waybill, in which case it shall have effect subject to the provisions of such similar legislation (the "Hague-Rules Legislation"), and the Japan COGSA or the Hague-Rules Legislation shall be deemed to be incorporated herein. The Japan COGSA or the Hague-Rules Legislation shall apply and govern before the Goods are loaded on and after they are discharged from the Ship and throughout the entire time the Goods are in custody of the Carrier and his servants or agents or the Sub-Contractor within the sea terminal at the Port of Loading or Port of Discharge. If any provision herein is held to be inconsistent with or repugnant to any extent of the Japan COGSA, the Hague-Rules Legislation or any other laws, statutes or regulations mandatorily applicable to the contract evidenced by this Waybill, such provision shall be null and void to the extent of such inconsistency or repugnance but no further.

(B) The Japan COGSA and the Hague-Rules Legislation shall be extended to apply to the Goods stowed on deck or under deck as provided in clause 20, before the Goods are loaded on or after they are discharged from the Ship and throughout the entire time during which the Carrier is responsible for the Goods under this Waybill.

(C) The Carrier shall be entitled to (and nothing in this Waybill shall operate to deprive or limit such entitlement) the full benefit of, and rights to, all limitations and exclusions from liability and all rights conferred or authorised by any applicable law, statute or regulation of any country and without prejudice to the generality of the foregoing also any law, statute or regulations available to the owner of the Ship(s) on which the Goods are carried.

### (2) METHODS AND ROUTE OF TRANSPORTATION

(A) The Carrier may at any time and without notice to the Merchant:

use any means of transport or storage whatsoever; load or carry the Goods on any Ship whether named on the front hereof or not; transfer the Goods from one conveyance to another including transshipping or carrying the same on another Ship than that named on the front hereof or by any other means of transport whatsoever; at any place unpack and remove the Goods which have been stuffed in or on a Container and forward the same in any manner whatsoever, proceed at any speed and by any route in its discretion (whether or not the nearest or most direct or customary or advertised route) and proceed to or stay at any place whatsoever once or more often and in any order; load or unload the Goods from any conveyance at any place (whether or not the place is a port named on the front hereof as the intended Port of Loading or intended Port of Discharge); comply with any orders or recommendations given by any government or authority or any Person or body acting or purporting to act as or on behalf of such government or authority or having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions; permit the Ship to proceed with or without pilots, to tow or be towed or to be dry-docked; permit the Ship to carry livestock, goods of all kinds, dangerous or otherwise, contraband, explosives, munitions or warlike stores and sail armed or unarmed.

(B) The liberties set out in subclause 7(2)(A) above may be invoked by the Carrier for any purposes whatsoever whether or not connected with the Carriage of the Goods. Anything done in accordance with subclause 7(2)(A) above or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation of whatsoever nature or degree. Without prejudice to the generality of the foregoing, in any situation, whether existing or anticipated prior to or during the Carriage, which, in the judgment of the Carrier or any Person charged with the Carriage or safekeeping of the Goods, has caused or may cause danger, injury, loss, delay or disadvantage to the Ship, the Carrier, the Goods, any Person or any property, the Carrier or participating carriers will have no further duty or responsibility whatsoever as the Carrier.

## 8. GENERAL PROVISIONS

### (1) PERIOD OF RESPONSIBILITY / NO UNDERTAKING OF ARRIVAL TIME

(A) The Carrier shall not be responsible for any loss or damage to the Goods howsoever occurring, if such loss or damage occurring prior to receipt of the Goods by the Carrier or after delivery of the Goods by the Carrier.

(B) The column "Final Destination" on the face hereof is solely for the purpose of the Merchant's references and the Carrier's responsibility with respect to the Goods shall in all cases cease at the time of delivery of the Goods at the Port of Discharge or Place of Delivery.

(C) The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or in time to meet any particular market or use, and the Carrier shall not be responsible for any direct or indirect loss or damages which is caused through delay.

