



## STOLT TANK CONTAINERS

### GENERAL TERMS AND CONDITIONS ("Terms")

#### DEFINITIONS AND INTERPRETATION

- (i) "Carrier" means the entity identified as carrier on the face of the Transport Document or, if no Transport Document has yet been issued, the entity identified as the carrier in the Contract.
- (ii) "Carrier Group" means any entity controlled by, controlling or under common control with the Carrier; and control shall have the meaning given to it in Section 450 of the UK Corporation Tax Act 2010.
- (iii) "Compulsory Legislation" means an international convention or national law which applies compulsorily to any element of the Services and which cannot be departed from.
- (iv) "Container" means any container, tank container, isotank or trailer used to carry the Goods. Any reference to "Package" in US COGSA or the Compulsory Legislation shall mean Container in these Terms.
- (v) "Contract" means the contract between the Carrier and the Merchant for the Services, which is deemed concluded on the earliest of:
  - (a) when a booking summary or written confirmation of booking details is issued by or on behalf of the Carrier (including by email); or
  - (b) when the Carrier begins moving the first of any Containers to be provided to the Merchant for the carriage of the Goods; or
  - (c) if no Container is to be provided by the Carrier, when the Goods are received and accepted for the Services by or on behalf of the Carrier;

and shall be comprised of: (1) the most recent booking summary or written confirmation; (2) the quote confirmation; (3) the Transport Document (when one is issued); (4) these Terms; and (5) the Tariff. However, the Carrier's responsibility and/or liability to the Merchant or the Goods as set forth in Section 13 herein shall commence only from the earliest of (b) or (c) above.

In case of a conflict between any of the aforementioned documents, they shall take precedence in the order they are listed.

- (vi) "Dangerous Goods" means any Goods which are or may become hazardous or dangerous, including without limitation, Goods which are inflammable, explosive, radioactive or which do or may present a risk of damage to any property or person or the environment.

- (vii) "Demurrage" means the demurrage charges payable by Merchant in respect of any Container supplied by or on behalf of the Carrier, after the expiry of "Free Days" at the rate shown on Carrier's latest Quote Confirmation.
- (viii) "Free Days" means the period of time offered by the Carrier to the Merchant free of charge, beyond which additional charges such as, but not limited to Demurrage, will be due to the Carrier.
- (ix) "Goods" means the whole or part of the cargo received from the Merchant and includes any Container supplied by or on behalf of the Merchant.
- (x) "Merchant" includes the Shipper, the Consignee, the receiver of the Goods, the holder of the Transport Document, any person owning or entitled to possession of the Goods or the Transport Document as well as the customer (to the extent the term is used in the Contract) and any person subrogated to the rights of any such person, and any agent of the foregoing.
- (xi) "Multimodal Transport" arises if the Services involve more than Port to Port Carriage.
- (xii) "Party" means any of the Carrier, Merchant or Performing Party, together the "Parties".
- (xiii) "Performing Party" includes owners, charterers and operators of vessels (other than the Carrier), stevedores and/or terminal operators, any rail, road or air carriers who perform the Contract, including their direct and indirect sub-contractors, servants and agents.
- (xiv) "Port to Port Carriage" arises if (i) the port of loading and the port of discharge are indicated and (ii) no load place or delivery place are indicated on the Transport Document.
- (xv) "Relevant Authority" means any authority having legal jurisdiction over the Services and/or the Goods.
- (xvi) "Services" means any operations or services (including all related documentary, customs and information technology processes used or produced) undertaken by or on behalf of the Carrier in respect of the Goods.
- (xvii) "Tariff" means the Carrier's Tariff which is on file with the U.S. Federal Maritime Commission, as well as all of Carrier's accessorial tariffs globally.
- (xviii) "Transport Document" means the waybill or bill of lading issued by or on behalf of the Carrier in relation to the Goods.
- (xix) "US Carriage" shall mean carriage to, from or within the U.S.A.
- (xx) "US COGSA" shall mean the United States Carriage of Goods by Sea Act, approved April 16, 1936, which applies contractually to the Contract and all Transport Documents.
- (xxi) "Waterborne Carriage" means the carriage of Goods by sea or inland waterways.

- (xxii) Any words following the word "including" shall be interpreted without limitation to the generality of the preceding words.
- (xxiii) All persons defined as "Merchant" shall be jointly and severally liable to the Carrier for the fulfilment of the Merchant's obligations.

## **CARRIAGE OF GOODS**

### **1. SUPPLY OF CONTAINERS**

- 1.1. Unless otherwise agreed in the Contract, the Carrier shall supply (or arrange to be supplied) and the Merchant shall receive the Containers.
- 1.2. If the Carrier supplies Containers to the Merchant, Demurrage shall be paid by the Merchant after the expiry of Free Days on the terms set out in the Contract.
  - 1.2.1. "Free Days Origin" starts when the Container is received by the Merchant and continues until the Container is loaded onboard at the port of exit and the vessel sails.
  - 1.2.2. "Free Days Destination" starts at the on-carriage location or, if no on-carriage location is named, when the Container is discharged at the port of entry.

