

FAIRSEAS INTERNATIONAL BILL OF LADING

I. GENERAL PROVISIONS

1. Applicability

This Bill of Lading shall apply to containerised, uncontainerised, breakbulk, bulk and bagged cargoes, whether carried port to port or combined transport.

2. Definitions

"Carrier" means the party on whose behalf this Bill of Lading has been signed.
"Merchant" includes the Shipper, the Receiver, the Consignor, the Consignee, the holder of this Bill of Lading and the owner of the goods.

3. Time Bar

All liability whatsoever of the Carrier shall cease unless suit is brought within nine months after delivery of the goods or the date when the goods should have been delivered.

4. Law and Jurisdiction

Disputes arising under this Bill of Lading shall be determined by the courts and in accordance with the law at the place where the Carrier has its principal place of business.

II. PERFORMANCE OF THE CONTRACT

5. Methods and Routes of Transportation

(1) The Carrier is entitled to perform the transport and all services related thereto in any reasonable manner and by any reasonable means, methods and routes.
(2) In accordance herewith, for instance, in the event of carriage by sea, vessels may sail with or without pilots, undergo repairs, adjust equipment, drydock and tow vessels in all situations.

6. Optional Stowage

(1) Goods may be stowed by the Carrier by means of containers, trailers, transportable tanks, flats, pallets or similar articles of transport used to consolidate goods.
(2) Containers, trailers, transportable tanks and covered flats, whether stowed by the Carrier or received by it in a stowed condition from the Merchant, may be carried on or under deck without notice to the Merchant.

7. Hindrances affecting Performance

- (1) The Carrier shall use reasonable endeavours to complete the transport and to deliver the goods at the place designated for delivery.
- (2) If at any time the performance of the contract as evidenced by this Bill of Lading is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind, and if by virtue of sub-clause 7. (1) the Carrier has no duty to complete the performance of the contract, the Carrier (whether or not the transport has commenced) may elect to:
- treat the performance of this Contract as terminated (by way of abandonment of the voyage or otherwise) and place the goods at the Merchant's disposal at any place which the Carrier shall deem safe and convenient; or
 - deliver the goods at the place designated for delivery.
- (3) If the goods are not taken delivery of by the Merchant within a reasonable time after the Carrier has called upon it to take delivery, the Carrier shall be at liberty to put the goods in safe custody on behalf of the Merchant at the latter's risk and expense.
- (4) In any event the Carrier shall be entitled to full freight for goods received for transportation and additional compensation for extra costs resulting from the circumstances referred to above.

III. CARRIER'S LIABILITY

8. Basic Liability

- (1) The contract evidenced by this Bill of Lading shall only be deemed to be Combined Transport if the blocks "Place of receipt" and/or "Place of delivery", have been completed. For the avoidance of doubt any liability of the carrier shall be on a strictly port to port basis, regardless of whether this Bill of Lading is issued on a combined transport or port to port basis, unless otherwise agreed in writing between the Carrier and the Merchant and confirmed in the Booking Confirmation or similar instrument.
- (2) The Carrier shall be responsible for the acts and omissions of any person whose services it makes use of for the performance of the contract of carriage evidenced by this Bill of Lading.
- (3) The Carrier shall, however, be relieved of liability for any loss or damage if such loss or damage arose or resulted from:
- the wrongful act or neglect of the Merchant;
 - compliance with the instructions of the person entitled to give them;
 - the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
 - handling, loading, stowage or unloading of the goods by or on behalf of the Merchant;
 - inherent vice of the goods;
 - insufficiency or inadequacy of marks or numbers on the goods;
 - strikes or lock-outs or stoppages or restraints of labour from whatever cause, whether partial or general;
 - any cause or event which the Carrier could not avoid and the consequence whereof he could not prevent by the exercise of reasonable diligence.
- (4) Where under sub-clause 8. (3) the Carrier is not under any liability 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 under this clause have contributed to the loss or damage.
- (5) The burden of proving that the loss or damage was due to one or more of the causes or events, specified in (a), (b) and (h) of sub-clause 8. (3) shall rest upon the Carrier.
- (6) When the Carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the causes or events, specified in (c) to (g) of sub-clause 8. (3) it shall be presumed that it was so caused. The Merchant shall however be entitled to prove that the loss or damage was not in fact caused, either wholly or partly, by one or more of the causes or events.

