

## **TERMS AND CONDITIONS**

### **1. DEFINITIONS**

“Carriage” means the whole or any part of the operations or services performed by the Carrier and any Participating Carriers or Sub-Contractors in respect of the Goods covered by this Sea Waybill.

“Carrier” means the Vessel and its owner or demise charterer.

Neptune Pacific Line Pte. Ltd, Neptune Pacific Line Inc., Neptune Pacific Logistics (a division of Neptune Pacific Line Inc.), Pacific Forum Line (Group) Limited, PFL Cargo (a division of Pacific Forum Line (Group) Limited) and Polynesian Shipping Line (a division of Neptune Pacific Line Inc.) act as agents of the owner or demise charterer in arranging transport covered by this Sea Waybill. If, however, it is found that Neptune Pacific Line Pte. Ltd, Neptune Pacific Line Inc, Pacific Forum Line (Group) Limited, or any charterer, manager, operator or agent is to be liable as carrier, then such party will have the benefit of all defences, exceptions and limitations applicable to the Carrier under this Sea Waybill.

“Charges” means freight, deadfreight, demurrage and all expenses and money obligations incurred and payable by the Merchant.

“Container” means any open or closed container, van, trailer, flatbed, flatrack, transportable tank or any similar receptacle whatsoever.

"Goods" means the whole or any part of the cargo received from the shipper and described on the face of this Sea Waybill, and any Container, packaging or equipment not supplied by or on behalf of the Carrier.

“Hague-Visby Rules” means "The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading" (Brussels, 25 August 1924) as modified by "The Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels on 25 August 1924" (Brussels, 23 February 1968) and the "Protocol (SDR Protocol) amending the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 25 August 1924 (The Hague Rules), as amended by the Protocol of 23 February 1968 (Visby Rules)" (Brussels, 21 December 1979).

“Merchant” means the shipper, consignee, receiver, holder of this Sea Waybill, owner of the Goods or person entitled to the possession of the Goods and the servants and agents of any of these, all of whom shall be jointly and severally liable to the Carrier for the payment of all Charges, and for the performance of the obligations of any of them under this Sea Waybill.

“Multimodal” transport arises if the Place of Receipt and/or the Place of Delivery are indicated on the face of this Sea Waybill in the relevant spaces.

“Participating Carrier” means any other carrier by water, land or air, performing any stage of the Carriage, whether acting as sub-carrier, connecting carrier, substitute carrier or bailee.

“Port-to-Port” arises if the Carriage is not Multimodal.

“Sub-Contractor” includes owners and operators of any Vessels (other than the Carrier), all Participating Carriers, all stevedores, terminal operators, warehousemen, crane operators, watchmen, carpenters, ship cleaners, surveyors and all independent contractors employed by the Carrier in performance of the Carriage and any sub-sub-contractors thereof.

“Vessel” means the ocean vessel named on the face side hereof, and any substitute vessel or other means of conveyance by water used in whole or in part in the Carriage.

### **2. CARRIER'S TARIFF(S)**

Goods carried under this Sea Waybill are subject to all terms and conditions of the Carrier's applicable tariff(s), which is/are incorporated into this Sea Waybill. Copies of the tariff(s) or relevant provisions thereof are obtainable from the Carrier on request. In the event of a conflict between the terms and conditions of such tariff(s) and the Terms and Conditions of this Sea Waybill, those of this Sea Waybill shall prevail. These tariffs apply to each carriage for which a Neptune Pacific Line Pte. Ltd, Neptune Pacific Line Inc or Pacific Forum Line (Group) Limited Sea Waybill has been issued.

### 3. WARRANTY

In agreeing to these Terms and Conditions, the Merchant warrants that it is, or has the authority of, the person owning or entitled to the possession of the Goods and this Sea Waybill.