Time at destination counts until return of the Container pursuant to Section 6 of these Terms. Weekends, public and religious holidays are counted against the Free Days allowed. Quay rental at the port of exit or port of entry is not included. Unless otherwise agreed, the cost will be invoiced separately.

### **2. FILLING AND SEALING OF CONTAINERS AND GOODS**

- 2.1. The Merchant shall be responsible for:
  - 2.1.1. providing, promptly when requesting a quote or making a booking request and always upon request, the Carrier with information, instruction, and documents for the proper handling, stowage and carriage of the Goods, including precautions that should be taken by the Carrier or any Performing Party;
  - 2.1.2. providing the Carrier with information needed by the Carrier to comply with any applicable law, regulation or requirements of public authorities when making a booking request and at any time upon request;
  - 2.1.3. properly ensuring that all necessary documentation from the Carrier has been received, and the information on such documentation satisfies Merchant's requirements;

- 2.1.4. properly ensuring the Goods are fully compatible with the requested type of Container and any connected equipment and accessories (the Carrier may at its sole discretion decline carriage of any Goods that are or may become incompatible);
  - 2.1.5. properly inspecting the Container, including its components, and that it is sound and suitable for use for carriage of the Goods;
  - 2.1.6. properly filling and unloading the Goods into and from any Container, for properly closing all valves on completion of filling and unloading, and for properly and sufficiently labelling, placarding, sealing and/or marking the Goods and the Containers;
  - 2.1.7. properly filling the Container within the minimum and maximum allowed limits under any applicable rules governing the mode of transportation;
  - 2.1.8. drawing representative samples of Goods from the Container after filling is complete, and safely retaining those samples for ninety (90) days;
  - 2.1.9. properly ensuring, after filling the Container, that no residue of the Goods remains in the bottom discharge valve prior to closing the valve; and
  - 2.1.10. properly sealing all filled Containers using high security seals with the seal numbers shown on the Transport Document (when issued).
- 2.2. If compressors, flexible hoses, couplings and/or other equipment are required for loading or discharge and are supplied by the Carrier, the use of such equipment is at the sole risk of the Merchant.
  - 2.3. If any assistance is given by the driver at the Merchant's loading facility and/or at the place of unloading, the driver does so as the Merchant's agent.

### **3. STOWAGE OF CONTAINERS AND GOODS**

- 3.1. Containers may be carried on or under deck without notice to the Merchant and at Merchant's risk, unless expressly stated on the Transport Documents.
- 3.2. Goods carried on deck shall be subject to the same liability regime for loss or damage or delay as Goods carried under deck.

### **4. TRANSPORT OF CONTAINERS AND GOODS**

- 4.1. The Goods may be carried by any route whatsoever and by any mode of transport whatsoever, at the Carrier's sole discretion.
- 4.2. The Carrier may, at any time and without notice:
  - 4.2.1. transship the Goods and/or substitute any mode of transport at any time;

- 4.2.2. change the pre-carriage and/or on-carriage location;
- 4.2.3. unload and re-load the Goods at any place or port (whether or not named on the Transport Document) and/or store the Goods using any means of storage at any port or place.
- 4.3. For Waterborne Carriage, the Carrier may sail with or without pilot, proceed, return to and stay at any port or place whatsoever, once or more and in any order (whether towards or away from the port or place of discharge), proceed at any speed, undergo repair, adjust equipment, dry dock, tow or be towed, assist other vessels in any situation, deviate for the purpose of saving life or property or of landing ill or injured persons, and call for fuel at any port(s) or place(s).
- 4.4. The Carrier may comply with the orders or recommendations of any actual or purported government or Relevant Authority, or any person or body with the right to give orders or recommendations.
- 4.5. Anything done or not done in accordance with this Clause, or any resulting delay, shall be part of the Services and not a deviation.

## **5. DELIVERY OF CONTAINERS AND GOODS**

- 5.1. The Goods shall be deemed delivered:
  - 5.1.1. as soon as they have (i) been unloaded from the vessel at the port of discharge or (ii) arrived at the delivery place; or
  - 5.1.2. (where the Carrier is required or permitted by law or custom to release the Goods to port or other authorities of that port or delivery place) as soon as the Goods have been released or are in the control (physical and/or legal) of the port or other authorities, at any location;at which point the Services and the Carrier's responsibility for the Goods ends.
- 5.2. Upon delivery, the Merchant shall:
  - 5.2.1. inspect the Container and ensure it can be safely unloaded;
  - 5.2.2. verify that the Goods are in a sound and acceptable condition;
  - 5.2.3. ensure that the proper unloading procedures are agreed and followed;
  - 5.2.4. ensure that the Container is directed to the correct site location/discharge point; and
  - 5.2.5. discharge the Goods into the correct storage tank, truck, railcar or plant facilities.
- 5.3. If the Goods are not discharged by the Merchant upon delivery:
  - 5.3.1. Demurrage shall accrue; and/or