#### (2) PACKAGE OR SHIPPING UNIT LIMITATION

(A) Subject to the Carrier's right to limit liability as provided for herein, if the Carrier is liable for compensation in respect of loss of or damage to the Goods, such compensation shall be calculated by reference to the net invoice value of the Goods, plus freight charges and insurance if paid. If there is no invoice value of the Goods or if any such invoice is not bona fide, such compensation shall be calculated by reference to the market value of such Goods at the place and time they are delivered or should have been delivered to the Merchant. The market value of the Goods shall be fixed according to the current market price, by reference to the normal value of the Goods of the same kind and quality. In no event shall the Carrier be liable for any loss of profits or any consequential or indirect loss or damage. Without prejudice to the generality of the foregoing, even if the Carrier is held liable for any delay, the liability of the Carrier shall in no event exceed the freight applicable to the stage of the Carriage under which such delay occurred.

(B) If and to the extent any Hague-Rules Legislation making such Rules are compulsorily applicable (such as the Japan COGSA or the US COGSA) to this Waybill, the Carrier shall not, unless a declared value has been noted in accordance with subclause 8(3) and clause 15 below, be or become liable for any loss or damage to or in connection with the Goods in excess of the package or the Shipping Unit limitation as laid down by such Rules or legislation, whichever are compulsorily applicable.

(C) Unless a declared value has been noted in accordance with subclause 8(3) and clause 15 below, where any Hague-Rules Legislation making such Rules compulsorily applicable to this Waybill do not apply, the Carrier shall in no event be or become liable for any loss or damage or delay to or in connection with the Goods in an amount exceeding SDR 2.00 per kilogram of gross weight of the Goods lost or damaged or delayed.

(D) Subject to clause 27 of this Waybill, for shipments to or from ports in the United States of America, neither the Carrier nor the Ship shall, in any event, be or become liable for any loss or damage to such Goods in the amount exceeding US\$500 lawful money of the United States of America per package or in case of the Goods not shipped in package, per customary freight unit or equivalent of that sum in other currency.

#### (3) AD VALOREM: DECLARED VALUE OF PACKAGE OR THE SHIPPING UNIT

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 Waybill 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 adjusted pro rata on the basis of such declared value.

#### (4) DEFINITION OF PACKAGE OR THE SHIPPING UNIT

Where a Container is used to consolidate the Goods and such Container is stuffed by the Carrier, the number of packages or the Shipping Units stated on the face of this Waybill in the box provided shall be deemed the number of packages or the Shipping Units for the purpose of any package or shipping unit limitation as laid down by the Hague Rules, the Hague-Visby Rules, other international convention or legislation relating to the Carriage of the Goods. Except as aforesaid the Container shall be considered the package or the Shipping Unit.

#### (5) FIRE AND RUST

(A) The Carrier shall not be liable for any loss or damage to or delay of the Goods occurring at any time, even though before loading on or after discharge from the Ship, by reason or by means of any fire whatsoever, unless such fire shall be caused by the actual fault or privity of the Carrier.

(B) 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 acknowledgment of 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. If the Merchant requires special arrangements or care for the Carriage of such Goods, the Merchant must request same in writing to the Carrier and the said arrangements must be noted on the face of this Waybill and all special freight, as required, must be paid by the Merchant.

#### (6) GOVERNMENT ORDERS

The Carrier or the master shall have liberty to comply with any orders, directions, regulations, requests or suggestions given by or received from the government of any nation or by any Person purporting to act with the authority of such government. Any disposition of the Goods pursuant to this clause 8 shall constitute completion of the transportation under this Waybill by the Carrier, and the Goods thereafter shall be solely at the Merchant's own risk and expense. The Merchant shall bear and pay all duties, taxes, fines, imposts, expenses or losses incurred or suffered by reason thereof and shall indemnify the Carrier in respect thereof.

#### (7) WAR RISK EXPENSES

The Carrier may at any time and without prior notice to the Merchant impose surcharges to cover all extra expenses (including but not limited to extra insurance premiums and costs of diversion) incurred by the Carrier as a result of the outbreak of war, hostilities, war-like operations, civil war, civil commotions, blockade, piracy, terrorism or revolutions regardless of whether the Ship sailed or not sailed or is underway at the time the expenses are incurred.