### 4. CARRIER'S RESPONSIBILITY: PORT TO PORT AND MULTIMODAL TRANSPORT

(1) Except as otherwise noted herein, the Carrier shall be responsible for the Goods under the following circumstances only:

*(a) Port-to-Port Shipment:*

The Carrier's responsibility for the Goods is limited to that part of the Carriage from and during loading onto a Vessel, up to and including discharge of the Goods from a Vessel, unless compulsorily applicable law provides otherwise. The liability (if any) of the Carrier during this period shall be determined according to any national law making the Hague-Visby Rules applicable, or otherwise Articles 1 to 8 (inclusive) of the Hague-Visby Rules. Where the Carrier arranges any transportation, storage, handling or other service in respect of the Goods, prior to loading or subsequent to discharge from the vessel, it does so solely as agent of the Merchant and at the Merchant's risk.

*(b) Multimodal Transport:*

(i) The Carrier shall not be responsible for loss or damage to the Goods, howsoever arising, occurring before acceptance of the Goods by the Carrier at the Place of Receipt or after delivery by the Carrier at the Place of Delivery.

(ii) The Carrier shall be responsible for the Goods in accordance with any international convention or national law, which provisions cannot be departed from by contract to the detriment of the Merchant and which would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of the Carriage during which the loss or damage occurred.

(iii) If no international convention or national law applies and any loss or damage to the Goods is known to have occurred during waterborne Carriage, the Carrier shall be responsible for the Goods in accordance with Articles 1-8 (inclusive) of the Hague-Visby Rules.

(iv) If it cannot be determined where any loss or damage to the Goods has occurred, i.e. on water or land, the Carrier will be entitled to rely on all exclusions and defences that would have applied under Clause 4(1)(a) above.

(v) If the Place of Receipt is not named on the face of this Sea Waybill, the Carrier will be under no liability whatsoever for loss or damage to the Goods if such loss or damage arises prior to loading onto a Vessel. If the Place of Delivery is not named on the face of this Sea Waybill, the Carrier will be under no liability whatsoever for loss or damage to the Goods if such loss or damage arises subsequent to discharge from a Vessel.

(2) Any compensation for loss or damage to Goods will in no circumstances exceed 2 SDRs per kilo of gross weight of the Goods lost or damaged, except where the Hague-Visby Rules are applicable either by national law or otherwise, in which case the Carrier's liability will not exceed the limits prescribed under the relevant law or Rules. The Merchant acknowledges that the Carrier has no knowledge of the value of the Goods and that higher compensation than that provided for in this Sea Waybill may not be claimed unless the nature of the Goods and valuation have been declared by the Merchant prior to Carriage commencing, and extra freight paid if required. In no event shall the limitation amount exceed the declared value on the face of this Sea Waybill.

(3) If notice of loss, damage or claim is not given at time of discharge/removal of the Goods by the Merchant or, if not then apparent within three consecutive days thereafter, a presumption of discharge/delivery in good order shall arise.

(4) 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 Sea Waybill 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 or shipping unit. The words "shipping unit" shall mean each physical unit or piece 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 event shall anything herein be construed to be a waiver of limitation as to the goods shipped in bulk.

## **5. LIABILITY**

(1) In no circumstance whatsoever shall the Carrier be liable for direct, indirect or consequential loss or damage caused by delay, unless compulsorily applicable law provides otherwise.

(2) All carriage under this Sea Waybill to or from the United States shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, 46 U.S.C. sections 1300-1315 (hereafter, "COGSA"). Except as may be otherwise specifically provided herein, said law shall govern before the goods are loaded on and after they are discharged from the vessel whether the goods are carried on deck or under deck and throughout the entire time the goods are in the custody of Carrier.

Unless otherwise mandated by compulsorily applicable law, Carrier's liability for compensation for loss of or damage to goods when COGSA is applicable shall in no case exceed the amount of US\$500 per package or per customary freight unit, unless Merchant, with the consent of Carrier, has declared a higher value for the goods in the space provided on the front of this Bill of Lading and paid extra freight per Carrier's tariff, in which case such higher value shall be the limit of Carrier's liability.