- 5.3.2. without notice to the Merchant, the Carrier may store the Goods anywhere and by any means (including commingling) at the sole risk of the Merchant. Any and all costs and expenses arising shall be paid by the Merchant.
- 5.4. If the Goods are not discharged by the Merchant within ten (10) days of delivery for any reason, including but not limited to:
- 5.4.1. the person entitled to them under the Contract has not claimed delivery; or
- 5.4.2. the person claiming to be entitled to the Goods has not properly identified itself;
- the Carrier may release (and therefore deliver) the Goods according to instructions from the Merchant or a party designated by the Merchant to issue such instructions, provided that any security required by the Carrier has been provided in advance.
- 5.5. If the Goods are not discharged within fifteen (15) days of delivery, or if at any time in the opinion of the Carrier the Goods are likely to deteriorate, become dangerous, harmful to the environment, the public or the Container itself, or become worthless, or incur charges (whether for Demurrage or otherwise), the Carrier may at its sole discretion and without prejudice to any other rights it may have, discharge, sell, abandon or otherwise dispose of the Goods without notice to the Merchant.
- 5.6. If a deposit is required to be paid before a Container can be released to the Merchant, the Merchant shall pay the deposit on demand directly to the demanding party. Any and all losses, damages, expenses incurred by the Carrier in connection with the deposit shall be borne by the Merchant. Neither the Merchant nor its representative shall request the release of the deposit unless all outstanding accounts with the Carrier have been settled.

## **6. RETURN OF CONTAINERS**

- 6.1. After delivery, the Merchant shall return the Carrier's Container(s):
- 6.1.1. in the same order and condition as received (normal wear and tear excepted); and
- (i) empty (with not more than 19 litres (5 U.S. gallons) of Goods remaining in the Container after discharge); or
- (ii) free of labels, clean and in a dry condition (except with Containers carrying Dangerous Goods, for which placards and proper shipping name labels must remain on the Container),
- to the Carrier's assigned depot or to another mutually agreed location.
- 6.2. Demurrage shall be payable until the Container is returned in accordance with Clause 6.1.

- 6.3. For the avoidance of doubt, should residue in any Container exceed 19 litres (5 U.S. gallons), in addition to Demurrage the Merchant shall be responsible for any and all expenses for additional cleaning, including but not limited to the drumming, trucking and disposal of the residue.
- 6.4. The Merchant shall be liable for all lost or damaged Containers. If, in the Carrier's reasonable judgment:
- 6.4.1. the damage can be made good, then the Merchant shall pay the Carrier for such repair costs, as well as all Demurrage charges until repairs are completed and the Container is returned to the Carrier in accordance with Clause 6.1;
  - 6.4.2. the Container is a total loss (constructive or otherwise), the Merchant shall compensate the Carrier (without consideration of market value) by paying the replacement cost value of the Container without the right to deduct for any depreciation;
- and Merchant shall continue paying all Demurrage charges until the replacement cost value is paid to Carrier.

## **FILLING AND DOCUMENTATION OF GOODS AND CONTAINERS**

### **7. WEIGHT OF LOADED CONTAINERS**

- 7.1. Before loading aboard the vessel, the Merchant shall provide the Carrier with the verified gross weight of each laden Container, in accordance with the International Convention for the Safety of Life at Sea together with the associated guidelines published as MSC.1/Circ. 1475, as amended from time to time (together "SOLAS").
- 7.2. Should the Merchant fail to comply with this Clause or where the Carrier reasonably believes the verified gross weight information provided is inaccurate or incomplete, the Carrier may, without notice to and at the cost (including Demurrage and all associated charges) and risk of the Merchant:
- 7.2.1. establish the total gross weight of each loaded Container carried pursuant to this Contract in accordance with SOLAS; and/or
  - 7.2.2. refuse to load the Container(s) on board the vessel (if the Containers are not yet loaded) or, if the Containers are loaded, arrange for the Containers to be landed and stored, and such landing and storage shall be deemed to constitute due delivery of the Goods under the Contract.

### **8. DECLARED VALUE OF GOODS**

If the value of the Goods has been declared by the Merchant in writing before shipment and inserted on the face of the Transport Document, and extra freight (as per the Quote Confirmation or any applicable Tariff) has been paid thereon and the Carrier has consented to such declared value, the amount of the declared value shall be substituted for the limits laid down in these Terms.

## **9. DANGEROUS GOODS**

9.1. The Merchant shall not tender for the Services any Dangerous Goods unless the Merchant has:

9.1.1. provided the Carrier with a current (less than three (3) years old) Safety Data Sheet (SDS) or one verified in writing by the Merchant as being current; and

9.1.2. provided the Carrier with a final dangerous goods transport document as per the IMDG Code no later than the document cut-off identified in the Contract; and

Notwithstanding the above, the Carrier has sole discretion whether or not to carry the Goods.

9.2. For any Goods requiring the use of a chemical inhibitor to maintain its stability, the Merchant represents and warrants that it has exercised reasonable care to ensure that the inhibitor will remain effective for the duration of the transit or storage through delivery at the final destination.