9. Amount of Compensation

- (1) When 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 value of such goods at the place and time they are delivered to the Merchant in accordance with the contract or should have been so delivered.
- (2) The value of the goods shall be fixed according to the commodity exchange price or, if there be no such price, according to the current market price, or if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (3) Compensation shall not, however, exceed two Special Drawing Rights (SDR's) per kilogram of gross weight of the goods lost or damaged.
- (4) Higher compensation may be claimed only when, with the consent of the Carrier, the value for the goods declared by the Shipper which exceeds the limits laid down in this clause has been stated on the face of this Bill of Lading at the place indicated. In that case the amount of the declared value shall be substituted for that limit.

10. Special Provisions for Liability of Compensation

- (1) Notwithstanding anything provided for in clauses 8, and 9, of this Bill of Lading, if it can be proved where the loss or damage occurred, the Carrier and the Merchant shall, as to the liability of the Carrier, be entitled to require such liability to be determined by the provisions contained in any international convention or national law, which provisions:-
- cannot be departed from by private contract, to the detriment of the claimant, and
 - would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
- (2) Insofar as there is no mandatory law applying to carriage by sea by virtue of the provisions of sub-clause 10. (1), the liability of the Carrier in respect of any carriage by sea shall be determined by the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23rd 1968 – The Hague/Visby Rules. The Hague/Visby Rules shall also determine the liability of the Carrier in respect of carriage by inland waterways as if such carriage were carriage by sea. Furthermore, they shall apply to all goods, whether carried on deck or under deck.
- (3) **Delay, Consequential Loss etc.**
If the Carrier is held liable in respect of delay, consequential loss or damage other than loss of or damage to the goods, the liability of the Carrier shall be limited to freight for the transport covered by this Bill of Lading, or to the value of the goods as determined in clause 9, whichever is the lesser.

12. Notice of Loss or Damage to the Goods

- (1) Unless notice of loss of or damage to the goods specifying the general nature of such loss or damage, is given

in writing by the Merchant to the Carrier when the goods are handed over to the Merchant, such handing over is *prima facie* evidence of the delivery by the Carrier of the goods as described in this Bill of Lading.

- (2) Where the loss or damage is not apparent, the same *prima facie* effect shall apply if notice in writing is not given within three (3) consecutive days after the day when the goods were handed over to the Merchant.

13. Defences and Limits for the Carrier, Servants, etc.

- (1) The defences and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier for loss or damage to the goods whether the action can be founded in contract or in tort.
- (2) The Carrier shall not be entitled to the benefit of the limitation of liability provided for in sub-clause 9. (3), if it is proved that the loss or damage resulted from a personal act or omission of the carrier done with intent to cause such loss or damage or recklessly and with knowledge that that damage would probably result.
- (3) The Merchant undertakes that no claim shall be made against any servant, agents or other persons whose services the Carrier has used in order to perform this contract and if any claim should nevertheless be made, to indemnify the Carrier against all consequences thereof.
- (4) However, the provisions of this Bill of Lading apply whenever claims relating to the performance of this contract are made against any servant, agent or other persons whose services the Carrier has used in order to perform this contract, whether such claims are found in contract or in tort. In entering into this contract, the Carrier, to the extent of such provisions, does so not only on its own behalf but also as agent or trustee for such person. The aggregate liability of the carrier and such persons shall not exceed the limits in clauses 9, 10, and 23, respectively.

IV. DESCRIPTION OF GOODS

14. Carrier's Responsibility

The information in this Bill of Lading shall be *prima facie* evidence of the taking in charge by the carrier of the goods as described by such information unless a contrary indication such as "shipper's weight, load and count", "shipper packed container" or similar expressions have been made in the printed text or superimposed on the Bill of Lading. Proof to the contrary shall not be admissible when the Bill of Lading has been transferred, or the equivalent electronic data interchange message has been transmitted to and acknowledged by the Consignee who in good faith has relied and acted thereon.

15. Shipper's Responsibility

The Shipper shall be deemed to have guaranteed to the Carrier the accuracy, at the time the goods were taken in charge by the Carrier, of the description of the goods, marks, number, quantity and weight, as furnished by it, and the Shipper shall defend, indemnify and hold harmless the Carrier against all loss, damage and expenses arising or resulting from inaccuracies or inadequacy of such particulars. The right of the Carrier to such indemnity shall in no way limit its responsibility and liability under this Bill of Lading to any person other than the Shipper. The Shipper shall remain liable even if the Bill of Lading has been transferred by it.