## **6. SUB-CONTRACTING: BENEFICIARIES**

(a) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage.

(b) Should it be alleged or claimed that any person or entity other than the Carrier is under any responsibility for the Goods or the Carriage of the Goods, all rights, defences, liberties, limitations of and exonerations from liability, provided by law or by these Terms and Conditions, shall be available to the person or entity if they are a servant, agent or Sub-Contractor of the Carrier, as if such provisions were expressly for the benefit of such persons. In contracting for the rights, defences, liberties, limitations of and exonerations from liability contained in this Sea Waybill or in the contract of Carriage, the Carrier is acting as agent and trustee for and on behalf of all persons and entities described above.

The Merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the carrier, including, but not limited to, the carriers servants or agents, any independent contractor and its 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 such person or vessel any liability whatsoever in connection with the goods or the carriage.

(c) In the event an allegation or claim is made to which paragraph (b) above applies, the Merchant undertakes to indemnify the Carrier against all consequences thereof. The Merchant also undertakes to indemnify the Carrier against all consequences of any claim or allegation being made by any person, other than in accordance with these Terms and Conditions, which imposes or attempts to impose upon the Carrier any liability in connection with the Goods or the Carriage of the Goods.

(d) No agent or servant of the Carrier shall have power to waive or vary any of the terms of this Sea Waybill unless such waiver or variation is in writing and is specifically authorized or ratified in writing by an officer or director of the Carrier having actual authority to bind the Carrier to such waiver or variation.

## **7. OPTION OF INSPECTION / CARRIAGE AFFECTED BY GOODS' CONDITION**

The Carrier or any Sub-Contractor or person authorized by the Carrier may at its option open any

Container to inspect the contents. If it appears that any part thereof cannot safely or properly be carried, either at all or without incurring additional expense, the Carrier may abandon the transportation, take any measures, and/or incur any reasonable additional expenses to continue the Carriage or store the Goods, which storage shall constitute due delivery under this Sea Waybill. The Merchant shall indemnify the Carrier against any reasonable additional Charges so incurred, unless due solely to the Carrier's fault.

## **8. MERCHANT'S RESPONSIBILITIES**

(a) Neither the Carrier, nor its agents and servants, shall be liable for the correctness of any marks, descriptions or other representations furnished or made by or on behalf of the Merchant or appearing on the Goods or documents relating to the Goods. The Merchant will indemnify the Carrier against all loss, damage, expenses and fines arising or resulting from inaccurate or incorrect particulars relating to the Goods being furnished by or on behalf of the Merchant. The Sea Waybill shall be prima facie evidence of the receipt by the Carrier from the Merchant in apparent good order and condition, except as otherwise noted, of the total number of Containers or packages or units indicated on the face of the Sea Waybill.

(b) The Terms and Conditions of this Sea Waybill shall govern the Carrier's responsibility in connection with or arising out of the supply of a Container to the Merchant, whether supplied before or after the Goods are received by the Carrier or delivered to the Merchant. Where the Carrier is instructed to provide a Container, in 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.

(c) When a Container is to be stripped by or on behalf of the Merchant, Merchant shall promptly strip, or cause to be stripped, the Container and take delivery of its contents irrespective of the condition of the Goods. Further, the Merchant shall be and remain liable for any loss, damage or expense of whatsoever nature to the Goods, Container, Vessel, or to other cargo, property or persons, whether such loss or damage is then evident or later manifests itself.

(d) When any Container utilized is owned or leased by the Carrier, until returned to the Carrier's custody, the Merchant shall be and remain liable, at rates under the Carrier's tariff(s) or the contract of Carriage, for any delay beyond the time allowed by the Carrier or its agents for use of such Container, and for any loss, damage or expense incurred by the Carrier as a result of the failure to return the container to the Carrier in the same sound condition and state of cleanliness as when received by or on behalf of the Merchant, even if a condition caused by the Goods does not then manifest itself and/or results in loss, damage or expense at a subsequent time.