9.3. Goods which are shipped by the Merchant in breach of Clauses 9.1 or 9.2 may at any time at the Merchant's risk and cost be landed at any place or destroyed or rendered harmless by the Carrier without compensation to the Merchant and without prejudice to the Carrier's right to freight.

9.4. Any and all costs, liabilities, increased premia, penalties and/or expenses whatsoever, incurred by the Carrier in connection with the Merchant's actual or alleged breach of Clauses 9.1 or 9.2 be borne by the Merchant.

## **10. ISSUANCE OF TRANSPORT DOCUMENTS BY CARRIER**

10.1. When a Transport Document is issued, the Carrier will issue a waybill in respect of the Goods. No bill of lading will be issued unless the Carrier expressly agrees to do so in writing.

10.2. The Carrier will only issue substitute waybills or bills of lading at its sole discretion and subject to the person making the request providing the Carrier with (i) the full set of the original waybills or bills of lading and (ii) a full indemnity issued by a first class bank acceptable to the Carrier for all and any liability and expenses arising out of the request for substitute waybills or bills.



## WARRANTIES, OBLIGATIONS, LIABILITIES AND REMEDIES OF THE PARTIES

### 11. MERCHANT'S WARRANTIES

#### 11.1. The Merchant warrants that:

- 11.1.1. it has the authority to enter into the Contract on behalf of, the owner of the Goods and any person entitled to possession of the Goods and/or the Transport Document or the person who is or may become interested in the Goods and/or the Transport Document;
- 11.1.2. the description, condition, quality, quantity and value of the Goods (including the verified gross weight information provided under Clause 7) and the marks, number, quantity, weight and any statement as to the contents of Containers are full and correct;
- 11.1.3. any inhibitor necessary for the safe carriage of the Goods will be effective for the entire duration of time the Goods are in the possession of Carrier;
- 11.1.4. the Goods and the Containers have been properly and sufficiently prepared, labelled, placarded, sealed and/or marked by or on behalf of the Merchant in compliance with all applicable laws;
- 11.1.5. the Goods will not cause loss, damage or expense to the Carrier of any Performing Party, or any vessel or other conveyance (including Containers) used in the carriage of the Goods or any other property, or to any other cargo;
- 11.1.6. in performing its duties pursuant to the Contract, the Merchant will comply with all applicable laws without jurisdictional limitation, including but not limited to sanctions and laws regarding the import and export of goods ("Restricted Trade Laws")
- 11.1.7. upon request, the Merchant will provide copies of all licences, permits and consents related to Restricted Trade Laws;
- 11.1.8. neither the Merchant nor any of the parties mentioned in Section 11.1.1 is a Prohibited Person, meaning (i) an individual or entity located in, or an individual or entity controlled by an individual or entity located in, a jurisdiction subject to sanctions by the United States (collectively, "Prohibited Jurisdictions"); (ii) an individual or entity that appears on the U.S.OFAC list of Specially Designated Nationals and Blocked Persons or any other sanctions-related list maintained by the U.S. federal government, the United Nations, the United Kingdom or the European Union ; (iii) an entity that is owned, directly or indirectly, 50% or more by an individual or entity described in subsection (i) or (ii) of this clause; or (iv) an entity in which individuals or entities described in subsection (i) or (ii) of this clause own, directly or indirectly, an aggregate interest of 50% or more;
- 11.1.9. the Merchant will not order the handling, storage or carriage of Goods on behalf of, or for the benefit of, (i) a Prohibited Person, or (ii) an individual or entity controlled by a Prohibited Person;

- 11.1.10. the Merchant will only instruct the Carrier to carry lawful Goods and to trade in lawful places;
- 11.1.11. the Merchant will not instruct the Carrier and the Carrier shall not be required to engage in activities that (i) would violate applicable Restricted Trade Laws, including engaging in transactions involving Prohibited Jurisdictions; or (ii) could result in the Carrier or any of the Performing Parties or their insurers, re-insurers or banks becoming the subject of a government enforcement action or identified on any sanctions-related list maintained by the U.S. federal government, the United Nations, the United Kingdom or the European Union; and
- 11.1.12. the Goods contain no drugs, prohibited or stolen goods, contraband or other illegal material or substance or any cargo or item which is subject to any Restricted Trade Laws, unless all necessary licences, permits and consents have been obtained (copies of such licences, permits and consents to be provided to the Carrier on request).

