

## 1. DEFINITIONS

- A. "Carrier" means ESS CARGO SERVICES LTD. doing business as ESS CARGO SERVICES LTD.
- B. "Merchant" means the Shipper, Consignor, the Receiver, the Consignee, the Owner of the Goods, and any other Holder of this Bill of Lading.
- C. "Goods" means the cargo received from the Shipper and includes any Container(s) supplied by or on behalf of any other than the Carrier.
- D. "Container" means any container, flat, pallet, or other form of cargo carrying unit or equipment referred to on the face hereof, or in or on which any Goods may be unitized or otherwise packed or stowed when received by the carrier for carriage hereunder or subsequent to such receipt.
- E. "The Internal Law of a State" shall be deemed to exclude all principles of private international law applied by such state.

## 2. CONTRACTING PARTIES

The contract evidenced by this Bill of Lading is between the Shipper and the Carrier. The Shipper warrants to the Carrier that he is entitled and/or is duly authorized by any other person who owns or is entitled to possession of the Goods or this Bill of Lading, and to deliver the Goods to the Carrier on the terms hereof. Without prejudice to the foregoing, each merchant agrees to accept this Bill of Lading from the Carrier and also to accept endorsement or delivery hereof from the Shipper, Consignee or any other prior endorsee or holder and or deliverer of the Goods. The Merchant confirms, ratifies and agrees to be bound by all of the stipulations, exceptions and conditions stated herein whether written, printed, stamped or otherwise incorporated on the front or back hereof and that the contract contained or evidenced herein shall be fully binding between the Carrier and such Merchant in all respects. Each Merchant also agrees that all agreements previously made for the carriage of the Goods are superseded by the contract contained or evidenced herein.

## 3. SUB-CONTRACTING

The Carrier shall be entitled to sub-contract on any terms, the whole, or any part of the carriage, loading, storing, warehousing, handling and any and all duties whatsoever undertaken by the Carrier in relation to the Goods. The Merchant undertakes that no claims or allegation shall be made against any servant, agent, or sub-contractor, including without limiting the generality of the foregoing terminal and depot operators and stevedores of the Carrier which imposes or attempts to impose upon any of them or any vessel owned by any of them, any liability whatsoever in connection with the Goods, and, if any such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent, and sub-contractor, including the generality of the foregoing terminal and depot operators and stevedores, shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit, and entering into this Contract, the Carrier to the extent of those provisions, does so not only on its own behalf, but as agent and trustee for such servants, agents, and sub-contractors including without limiting the generality of the foregoing terminal and depot operators and stevedores. The expression "sub-contractor" in this clause shall include direct and indirect sub-contractors and their respective servants and agents.

## 4. SCOPE

The Goods may, at the Carrier's absolute discretion, be carried as a single or several shipments by the Vessel and or any other means of transport and through any route whatsoever whether or not such route is direct, advertised or customary route. Any action taken by the Carrier under this clause or delay resulting therefrom shall be deemed to be included within the contractual carriage and shall not be a deviation. Should the Carrier be held liable in respect of such action, the Carrier shall be entitled to the full benefit of all privileges, rights and immunities contained in

this Bill of Lading.

## 5. CARRIER'S RESPONSIBILITY

### A. CLAUSE PARAMOUNT

- a. Subject to clause 15 below, this Bill of Lading insofar as it relates to sea carriage by any vessel whether named herein or not shall have effect subject to the Hague Rules or any legislation making such Rules or the Hague – Visby Rules compulsorily applicable (such as COGSA) to this Bill of Lading and the provisions of the Hague Rules or applicable legislation shall be deemed incorporated herein. The Hague Rules (or COGSA) shall apply to the carriage of Goods by inland waterways and reference to carriage by sea in such Rules or legislation shall be deemed to include reference to inland waterways. If and to the extent that the provisions of the Harter Act of the United States of America 1893 would otherwise be compulsorily applicable to regulate the Carrier's responsibility for the Goods during any period prior to lading on or after discharge from the vessel the Carrier's responsibility shall instead be determined by the provisions of 5(C) below, but if such provisions are found to be invalid such responsibility shall be subject to COGSA.
- b. The Carrier shall be entitled to (and nothing in this Bill of Lading shall operate to deprive or limit such entitlement) the full benefit of, and rights to, all limitations and exclusions of liability and all rights conferred or authorized by any applicable law, statute or regulation of any country (including, but not limited to, where applicable any provisions of sections 4281 to 4287 inclusive of the Revised Statutes of the United States of America and amendments there to and where applicable any provisions of the laws of the United States of America) and without prejudice to the generality of the foregoing also any law, statute or regulation available to the Owner of the vessel(s) on which the Goods are carried.