(e) The Merchant agrees to be responsible for all expenses of any nature incurred while the Goods (including the Containers) are in the custody of the Carrier or any Participating Carrier, their agents or servants, including but not limited to repairs, reconditioning, demurrage as per the Carrier's tariff(s), detention, fines and taxes (civil or criminal), cargo related inspections by governmental authorities and their attendant costs, whether charged to the Goods or Containers or levied upon the Carrier, Vessel, Participating Carrier, its conveyance, their agents or servants, which in any way relate to the Goods or which result from the acts or omissions on the part of the Merchant, its agents or servants, or third parties for whom the Carrier, Participating Carrier, their agents or servants, are not responsible, and to submit to jurisdiction of any court, tribunal or other body before whom the Carrier may be brought.

(f) The Carrier's prior written consent is required for the Carriage of dangerous or hazardous Goods which must be distinctly marked as such on the outside of the Goods and the Container.

(g) The Merchant warrants that it has complied with all statutes, ordinances, regulations and requirements of Customs, Port and any other Authorities relative to the Goods, documentation and any other matters affecting or in any way relating thereto.

(h) Insofar as breakbulk cargo is concerned, which requires special care and handling, unless the nature of the same is disclosed and handling instructions requested in writing at the time of booking, and the Carrier's agreement is obtained, the Carrier will not be obligated to provide such special care and/or handling.

(i) The Merchant undertakes that the goods are packed in a manner adequate to withstand the ordinary risks of carriage having regard to their nature and in compliance with all laws, regulations and requirements which may be applicable.

(j) If the Merchant fails to comply with the above mentioned obligations, the Merchant will be

responsible for all costs resulting there from and for all resulting liabilities and responsibilities whatsoever.

(k) Merchant indemnifies Carrier for any damage or injury to persons or property caused by Carrier's containers or equipment during handling by or when in possession or control of Merchant.

## **9. MERCHANT-PACKED CONTAINERS**

(a) If a Container has been stuffed by or on behalf of the Merchant, the Merchant agrees that the Carrier has no reasonable means of checking quantity, weight, condition, identity or existence of contents or manner in which the Goods are stuffed, stowed and secured within the Container or packaged (if breakbulk cargo), and the Carrier does not represent the quantity, weight, condition, identity or existence of such contents inserted in the Sea Waybill to be accurate or the stuffing, stowing and securing to be proper.

(b) If a Container has been stuffed by or on behalf of the Merchant, the Carrier shall not be liable for any loss or damage to the Goods caused by matters beyond the Carrier's control, including:

(i) the manner in which the Container has been stuffed;

(ii) the unsuitability of the Goods for Carriage in Containers;

(iii) the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of the Carrier, this sub-paragraph (iii) shall only apply if the unsuitability or defective condition arose:

(a) without any want of due diligence on the Carrier's part, or

(b) if it would have been apparent upon reasonable inspection by the Merchant at or prior to the time the Container was stuffed;

(iv) the Container not being sealed at the commencement of the Carriage, except where the Carrier has agreed to seal the Container.

(c) The Carrier is committed to the concept of supply chain security. The Merchant will ensure that the sealing of all Merchant-packed containers is completed immediately after stuffing, before placing them at the Carrier's disposal. Only high security seals must be used. Unless any compulsorily applicable law provides otherwise, all seals must meet the specifications for high security seals issued by the International Organization for Standardization under ISO/PAS 17712 and any subsequent amendment thereof. The Merchant agrees to provide in writing details of the precise contents of the Containers and the seal number(s) when giving shipping instructions to the Carrier.

(d) The Merchant shall defend, indemnify and hold the Carrier harmless against any loss, damage, claim, liability or expense whatsoever arising from one or more of the matters covered in paragraphs (b) and (c) above except for paragraph (b)(iii)(a).