## **12. MERCHANT'S OBLIGATIONS AND INDEMNIFICATION**

### **General**

- 12.1. The Merchant shall comply with all applicable laws, regulations or requirements of any Relevant Authority relating to the Goods, and the provisions of all licences, permits, consents and directions given by any Relevant Authority in respect of the Goods. Copies of such licences, permits, and consents shall be provided by the Merchant to the Carrier on request.
- 12.2. The Merchant shall arrange insurance for the Goods against all customary risks at all times during the Services and shall, on request, provide a copy of a certificate of insurance. Carrier shall have no liability for any failures or delays in the issuance of a certificate of insurance.
- 12.3. The Merchant indemnifies the Carrier, the Performing Parties or any member of the Carrier Group (and their respective employees, servants, agents, insurers or reinsurers) against any and all costs, expenses, claims, losses, liabilities, orders, awards, fines, proceedings and judgments of whatsoever nature incurred or suffered in connection with:
  - 12.3.1. a breach by the Merchant of any of its obligations and/or warranties under the Contract; and/or
  - 12.3.2. the Carrier becoming liable to any other party (including to any Relevant Authority) and/or incurring additional costs by reason of carrying Dangerous Goods; and/or
  - 12.3.3. the Carrier becoming liable to any other party (including to any Relevant Authority) and/or incurring additional costs by reason of the Carrier carrying out the Merchant's instructions or by Merchant's failure to provide instructions;
  - 12.3.4. the Carrier becoming liable to any third party and/or incurring additional costs by reason of the contamination of a third party's goods or facilities caused by the unloading of Goods from a Container; and/or

- 12.3.5. the Carrier incurring liability in excess of its liability under the provisions of this Contract regardless of whether such liability arises from, or in connection with a breach of contract, negligence or breach of duty by the Carrier, its agents, servants or the Performing Parties.
- 12.4. The Merchant shall be responsible and agrees to reimburse the Carrier, plus a mark-up of ten percent (10%), for all duties, taxes, imposts, levies, deposits, fines and outlays of whatever nature levied by any Relevant Authority and/or any expenses incurred in complying with the requirement of any Relevant Authority in relation to the Goods or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods.

#### **Filling of Containers**

- 12.5. The Carrier shall not be liable for, and the Merchant shall indemnify the Carrier against, loss and/or damage to Goods and/or any injury, loss, damage, liability or expense whatsoever incurred by the Carrier to the extent the same has been caused by any matter beyond its control including:
  - 12.5.1. the way in which the Container was filled or unloaded;
  - 12.5.2. the unsuitability of the Goods for carriage in the Container;
  - 12.5.3. leakage from any valve or manlid not properly closed; or
  - 12.5.4. the Merchant's failure to comply with any of the provisions of Clause 2.

#### **High Risk Areas**

- 12.6. Where the Container is in a location known by the Parties to contain a heightened risk of hostilities ("High Risk Area") the Merchant shall be responsible for:
  - 12.6.1. any loss or damage to the Containers in accordance with Clause 6.4; and
  - 12.6.2. Demurrage resulting from the failure at any time to take receipt, deliver, redeliver or otherwise place the Container(s) in an undamaged state and in good order and condition outside of a High Risk Area until the replacement cost value of the Container(s) is paid to Carrier pursuant to Clause 6.4.2.
- 12.7. The Merchant further agrees to waive, release, protect and hold the Carrier harmless in respect of any claim of whatsoever nature by whosoever for any loss or damage to the Goods or any consequence thereof while the Containers are in a High Risk Area.

### **13. CARRIER'S LIABILITY**

- 13.1. The Carrier shall not be liable for:
- 13.1.1. any loss, damage or expense for delay, howsoever arising;
  - 13.1.2. any loss of profits, loss of sales, loss of business, loss of goodwill or reputation (in each case whether direct or indirect) or for any indirect or consequential loss;
  - 13.1.3. any loss or damage arising unintentionally from erroneous input into a computer system or from wrongful data transmission;
  - 13.1.4. any loss, damage or expense for any casualty occurring when the Goods are not in Carrier's custody or control;
  - 13.1.5. any loss or damage to the Goods arising from ambient conditions, latent defects, breakdown, defrosting, stoppage of the refrigerating, heating, cooling, or any other specialized machinery, plant, insulation and/or apparatus of the Container or any other facilities, provided that the Carrier exercised reasonable due diligence before releasing the empty Container to Merchant;
  - 13.1.6. any loss or damage to a third party's goods or facilities caused by contamination with Goods unloaded from a Container;
  - 13.1.7. any loss or damage to the Goods, where heating or cooling is required, arising from over/under heating or cooling of the Goods, howsoever arising, so long as the Goods are at the specified temperature when delivered to Merchant; or
  - 13.1.8. any fine, penalty, loss, damage or expense to any other party (including to any Relevant Authority) for any casualty resulting from the carriage of Dangerous Goods.
- 13.2. The defenses, limits and exclusions of liability provided for in the Contract shall apply in any action against the Carrier arising out in connection with the Contract (including loss or damage to Goods and delay) and whether the action be founded in contract, bailment, tort, breach of express or implied warranty or otherwise and even if the loss, damage or delay arose as a result of unseaworthiness, negligence, wilful misconduct or fundamental breach of contract.
- 13.3. In the event of loss or damage to the Goods, Carrier's liability to the Merchant shall be determined as follows:

#### **Port to Port Carriage**

- 13.4. For any claim for loss of or damage to the Goods arising during Port to Port Carriage the Carrier shall not be liable if such loss or damage arises prior to loading at the port of loading or subsequent to discharge at the port of discharge.