## (8) NOTICE OF CLAIM - TIME FOR SUIT

(A) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agent at the Port of Discharge before or at the time of the removal of the Goods into the custody of the Merchant thereof under this Waybill, such removal shall be prima facie evidence of the delivery by the Carrier of the Goods as described herein. If the loss or damage is not apparent the notice must be given within three (3) consecutive days after delivery.

(B) Subject to the provisions of clauses 5 and 7 above, which may result in a shorter period, the Carrier, its agents, servants and the Sub-contractors and the Ship shall be discharged from all liability in contract and in tort in respect of loss, damage, delay, misdelivery or conversion unless suit is brought within nine (9) months after delivery of the Goods or the date when the Goods should have been delivered. Investigation, negotiating or otherwise dealing with claims by the Carrier or its lawyers or representatives shall not be construed as an admission of liability and should not be deemed a waiver of this provision.

(C) The Carrier may, at its sole discretion, and on the basis that it has not been prejudiced by the passage of time, waive notice requirements or other time limit.

## (9) GOVERNING LAW AND JURISDICTION

The contract evidenced by or contained in this Waybill shall be governed by Japanese law except as may be otherwise provided for herein, and any action against the Carrier under this Waybill or in connection with the Carriage of the Goods shall be brought before the Tokyo District Court in Japan, to whose jurisdiction the Merchant irrevocably consents, whilst any such actions against the Merchant may be brought before the said Court or any other competent court at the Carrier's option.

## (10) SUBROGATION

When any claims are paid to the Merchant by the Carrier, the Carrier shall be automatically subrogated to all rights of the Merchant against all other third parties on account of such loss or damages.

## 9. MERCHANT'S RESPONSIBILITY

(1) The Merchant, with respect to cargo units not packed or loaded by the Carrier, represents and warrants:

(A) that the Goods are properly described, marked, secured, and packed on their respective cargo units;

(B) that any cargo units other than the Carrier-furnished units are seaworthy and physically suitable, sound and structurally adequate to properly contain and support the Goods during handling and the transportation contemplated by this Waybill, and that such cargo units may be handled in the usual and customary manner without damage to themselves or to their contents, or to the Ship or its other cargo, or property or Persons;

(C) that all particulars with regard to the cargo units and their contents, and the weight, quantity, quality of each set cargo unit, are in all respects correct; and

(D) that such units are in compliance with all applicable laws, regulations and government requirements which may be applicable.

The Merchant, jointly and severally, agrees to indemnify the Carrier and to hold the Carrier harmless in respect of all injury or death of any Person, or any loss or damage to Cargo or any other property or to the Ship or any other vessel, or any other loss or expense, including but not limited to, loss of profits and legal costs, caused by the breach of any of the foregoing representations or warranties.

(2) The Merchant shall, jointly and severally, be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, the Containers) of the Carrier or any Person or Ship (other than the Merchant) referred to in clause 6 above caused by the Merchant or any Person acting on its behalf or for which the Merchant is otherwise responsible.

(3) The Merchant shall, jointly and severally, 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 9 or from any cause in connection with the Goods for which the Carrier is not responsible.

(4) Where the Carrier is instructed to provide a Container in the absence of a written request to the contrary, the Carrier is not under an obligation to provide a Container of any particular type or quality.

## 10. CONTAINERS

(1) The Goods may be stuffed by the Carrier in or on the Containers and the Goods may be stuffed with other Goods.

(2) When containers, vans, trailer, transportable tanks, skids, palletized units, and other cargo units are not packed or loaded by the Carrier, the Carrier does not represent to be accurate and is not bound by any description of the value, quantity, weight, condition or existence of the contents thereof as furnished by or on behalf of the Merchant and identified in this Waybill by use of the phrase "said to contain", "Shipper's weight load and count", "shipper-packed container" or terms of like meaning, and the Carrier in such case shall not be liable for any difference in value, quantity, weight or condition of the Goods furnished by or on behalf of the Merchant and that of the Goods actually delivered. The Carrier shall have no responsibility or liability whatsoever for loss or damage to the Goods:

(A) caused by the manner in which the Container has been packed, loaded, secured, shored and/or stowed;

(B) caused by the unsuitability of the Goods for the Carriage in the Container;

(C) caused by the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Carrier, this subclause 10(2)(C) shall only apply if the unsuitability or defective condition arose (i) without any want of due diligence on the part of the Carrier or (ii) would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Carrier was stuffed.