### B. PORT TO PORT SHIPMENT

The responsibility of the Carrier is limited to that part of the Carriage from and during loading onto the vessel up to and during discharge from the vessel and the Carrier shall not be liable for any loss or damage whatsoever in respect of the Goods or for any other matter arising during any other part of the Carriage even though Charges for the whole Carriage have been charged by the Carrier. The Merchant constitutes the Carrier as agent to enter into contracts on behalf of the Merchant with others for transport, storage, handling or any other services in respect of the Goods prior to loading and subsequent to discharge of the Goods from the Vessel without responsibility for any act or omission whatsoever on the part of the Carrier or others and the Carrier may as such agent, enter into contracts with others on any terms whatsoever including terms less favorable than the terms in this Bill of Lading.

### C. COMBINED TRANSPORT

Save as is otherwise provided in this Bill of Lading, the Carrier shall be liable for loss of or damage to the Goods occurring from the time that the Goods are taken into his charge until the time of delivery to the extent set out below.

- a. Where the stage of Carriage where the loss or damage occurred cannot be proved:
  - I. The Carrier shall be entitled to rely upon all exclusions of liability under the Rules or legislation that would have applied under 5(A)(a) above had the loss or damage occurred at sea or, if there was no carriage by sea, under the Hague Rules (or COGSA).
  - II. Where under (I) above, the Carrier is not liable in respect of some of the factors causing the loss or damage, he shall only be liable to the extent that those factors for which he is liable have contributed to the loss or damage.
  - III. Subject to 5(D)(c) below, where the Hague Rules (or any legislation applying such Rules or Hague-Visby Rules such as COGSA) is not compulsorily applicable the Carrier's liability shall not exceed US \$2.00 per kilo of the gross weight of the Goods lost damaged or in respect of which the claim arises or the value of such Goods whichever is the lesser.

IV. The value of the Goods shall be determined according to the commodity exchange price at the place and time of delivery to the Merchant or at the place and time when they should have been so delivered, or, if there is no such price, according to the current market price by reference to the normal value of the Goods of the same kind and quality at such place and time.

- b. Where the stage of Carriage where the loss or damage occurred can be proved:
  - I. The liability of the Carrier shall be determined by the provisions contained in any international convention or national law of the country which provision.
  - II. Cannot be departed from by private contract to the detriment of the Merchant, and
  - III. would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of Carriage where the loss or damage occurred and had received an evidence thereof any particular document must be issued in order to make such international convention or national law applicable.
  - IV. Where neither (I) or (II) above apply any liability or the Carrier shall be determined by 5(C)(a) above.

#### D. GENERAL PROVISIONS

##### a. DELAY, CONSEQUENTIAL LOSS

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

##### b. PACKAGE OR SHIPPING UNIT LIMITATION

Where the Hague Rules or any legislation making such Rules compulsorily applicable (such as COGSA) to this Bill of Lading apply, the Carrier shall not, unless a declared value has been noted in accordance with (c) below, be or become liable for any loss or damage to or in connection with the Goods in an amount per package or shipping unit in excess of the package or shipping unit limitation as laid down by such Rules or legislation. Such limitation amount according to COGSA is US\$500. If no limitation amount is applicable under such Rules or legislation, the limitation shall be US\$500.

##### c. AD VALOREM DECLARED VALUE OF PACKAGES OR 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 Bill of Lading in the space provided for and, if required by the Carrier, extra freight paid in such case. If the actual value of the Goods shall exceed such declared 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.

##### d. DEFINITION OF PACKAGE OR SHIPPING UNIT

Where a Container is used to consolidate Goods and such Container is stuffed by the Carrier, the number of packages or shipping units stated on the face of this Bill of Lading in the box provided shall be deemed the number of packages or shipping units for the purpose of any limit of liability per package or shipping unit provided in any international convention or national law relating to the Carriage of Goods by sea. Except as aforesaid the Container shall be considered the package of shipping unit. The words "shipping unit" shall mean each physical unit or place of cargo not shipped in a package, including articles and things of any description whatsoever, except Goods shipped in bulk, and irrespective of the weight or measurement unit employed in calculating freight charges. As to Goods shipped in bulk the limitation applicable thereto shall be the limitation provided in such convention or law which may be applicable and in no such event shall anything herein be constructed to be a waiver of limitation as to Goods shipped in bulk.