- 13.5. If and to the extent that any Compulsory Legislation provides for an additional period of responsibility, the Carrier shall during that period have the benefit of every right, defense, limitation and liberty provided by such Compulsory Legislation, and (to the extent permitted by such Compulsory Legislation) the rights, defenses, limitations and liberties provided by US COGSA notwithstanding that the loss or damage did not occur at sea.

#### **Multimodal Transport**

- 13.6. If any loss or damage occurs to the Goods during Multimodal Transport, then save where the provisions of Clause 13.8 apply and subject to any Compulsory Legislation, the Carrier shall not be liable for loss or damage caused by:
- 13.6.1. strike, lockout, stoppage or restraint of labor, the consequences of which the Carrier is unable to avoid by the exercise of diligence;
  - 13.6.2. any cause or event which the Carrier is unable to avoid, and the consequences of which the Carrier is unable to prevent by the exercise of reasonable diligence.
- 13.7. To the extent U.S. law applies, the Carrier shall by the Transport Document be entitled to all limitations and exemptions from liability as a matter of contract and as authorized by the provisions of title 46 of the United States Code from section 30501 through section 30512, the same as if the Carrier were the owner of the vessel.

#### **Liability During Waterborne Carriage**

- 13.8. Should any loss of or damage occur during any element of the Services which involves Waterborne Carriage:
- 13.8.1. Where any Compulsory Legislation applies, the liability of the Carrier will be determined in accordance with such Compulsory Legislation;
  - 13.8.2. Where no Compulsory Legislation applies, the liability of the Carrier will be determined and limited in accordance with US COGSA;
  - 13.8.3. Where the place of loss or damage cannot be determined, the loss or damage shall be determined to have occurred aboard the first vessel that carried the Goods by sea.

#### **Liability for 3rd Party Containers**

- 13.9. The Carrier shall not be liable for any claim to the extent such claim arises from a Container not supplied by the Carrier (including loss and/or damage to Goods), and the Merchant shall indemnify the Carrier for any injury, loss, damage, liability, cost, security or expense whatsoever incurred by the Carrier as a result thereof.

### **Liability for Timings**

- 13.10. The Carrier does not warrant that the Goods or any documents relating thereto shall be loaded on or by any particular date, time or vessel, or arrive at the port of discharge or delivery place at any particular time or in time to meet any particular market or use.

### **Liability for Shortage or Contamination**

- 13.11. The Carrier shall not be liable for any shortage or contamination of Goods ascertained at discharge, if the Container is delivered by the Carrier with an original security seal intact unless directly resulting from insufficient cleaning.

### **Liability for Particulars of Goods**

- 13.12. The Carrier makes no representation of and shall not be liable for the description, condition, quality, quantity or value of the Goods or the marks, number, quantity, weight or any statement as to the contents of Containers and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars. The Carrier does not undertake to check the thermal expansion coefficient or temperature of the Goods.

### **Limit of Liability**

- 13.13. In addition to the above, the Carrier shall be entitled to rely upon any rights, defences, exceptions, limitations or liberties provided elsewhere in the Contract or of any statutory right, defence, or limitation of liability provided by any applicable law, statute or regulation of any country.

## **14. CALCULATION OF COMPENSATION**

### **Loss or Damage to Goods**

- 14.1. The Carrier's liability for any loss or damage to the Goods shall be limited to the lesser of:
- 14.1.1. the value of the Goods at the port or place of loading at the time of shipment; and
  - 14.1.2. if any Compulsory Legislation applies, the amount set out in such Compulsory Legislation; or
  - 14.1.3. if no Compulsory Legislation applies, the amount set out in US COGSA.

### **General Claims**

- 14.2. The Carrier's maximum aggregate liability for any claim under the Contract (other than for loss of or damage to the Goods) shall be limited to an amount equal to the freight payable to the Carrier under the Contract.

**15. CARRIER'S SUBCONTRACTORS' LIABILITY**

- 15.1. The Carrier may sub-contract on any terms whatsoever the whole or any part of the Services.
- 15.2. If the Carrier elects to sub-contract performance of any or all of the Services, the Merchant shall indemnify the Carrier and/or any Performing Party or any director, officer, employee, servant or agent of the Carrier in full and against all consequences of any claim or allegation whether arising in contract, bailment, tort (including negligence) or otherwise which imposes or attempts to impose upon any of them, or any vessel owned, operated or chartered by any of them, any liability whatsoever in connection with the Goods and/or the Services.
- 15.3. The Merchant undertakes to make no claim or allegation against any Performing Party (including any director, officer, employee, servant or agent of the Carrier), which attempts to impose upon any of them or their property any liability in connection with the Goods. The Merchant indemnifies the Carrier against all consequences of any such claim or allegation. Every such Performing Party (including any sub-contractor) shall have the benefit of all provisions of these Terms of whatsoever nature benefiting the Carrier including the aforementioned undertaking and Law and Jurisdiction Clause. In entering into the Contract, the Carrier, to the extent of such provisions, does so not only on its own behalf but also as agent and trustee for each of its directors, officers, employees, servants or agents, and each Performing Party, all of whom shall to that extent be deemed parties to the Contract.