(D) if the Container is not sealed at the commencement of the Carriage except where the Carrier has agreed to seal the Container.

(3) The Merchant shall assume full responsibility for and shall indemnify the Carrier against any loss of or damage to any Container or other equipment furnished or arranged by the Carrier for the Merchant which occurs while in the possession or control of the Merchant, its agent or its inland carrier engaged by or on behalf of the Merchant.

(4) The Carrier shall in no event be liable for and the Merchant shall indemnify and hold harmless the Carrier from and against any loss of or damage to the property of any other Person or any injury to or death of any other Person caused by any Container or other equipment furnished or arranged by the Carrier or by contents of the Container during handling by or while in the possession or control of the Merchant, its agent or its inland carrier engaged by or on behalf of the Merchant.

(5) If any Container furnished or arranged by the Carrier is unpacked at the Merchant's premises, the Merchant shall be responsible for returning the empty Container, with interior brushed and cleaned, to the point or place designated by the Carrier within the time prescribed. Should a Container not be returned within the time prescribed by the Carrier, the Merchant shall be liable for any detention charge, loss or expenses which may arise from such nonreturn.

#### 11. SOLAS VGM Compliance

(1) The Shipper must provide to the Carrier the Verified Gross Mass of the Container(s) by the deadline required at each terminal or the deadline stipulated by the Carrier, whichever comes earlier. The Carrier is under no obligation to weigh any Container(s) produced for the Carriage.

(2) Where the information stated in subclause 11(1) has not been provided within the period stipulated above the Carrier may at its sole option reject the Container(s) for loading and shall have the liberty but not the obligation to load the Container(s) on any future sailing at any time subject to available carrying capacity. The Carrier shall under no circumstances be liable for any delays or costs caused because of the Container(s) being rejected for loading.

(3) If, at the sole discretion of either the port of loading terminal operator or the Carrier, it is determined necessary to weigh the Container(s), the Shipper hereby consents to allow such weighing and the weight thereby determined shall be the Verified Gross Mass used for loading, planning, charges or any other requirement for which the Verified Gross Mass is needed. The costs of the weighing of the Container(s) in these circumstances are solely for the Merchant's account.

(4) The Carrier reserves the right to reject for the Carriage of any Container(s) if the Verified Gross Mass declared by the Shipper and the Verified Gross Mass determined by the Carrier (or the terminal, as the case may be) does not match by exceeding  $\pm 2.5\%$  of the determined Verified Gross Mass.

(5) Where the Verified Gross Mass of the Container(s) has been incorrectly declared, the Shipper shall be liable to the Carrier for all losses of whatsoever nature (including but not limited to deadfreight, demurrage, storage charges, customs charges, fines etc.) which arise out of such incorrect declaration whether or not it was the responsibility of the Merchant.

(6) Any Container(s) where the Verified Gross Mass is in excess of the maximum gross mass indicated on the Safety Approval Plate will not be carried in any circumstances.

#### 12. NOTIFICATION, DELIVERY AND STORAGE OF THE GOODS

Any mention in this Waybill of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.

Except at ports where the Carrier delivers the Goods directly to the Merchant, delivery shall take place and the Carrier shall have no further responsibility when the Goods are discharged upon a safe dock, lighter or other craft and custody is taken by port or government authorities, terminal operators or lightermen.

If for any reason whatsoever, the Merchant refuses or fails to take delivery of the Goods upon their arrival and availability at destination and upon expiration of tariff-prescribed free time and any notice period as set forth in a notice of arrival, availability or demand given by the Carrier, the Carrier may, without further notice or demand, and in addition to any other legal or equitable remedies, exercise its lien for any Charges due at a private or judicial sale of the Goods, or may place the Goods in storage at the risk and expense of the Merchant (such storage shall constitute due delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the Goods or that part thereof shall cease), subject to a lien in favour of the Carrier for any Charges due.