16. Shipper-packed Containers etc.

- (1) If a container has not been filled, packed or stowed by the Carrier, the Carrier shall not be liable for any loss of or damage to its contents and the Merchant shall cover and indemnify any loss or expense incurred by the Carrier, if such loss, damage or expense has been caused by:
- Negligent filling, packing or stowing of the container;
 - The contents being unsuitable for carriage in containers; or
 - The unsuitability or defective condition of the container unless the container has been supplied by the Carrier and the unsuitability or defective condition would not have been apparent upon reasonable inspection at or prior to the time when the container was filled, packed or stowed.
- (2) The provisions of sub-clause (1) of this clause also apply with respect to trailers, transportable tanks, flats and pallets which have not been filled, packed or stowed by the Carrier.
- (3) The Carrier does not accept liability for damage due to the unsuitability or defective condition of reefer equipment or trailers supplied by the Merchant.

17. Dangerous Goods

- (1) The Merchant shall comply with all internationally recognised requirements and all rules which apply according to national law or by reason of international convention, relating to the carriage of goods of a dangerous nature and shall in any event inform the Carrier in writing of the exact nature of the danger before goods of a dangerous nature are taken into charge by the Carrier and indicate to it, if need be, the precautions to be taken.
- (2) Goods of a dangerous nature which the Carrier did not know were dangerous may at any time or place be unloaded, destroyed or rendered harmless without compensation; further, the Merchant shall be liable for all expenses loss or damage arising out of their handling over to carriage or of their carriage.
- (3) If any goods shipped with the knowledge of the Carrier as to their dangerous nature shall become a danger to any person or property they may in like manner be landed at any place or destroyed or rendered innocuous by the Carrier without liability on the part of the Carrier except to General Average, if any.

18. Return of Containers

- (1) For the purpose of this clause the Consignor shall mean the person who concludes this Contract with the Carrier and the Consignee shall mean the person entitled to receive the goods from the Carrier.
- (2) Containers, pallets or similar articles of transport supplied by or on behalf of the Carrier shall be returned to the Carrier in the same order and conditions as handed over to the Merchant, normal wear and tear excepted with interiors clean and within the time prescribed in the Carrier's tariff or elsewhere.
- (3) The Consignor shall be liable for any loss of, damage to, or delay including demurrage of such articles incurred during the period between handing over to the Consignor and return to the Carrier for carriage. The Consignor and the Consignee shall be jointly and severally liable for any loss of, damage to or delay including demurrage of such articles incurred during the period between handing over to the Consignee and return to the Carrier.

V. FREIGHT AND LIEN

19. Freight

- (1) Freight shall be deemed earned when the goods have been taken in charge by the Carrier and shall be paid in any event.
- (2) The Merchant shall be liable for interest, calculated at LIBOR + 3% in the event of any freight or charges not being paid when due.
- (3) 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 relevant tariff conditions. If no such stipulations as to devaluation exists or is applicable the following shall apply:

If the currency in which freight and charges are quoted is devalued between the date of the freight agreement and the date when the freight and charges are paid, then all freight and charges shall be automatically and immediately increased in proportion to the extent of the devaluation of the said currency.

- (4) For the purpose of verifying the freight basis, the Carrier reserves the right to have the contents of containers, trailers or similar articles of transport inspected in order to ascertain the weight, measurement, value or nature of the goods.

20. Lien

The Carrier and/or any Charterer of the carrying vessel, shall have a lien on the goods for any amount due under this Contract and for the costs of recovering the same and may enforce such lien in any reasonable manner including sale or disposal of the goods.

VI. MISCELLANEOUS PROVISIONS

21. General Average

- (1) General Average shall be adjusted at any port or place at the Carrier's option and to be settled according to the York-Antwerp Rules 1994 or any modification thereof, this covering all goods whether carried on or under deck. The New Jason Clause as approved by BIMCO from time to time, to be considered as incorporated herein.
- (2) Such security including a cash deposit as the Carrier may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon, shall, if required, be submitted to the Carrier prior to delivery of the goods.

22. Both-to-Blame Collision Clause

The Both-to-Blame Collision Clause as adopted by BIMCO from time to time shall be considered incorporated herein.

23. US Trade

- (1) In case the contract evidenced by the Bill of Lading is subject to the Carriage of Goods by Sea Act of the United States of America, 1936 (US COGSA) then the provisions stated in the said Act shall govern before loading and after discharge and throughout the entire time the goods are in the Carrier's custody.
- (2) If the US COGSA applies, and unless the nature and value of the goods have been declared by the shipper before the goods have been handed over to the Carrier and inserted in this Bill of Lading, the Carrier shall in no event be or become liable for any loss of or damage to the goods in an amount exceeding US\$500 per package or customary freight unit.