**16. MATTERS AFFECTING PERFORMANCE OF CONTRACT (FORCE MAJEURE)**

- 16.1. If the Services are or are likely to be affected by any hindrance, risk, delay, danger, difficulty or disadvantage of whatever kind (including, without limitation, any of the Merchant or Performing Parties becoming insolvent or any action undertaken or threatened by a third party) which is beyond the reasonable control of the Carrier, and whether or not existing at the time when the Contract was made or the Goods were received for carriage (a "Force Majeure event"), the Carrier may, without notice to the Merchant:
  - 16.1.1. treat the performance of the Services as terminated and place the Goods at the disposal and responsibility of the Merchant at any place or port; or
  - 16.1.2. affirm the Contract and complete the Services.
- 16.2. In addition to any amounts due under the Contract (including Demurrage), the Carrier shall be entitled to additional freight, compensation for any additional costs and/or the replacement cost of any Container (calculated in accordance with Clause 6.4.2) which contains Goods in respect of which the Carrier has exercised its rights under Clause 16.1.
- 16.3. In no event shall Carrier have any liability for loss or damage to the Goods resulting in whole or in part from a Force Majeure event.

**17. FREIGHT AND DEMURRAGE**

- 17.1. Unless otherwise expressly stated in the Contract, full freight to destination and charges due under the Contract, whether or not prepaid, shall be deemed earned and due upon the earlier of:
- 17.1.1. receipt of the Container by the Merchant; or
  - 17.1.2. receipt of Goods by the Carrier.
- 17.2. The Carrier shall retain any freight prepaid, and/or claim any freight due, should the Goods be delivered to destination or not.
- 17.3. All freight, Demurrage, charges or other amounts due to the Carrier shall be paid by the Merchant on demand directly to the Carrier without any offset, counterclaim or deduction in U.S. Dollars unless otherwise agreed.
- 17.4. The Merchant shall indemnify the Carrier for any and all costs and expenses (including legal and enforcement action) incurred as a result of the Merchant's breach of the Contract.

**18. CARRIER'S LIENS**

- 18.1. The Carrier shall have a general lien on the Goods or other product belonging to the Merchant (including any documents relating thereto), funds held, monies due to the Merchant by a third party, and any other goods in respect of which the Carrier is providing services to the Merchant ("Other Goods") for:
- 18.1.1. all amounts due from the Merchant under the Contract to Carrier, or to any member of the Carrier group under any other contract;
  - 18.1.2. any other amounts due to the Carrier from any person coming within the definition of Merchant, whether or not related to the Services;
  - 18.1.3. any and all other fees, costs and expenses due to the Carrier or the Carrier Group, including (but not limited to):
    - (i) Demurrage;
    - (ii) Deadfreight;
    - (iii) Fines;
    - (iv) Dues;
    - (v) Liens;
    - (vi) Surveys;



- (vii) Lightering;
- (viii) Custom duties and port charges;
- (ix) Legal fees and other expenses incurred in connection with the attachment, seizure, detention, condemnation or other legal proceeding brought against the Goods by any Relevant Authority or third parties; and
- (x) General average contributions to whomsoever due.

18.2. The Carrier may exercise any lien at any time, with or without notice, and whether the Services are completed or not. Such lien(s) shall survive delivery of the Goods and shall extend to selling the Goods to cover the costs of recovering any and all sums due from the Merchant (including legal fees).

## **19. TIME BAR**

19.1. Unless notice in writing is given to the Carrier or its agent at the place and time of delivery, or within three (3) calendar days thereafter if the damage is not apparent following a reasonable inspection, the Goods shall be deemed to have been delivered undamaged and in full and the Carrier shall have no liability whatsoever.

19.2. In any event, all liability whatsoever of the Carrier arising out of or in connection with the Contract shall cease unless formal proceedings are issued in accordance with Clause 23 and written notice thereof is given to the Carrier within eleven (11) months after the delivery of the Goods or the date when the Goods should have been delivered.

## **GENERAL PROVISIONS**

### **20. GENERAL AVERAGE**

20.1. All Goods whether carried on or under deck shall participate in General Average.

20.2. The Carrier may declare General Average which shall be adjusted at any place at the option of the Carrier or the Performing Parties, in respect of all Goods, whether carried on or under deck. The New Jason Clause as approved by BIMCO current as of the date of the Contract is incorporated herein.

20.3. Notwithstanding Clause 20.1 above, the Merchant shall indemnify the Carrier in respect of any amounts (and any expense arising therefrom) the Carrier is found to be due to contribute in General Average and shall provide such security as may be required by the Carrier or the Performing Parties or the appointed average adjuster, to cover the estimated contribution of the Goods in general average including any salvage and special or particular charges thereon. Such security shall, if required, be provided by the Merchant to the appointed average adjuster prior to delivery of the Goods.