**13. DANGEROUS HAZARDOUS OR NOXIOUS OR CONTRABAND CARGO**

The Carrier undertakes to carry the Goods of an inflammable, explosive, corrosive, radioactive, noxious, hazardous, unstable or dangerous nature only upon the Carrier's acceptance of a prior written application by the Merchant for the Carriage of such Goods. Such application must accurately state the nature, name, label and classification of the Goods as well as the method of rendering them innocuous, with the full names and addresses of the Merchant. The Merchant shall undertake that the nature of the Goods referred to above is distinctly and permanently marked and manifested on the outside of the package(s) and the Container(s) and shall also undertake to submit the documents or certificates required by any applicable statutes or regulations at any stage of the Carriage or by the Carrier. The Merchant warrants that such Goods are packed in a manner to withstand the risks of the Carriage having regard to their nature and in compliance with all laws, regulations or requirements, which may be applicable to the Carriage. The Goods of an inflammable, explosive, corrosive, radioactive, noxious, hazardous, unstable or dangerous nature, shipped without full disclosure in writing to the Carrier as to their nature and character, or the Goods that are contraband or prohibited by any laws or regulations of the port of loading, discharge or call or any place or waters during the transport, may at any time before discharge be landed at any place, thrown overboard, destroyed or rendered innocuous without liability on the part of the Carrier or other Merchant; and even if such disclosure be made, the Carrier may, without incurring any liability, make the same disposition of such Goods if, in the opinion of the Carrier, they shall be or become dangerous or noxious to the Ship or cargo, or to Persons. The Merchant shall indemnify the Carrier for all losses, damages, (including but not limited to, consequential damages such as loss of profits and expenses related to the Carrier's inability to use its Ships and equipment), liabilities, fines, civil penalties and expenses (including legal costs) suffered by the Carrier caused in whole or in part, whether due to negligence of the Merchant or not, and the Carrier shall be under no liability to make any General Average contribution in respect of such Goods by omission of full disclosure required by this clause 13 or by applicable law or regulations.

**14. TEMPERATURE CONTROLLED CARGO**

The Merchant undertakes not to tender for transportation of any Goods which require temperature control, refrigeration, ventilation or any other special attention unless the face of this Waybill notes that the Goods are to be carried in a temperature, refrigerated, specifically ventilated or otherwise specially equipped Container. This Carriage is subject to the special services and the Charges offered in the Carrier's Tariff.

The Merchant is responsible for bringing the Goods to the proper temperature before loading the Goods into the Containers, for the proper stowage of the Goods within the Container, for setting the temperature (including maintenance and repair), during all times before the Containers are delivered to the Carrier and after they are delivered by the Carrier. The Carrier is not responsible for product deterioration caused by inherent vice, defects in the merchandise or transit times in excess of the produce's shelf life. Refrigerated, heated, specially ventilated or otherwise specially equipped Containers are not equipped to change the temperature of the Goods (they are equipped only to maintain temperature; provided that the Carrier does not guarantee the maintenance of any intended temperature inside the Container). The Merchant will give written notice of requested temperature setting of the thermostatic controls before receipt of the Goods by the Carrier. When a loading Container is received, the Carrier will verify that the thermostatic controls are set to maintain the Container temperature as requested. The Carrier is unable to determine whether the Goods were at the proper temperature when they were loaded into the Container or when the Container is delivered to the Carrier.

**15. VALUABLE GOODS**

The Carrier shall not be responsible to any extent for any loss of or damage to platinum, gold, silver, jewelry, precious metals, radioisotope, precious chemicals, bullion, specie, currencies, negotiable instruments, securities, writing, documents, pictures, embroideries, works of art, curios, heirlooms, collections of every nature or any other valuable Goods whatsoever including the Goods having particular value only for the Merchant unless the true nature and value of the Goods are declared in writing by the Merchant before receipt of the Goods and the same are inserted on the face hereof and ad valorem freight is prepaid thereon.

**16. HEAVY LIFT**

(1) The weight of a single piece or package exceeding one (1) metric ton gross must be declared by the Merchant in writing before receipt by the Carrier and must be marked clearly and durably on the outside of the piece or package in letters and numbers not less than five (5) centimeters high.