##### e. RUST, ETC.

It is agreed that superficial rust, oxidation or any like condition due to moisture in 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 of the like did not exist on receipt.

f. NOTICE OF LOSS OR DAMAGE

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

g. TIME-BAR

The Carrier shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the Carrier within six months after delivery of the Goods or the date when the Goods should have been delivered. In the event that such time period shall be found contrary to any convention or law compulsorily applicable, the period prescribed by such convention or law shall then apply but in that circumstance only.

6. DEFENSES AND LIMITS FOR THE CARRIER

The defenses and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier for loss of or damage to the Goods or whether the action be founded in the Contract or in tort.

7. SHIPPER PACKED CONTAINERS

A. The terms of this Bill of Lading shall govern the responsibility of the Carrier in connection with or arising out of the supplying of a Container to the Merchant, whether before, or after the Goods are received by the Carrier for transportation or delivered to the Merchant.

B. If a container has not been filled, packed, stowed, stuffed, or loaded by the Carrier, the Carrier shall not be liable for loss or damage to the contents, and the Merchant shall indemnify the Carrier against any injury, loss, damage, liability, or expense incurred by the Carrier if such injury, loss, damage liability, or expense has been caused by:

- a. the manner in which the Container has been filled, packed, stowed, stuffed, or loaded, or,
- b. the unsuitability of the contents for carriage in Containers, or,
- c. the unsuitability or defective condition of the container which would have been apparent upon reasonable inspection by the Merchant, at, or prior to the time the Container was filled, packed, stowed, stuffed, or loaded.

C. If a Container which has not been filled, packed, stowed, stuffed, or loaded by the Carrier, is delivered by the Carrier with its seals intact, such delivery shall be deemed as full and complete performance of the Carrier's obligation hereunder, and the Carrier shall not be liable for any loss of, or damage to the contents of the Container.

D. The Shipper shall inspect the Container(s) before stowing them and the use of the container(s) shall be prima facia evidence of their being sound and suitable for use for transportation of the Goods.

8. INSPECTION OF GOODS

The Carrier shall be entitled, but under no obligation, to open any Package or Container at any time and to inspect the contents thereof. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried or carried further, either at all, or without incurring any additional expense or taking any measures in relation to such Package or Container, or its contents, or any part thereof, the Carrier may abandon the transportation thereof and or take any

measures and or incur any reasonable expense to carry or to continue the carriage of to store the same ashore or afloat under cover or in open, at any place, which storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any reasonable additional expense so incurred.

9. No representations are made by the Carrier as to the weight contents, measure, quantity, quality, description, conditions, marks, numbers, or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description particulars.

#### 10. SHIPPERS' RESPONSIBILITY

- A. The Shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Shipper upon receipt of this Bill of Lading, and that such particulars furnished by, or on behalf of the Shipper are correct.
- B. The Shipper shall indemnify the Carrier against all loss, damage or expenses arising, or resulting from inaccuracies or inadequacy of such particulars.

#### 11. FREIGHT AND CHARGES

- A. The Merchant's attention is drawn to the stipulations concerning currency in which the freight and charges are to be paid, rate of exchange, devaluation, and other contingencies relative to freight and charges in the Carrier's applicable Tariff.
- B. The freight has been calculated on the basis of particulars furnished by, or on behalf of the Shipper. The Carrier may at any time open any Container or other Package or Unit in order to re-weigh, re-measure, re-classify, or re-value the contents, and if the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that a sum equal to the difference between the correct freight charged shall be payable by the Merchant to the Carrier.

#### 12. LIEN

- A. The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this Contract and for general average contributions to whomsoever due and for all sums payable to the Carrier under this Contract and for that purpose shall have the right to sell the Goods by Public Auction or private treaty without notice to the Merchant. If on sale of the Goods the proceeds fail to cover the amount due and the cost incurred, the Carrier shall be entitled to recover the deficit from the Merchant.
- B. 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 the Goods at the sole risk and expense of the Merchant.

#### 13. MATTERS AFFECTING PERFORMANCE

- A. Means of transportation: The Carrier may, while remaining fully liable, use, or substitute any vessel, or other means of transportation to fulfill its obligations under this Bill of Lading without giving notice to, or, without obtaining the express consent of the Merchant.
- B. Sub-contracting: The Carrier, while remaining fully liable to fulfill its obligations under the Bill of Lading, shall be entitled to sub-contract on any terms, to any person or entity it may choose, for all or any part of said obligations, without notice to or without the express consent of the Merchant.
- C. If at any time the performance of the contract evidenced by this Bill of Lading is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind which

cannot be avoided by the exercise of reasonable endeavors, the Carrier (whether or not the transport has commenced) may without notice to the Merchant, treat the performance of this Contract terminated and place the Goods or any part of them at the Merchant's disposal at any port or place whatsoever which the Carrier may consider safe and advisable in the circumstances whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier will nevertheless be entitled to full freight and charges on Goods received for transportation, and the Merchant shall pay any additional costs of carriage to and delivery for transportation at such port or place.