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

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

If a vessel on which the Goods are being carried collides with another ship as the result of (i) the negligence of that other ship, and (ii) any act, neglect or default of the master, mariner, pilot of the vessel (or other servant of the owner or operator of the vessel) in the navigation or management of the vessel, and the Merchant recovers payment for loss of or damage to the Goods from the other ship, and the other ship obtains from the Carrier (or the Performing Parties) a contribution towards the payment it made to the Merchant, then the Merchant will reimburse the Carrier in respect of that contribution and shall indemnify the Carrier for any other loss, liability or expenses incurred by the Carrier (or the Performing Party) to the other ship whatsoever arising out of the other ship's claim for contribution.

## **22. CYBER SECURITY**

22.1. Notwithstanding anything to the contrary in the Contract, the Carrier (including the Carrier Group) will, to the maximum extent permitted by law, have no liability for any losses, damages, expenses, costs, fines or claims suffered, received or incurred by Merchant (or any of Merchant's group companies or affiliates), arising directly or indirectly from:

22.1.1. any virus, malware and other malicious, disabling or damaging code, device or script, and any form of unwanted, disruptive or illegal intrusion or access to Merchant's systems, tools, platforms, networks and applications (together "Merchant's Systems") (including by way of a cyber-attack) as a result of any access, interface with, or entry of data, information or content into Merchant's Systems by or on behalf of the Carrier; or

22.1.2. any errors to data, information or content entered into Merchant's Systems by or on behalf of the Carrier; or

22.1.3. a breach of security including a breach which leads to the destruction, loss, corruption, alteration, unauthorized disclosure of, or access to (including by way of a cyber-attack), any of the Merchant's information or data held or otherwise processed by or on behalf of the Carrier,

and the Merchant undertakes to ensure that the Merchant's Systems and the Carrier's system, tools, platforms, networks and applications are protected against any virus, malware and other malicious, disabling or damaging code, device or script, and any form of unwanted, disruptive or illegal intrusion or access to the Merchant's Systems and the Carrier's system, tools, platforms, networks and applications (including by way of cyber-attack).

## **23. LAW AND JURISDICTION**

- 23.1. Subject to Clauses 23.3 and 23.4, the Contract and any non-contractual obligation arising out of or in connection with it shall be subject to English law, and any disputes arising out of or in connection with it shall be referred to the exclusive jurisdiction of the High Court of Justice in London.
- 23.2. A Party served with a written request by the other Party shall appoint solicitors in London, England, for the purposes of accepting service of documents under the procedural rules of the High Court of Justice and advise the requesting Party in writing of their contact details.
- 23.3. For US Carriage, the Contract shall be subject to US law and any dispute arising out of or in connection with it shall (subject to Clause 23.4) be subject to the exclusive jurisdiction of the United States District Court for the Southern District of New York.
- 23.4. For any claim by the Carrier arising out of or in connection with the Contract, the Carrier may at its sole option commence proceedings in the courts of any competent jurisdiction.

## **24. DATA PROTECTION**

- 24.1. The parties acknowledge and agree that each of them will comply with their respective obligations as data controllers under the EU General Data Protection Regulation 2016/679/EU ("GDPR"), and any applicable local laws supplementing or implementing the GDPR.
- 24.2. The parties also agree that if any personal data (as defined in the GDPR) in connection to this Contract will be transferred outside of the European Economic Area, the parties will ensure that the GDPR requirements on third party transfers are met, including by entering into the European Commission's approved standard contractual clauses if applicable.

## **25. CONFIDENTIALITY**

Without the prior consent of the Carrier, the Merchant shall not disclose any financial terms of the Contract to any person or entity not controlling, controlled by or under common control of them, except for disclosure of information which must be disclosed by operation of law. For the avoidance of doubt, the Merchant shall not be entitled to receive any financial terms directly attributed to the services provided by Performing Parties hereunder. Such information may not be disclosed due to corresponding obligations of confidentiality.

## **26. SEVERABILITY**

The terms of the Contract shall be separable, and if any provisions thereof or any part of any provision is held to be invalid or unenforceable, such holding shall not affect the validity or enforceability of any other provision or part thereof.

**27. THIRD PARTY RIGHTS**

Except for the ability of other members of the Carrier Group to be able to enforce any of the Carriers' rights under these Terms, none of these Terms shall be enforceable by anyone that is not a party to the Contract.

**28. ENTIRE AGREEMENT**

The Merchant agrees that it has not relied upon any pre-contractual statement made by the Carrier in entering into the Contract. Pre-contractual statement means any undertaking, promise, assurance, statement, representation, warranty or undertaking (whether in writing or not) of any person relating to the Services.

**29. WAIVER**

No failure by the Carrier to enforce any rights under the Contract shall be considered to be a waiver of any form. A waiver will only be effective if in writing and will not constitute a waiver of any other breach or default, nor shall it affect the other terms of this Contract. A waiver of a breach of any of the terms of the Contract or of a default under this Contract will not prevent either Party from later requiring compliance with the waived obligation. The rights and remedies provided in these Terms are cumulative and (subject to the other provisions of these Terms) are not exclusive of any rights or remedies provided by law.