(2) In case of the Merchant's failure in its obligation under the preceding subclause, the Carrier shall not be responsible for any loss of or damage to the Goods and the Merchant shall be responsible for loss of or damage to any property or for personal injury or death arising as a result of the Merchant's said failure and shall indemnify the Carrier against loss or liability suffered or incurred by the Carrier as a result of such failure.

**17. AUTOMOBILE AND OTHER UNPACKED GOODS**

The term apparent good order and condition with reference to any automobile, rolling stock, tractor, machinery and other unpacked Goods does not mean that the condition of the Goods when received were free of any bend, dent, scratch, hole, cut and bruise that could not have been found by ordinary care and diligence. The Carrier shall in no event be liable for such conditions.

**18. INSPECTION OF THE GOODS**

(1) The Carrier or any Person authorised by the Carrier shall be entitled, but under no obligation, to open any Container or package at any time and to inspect the Goods. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried further, either at all or without incurring any additional expenses or taking any

measures in relation to the Container or its contents or any part thereof, the Carrier may abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under the this Waybill. The Merchant shall indemnify the Carrier against any reasonable additional expenses so incurred.

(2) If clause 24 applies or if by order of the authorities at any place, the Container has to be opened for the contents to be inspected, the Carrier shall not be liable for any loss, damage or any other consequences as a result of any opening, unpacking, inspection or repacking. The Carrier shall be entitled to recover the cost of such opening, unpacking, inspection and repacking from the Merchant.

#### 19. MATTERS AFFECTING PERFORMANCE

(1) If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including the condition of the Goods), whensoever and howsoever arising (whether or not the Carriage has commenced), the Carrier may:

(A) without notice to the Merchant abandon the Carriage of the Goods and where reasonably possible place the Goods or any part of them at the Merchant's disposal at any place which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease;

(B) without prejudice to the Carrier's right subsequently to abandon the Carriage under subclause 19(1)(A) above, continue the Carriage.

In any event the Carrier shall be entitled to the full Charges on the Goods received for the Carriage and the Merchant shall pay any additional costs resulting from the above mentioned circumstances.

(2) The liability of the Carrier in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with the 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.

#### 20. DECK CARGO (AND LIVE ANIMALS AND PLANTS)

(1) The Goods of any description whether containerised or not may be stowed on or under deck without notice to the Merchant and such stowage shall not be a deviation of whatsoever nature or degree. Subject to subclause 20(2) below, such Goods whether carried on deck or under deck shall participate in General Average and such Goods (other than live animals and plants) shall be deemed to be within the definition of the Goods for the purposes of the Hague Rules or the Hague-Visby Rules or any legislation making such Rules compulsorily applicable to this Waybill.

(2) The Goods which are stated on the front of this Waybill to be carried on deck and which are so carried (and live animals and plants, whether or not carried on deck) are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during the Carriage by sea or inland waterway whether caused by unseaworthiness or negligence or any other cause whatsoever. The Merchant shall defend, indemnify and hold harmless the Carrier against all and any extra cost incurred for any reason whatsoever in connection with the Carriage of such live animals and plants.

#### 21. BOTH-TO-BLAME COLLISION

If the Ship comes into collision with another ship as result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or of the servant of the Carrier in the navigation or in the management of the Ship, the owners of the Goods carried hereunder will indemnify the Carrier against all loss or liability to the other or the non-carrying ship or her owner insofar as such loss or liability represents loss of or damage to, or any claim whatsoever of the owners of the said Goods, paid or payable by the other or the non-carrying ship or her owners to the owners of the said Goods and set-off, recouped or recovered by the other or the non-carrying ship or her owners as part of their claim against the carrying Ship or the Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision, contact, stranding or other accident.

#### 22. GENERAL AVERAGE

(1) General Average shall be adjusted, stated and settled, according to York/Antwerp Rules 1994, at any place selected by the Carrier. The Merchant shall provide such security, Average agreement and/or bond and/or such additional security as may be required by the Carrier in this connection. Such security, average agreement and/or bond and/or such additional security as may be required by the Carrier must be furnished before delivery of the Goods.