- D. The circumstance referred to in sub-clause C above, shall include, but not be limited to, those caused by the existence of apprehension of war, declared or undeclared, hostilities, warlike or belligerent acts or operations, riots, civil commotion, political unrest, or other disturbances; closure of, obstacles in or danger to any canal, blockade of port or place or interdict or prohibition of or restriction on commerce or trading; quarantine sanitary or other similar regulations or restrictions; strikes, riots, lockouts or other labour troubles, whether partial or general and whether or not involving employees of the Carrier or his sub-contractors; congestion of port wharf, sea terminal, or any other handling of the Goods; epidemics or diseases; bad weather, shallow water, ice, landslide, or other obstacle in navigation or haulage.

#### 14. DANGEROUS GOODS

- A. The Merchant undertakes not to tender for transportation any Goods which are dangerous, inflammable, radio-active, or of damaging nature, without previously giving written notice to the Carrier and marking the Goods and the Container or other covering on the outside as required by any laws or regulations which may be applicable during carriage. The Carrier or the Master may however, in their absolute discretion, reject any such cargo.
- B. If the requirements of sub-clause A are not complied with, the Goods may, at any time or place, be unloaded, destroyed or rendered harmless without compensation and the Merchant shall indemnify the Carrier against all loss, damage, or expense arising out of the Goods being tendered for transportation or handled, or carried by the Carrier. Further, the Carrier shall be under no liability to make any general average contribution in respect of such Goods.
- C. If the Goods of dangerous, inflammable, radio-active or damaging nature which were tendered in compliance with sub-clause A, shall become a danger to the Vessel, cargo, or any other property or person, such Goods may in like manner, be unloaded, destroyed, or rendered harmless without compensation and the Merchant shall indemnify the Carrier against all loss, damage, or expense which the Carrier could not avoid by the exercise of reasonable diligence, but incurred as a result of the Carriage of such Goods.

#### 15. OPTIONAL STOWAGE, DECK CARGO AND LIVESTOCK

- A. The Goods may be stowed by the Carrier in Containers or similar articles of transport used to consolidate goods.
- B. Goods stowed in Containers, whether by the Carrier or by the Merchant, may be carried on deck or under deck without notice to the Merchant unless on the face hereof it is specifically stipulated that the Containers will be carried under deck, and if carried on deck, the Carrier shall not be required to note, mark or stamp on the Bill of Lading any statement of such on deck carriage. Such Goods (other than livestock) whether carried on deck or under deck and whether or not stated to be carried on deck shall participate in general average and shall be deemed to be within the definition of Goods for purpose of the Hague Rules or similar provision of any other Acts which may be applicable.

#### 16. REGULATIONS RELATING TO GOODS

The Merchant shall comply with all regulations of Customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses, or losses incurred or suffered by reason thereof, or any illegal, incorrect or insufficient marking, numbering, or addressing of the Goods, and indemnify the Carrier in respect thereof.

#### 17. GENERAL AVERAGE

General average shall be adjusted at any port or place at the option of the Carrier in accordance with the York-Antwerp Rules 1974. If the Carrier delivers the Goods without obtaining security for general average contributions, the Merchant, by taking delivery of the Goods, undertakes personal responsibility to pay such contributions and to provide a cash deposit or other security for the estimated amount of such contributions as the Carrier shall reasonably require.

#### 18. VARIATION OF THE CONTRACT, ETC.

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

#### 19. NEGOTIABILITY

A. This Bill of Lading shall be non-negotiable unless made out "to order". In which event it shall constitute title to the Goods and the holder shall be entitled to receive or transfer the Goods herein described.

B. This Bill of Lading shall be prima facie evidence of the taking in charge by the Carrier of the Goods as herein described. However, proof to the contrary shall not be admissible when this Bill of Lading has been negotiated, or transferred for valuable consideration to a third party acting in good faith.

#### 20. CARRIER'S TARIFF

The provisions of the Carrier's applicable Tariff, if any, are incorporated herein. Copies of such provisions are obtainable from the Carrier or his Agents upon request, or where applicable, from a government body with whom the Tariff has been filed. In the case of inconsistency this Bill of Lading and the applicable Tariff, this Bill of Lading will prevail.