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract, tort or otherwise, the Merchant shall contribute with the Carrier in General Average to the payment of sacrifices, losses or expenses of a General Average nature that may be made or incurred, and shall make good salvage and the special Charges incurred in respect of the Goods. If a salvaging ship is owned or operated by the Carrier or the owners of the Ship, salvage shall be paid for as fully and in the same manner as if the salvaging ship belonged to strangers. The Merchant shall pay its contribution to General Average even when such salvage is the result of fault, neglect or error of the master, pilot or crew. The Merchant expressly renounces all codes, statutes, ordinances, laws or regulations which might otherwise apply.

(2) Notwithstanding subclause 22(1) above, the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claim (and any expenses arising therefrom) of a General Average nature which may be made on the Carrier.

(3) The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

(4) The New Jason Clause as published by the Baltic and International Maritime Council is hereby incorporated into this Waybill.

## 23. CHARGES

(1) The Charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.

(2) The Charges have been calculated on the basis of particulars furnished by or on behalf the Merchant. The Carrier shall be entitled to production of the commercial invoice for the Goods or true copy thereof and to inspect, reweigh, remeasure and revalue the Goods and if the particulars are found by the Carrier to be incorrect the Merchant shall pay the Carrier the correct Charges (credit being given for the Charges charged) and the costs incurred by the Carrier in establishing the correct particulars.

(3) All the Charges shall be paid without any set-off, counter-claim, deduction or stay of execution, jointly and severally by the Merchant, either at or prior to the time agreed for payment or at latest before delivery of the Goods.

## 24. LIEN

The Carrier shall have a general and particular lien on the Goods and any documents relating thereto for all sums of whatsoever nature, including, but not limited to, the Charges for mending, co-operating, repairing, fumigating, devanning, restoring, storing or reconditioning and all expenses incurred for the benefit or protection of the Goods, also for any payments, duties, fines or other expenses including but not limited to legal cost and expenses, due and payable at any time to the Carrier from the Merchant and for general average contributions to whomsoever due and for the costs of recovering the same and the Carrier shall have the right to sell the Goods and documents by public auction or private treaty, without notice to the Merchant and at the Merchant's expense and without any liability towards the Merchant. If on the sale of the Goods the proceeds fail to cover the amount due and the costs incurred the Carrier shall be entitled to recover the deficit from the Merchant.

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

## 25. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorised or ratified in writing by a director or officer of the Carrier who has the actual authority of the Carrier so to waive or vary.

## 26. PARTIAL INVALIDITY

If any provision in this Waybill is held to be invalid or unenforceable by any court or regulatory or self regulatory agency or body, such invalidity or unenforceability shall attach only to such provision. The validity of the remaining provisions shall not be affected thereby and this Waybill shall be carried out as if such invalid or unenforceable provision were not contained herein.

## 27. U.S.A. LOCAL CLAUSE

(1) If the Carriage covered by this Waybill includes the Carriage to or from or through a port or place in the United States of America, this Waybill shall be subject to the US COGSA of which terms shall be deemed to be incorporated herein and shall be paramount throughout the Carriage by sea or inland waterways and the entire time that the Goods are in the actual custody of the Carrier or any Sub-contractor at the sea terminal in the United State of America before loading on or after discharge from the Vessel, as the case may be.

(2) If the US COGSA applies, the liability of the Carrier shall not exceed U.S.\$500 per package or customary freight unit, unless the nature and value of the Goods have been declared on the face hereof, in which case subclauses 8 (3) and clause 15 shall apply.

(3) The Carrier shall not be liable in any capacity whatsoever for loss, damage or delay to the Goods while the Goods are in the United State of America away from the sea terminal and are not in the actual custody of the Carrier. The responsibility of the Carrier shall be to procure, as agent, transportation by the Carriers (one or more) and such transportation shall be subject to the inland carriers' contracts of the Carriage and tariffs and any law compulsorily applicable. The Carrier guarantees the fulfilment of such inland carriers' obligations under their contracts and tariffs. If, for any reason, the Carrier is denied the right to act as agent only at these times, the Carrier's liability for loss, damage or delay to the Goods shall be determined in accordance with clauses 5 and 8 hereof.