(c) Merchant warrants that the stowage and seals of the containers are safe and proper and suitable for handling and carriage and indemnifies Carrier for any injury, loss or damage caused by breach of this warranty.

## **10. CONTAINERIZED CARGO**

The Goods may be stuffed by the Carrier in Containers and the Containers, whether so stuffed or received fully stuffed, may be carried on or under deck without notice. The Merchant expressly agrees that Containers carried on deck are considered for all legal purposes to be stored under deck. All Goods stuffed in Containers and carried on deck shall participate in General Average and shall be deemed to be "goods" for the purposes of the Hague-Visby Rules and any national law applying those Rules.

## **11. DECK CARGO / LIVE ANIMALS**

Goods that are stated on the face of this Sea Waybill as being carried on deck (except those carried in Containers on deck), and live animals, are received and carried solely at the Merchant's risk

(including accident or mortality of animals). The Carrier will not in any event be liable for any loss or damage to such Goods, howsoever arising, whether or not caused by negligence on the part of the Carrier, its servants, agents or Sub-Contractors. The Hague-Visby Rules and any national law applying those Rules shall not apply. The Merchant shall indemnify the Carrier against any extra costs incurred for any reason whatsoever in connection with the Carriage of any live animal.

## **12. CONTAINERS WITH TEMPERATURE OR ATMOSPHERE CONTROLLED APPARATUS**

Containers with temperature or atmosphere controlled apparatus will not be furnished unless expressly contracted for in writing at the time of booking and, when furnished, they may entail increased Charges. In absence of an express request, it shall be presumed that use of a dry Container is appropriate for the Goods.

The Merchant must provide the Carrier with the desired temperature range when delivering Containers to the Carrier, and the Carrier will exercise due diligence to maintain the temperature within a reasonable range while in its custody or control. The Carrier does not accept any responsibility for the functioning of temperature or atmosphere-controlled Containers not owned or leased by the Carrier or its related bodies corporate.

## **13. DELIVERY**

(a) If delivery of the whole or any part of the Goods is not taken by the Merchant when, where and at such time and place as the Carrier is entitled to have the Merchant take delivery, upon surrender of a single or multiple Sea Waybill(s), as the case may be, and upon payment of all Charges due, the Carrier may (at its option, subject to its lien and without notice) elect to have the Goods remain where they are, or delivered to the Merchant where multiple Sea Waybills are involved, or sent to a warehouse or other place, vanned or devanned, always at the risk and expense of the Merchant and against payment by the Merchant of all Charges applicable to LCL (Less than Container Load) loads (as provided in the governing tariff) and any extra expenses incurred as a result of the additional services rendered. Such option as exercised by the Carrier shall constitute proper delivery to the Merchant.

(b) Neither the Carrier nor its agents are or shall be obligated to inform the Consignee or Notify Party of the Vessel's estimated or actual date or time of arrival, and if given, such information shall be considered gratuitous.

(c) Notwithstanding any other term or condition of this Sea Waybill, if domestic law of the Port of Discharge provides that discharge shall be at the risk and expense of the Merchant, the Merchant agrees that the Goods shall be properly delivered by the Carrier under the contract of Carriage at the Vessel's rail and that the Carrier's responsibility for the Goods will cease at the Vessel's rail.

(d) Where Goods are discharged onto barges or lighters in certain ports (including in Nauru), such discharge shall constitute proper delivery under the contract of Carriage and the Carrier's responsibility for the Goods will cease at the Vessel's rail.

## **14. CHARGES, INCLUDING FREIGHT**

(a) The Charges payable under the contract of Carriage have been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier shall, at any time, be entitled to inspect, reweigh, remeasure or revalue the contents and, if any of the particulars furnished by the Merchant are found to be incorrect, the Charges shall be adjusted accordingly, and the Merchant shall be responsible to pay the correct Charges and all expenses incurred by the Carrier in checking said particulars or any of them.

(b) Charges shall be deemed earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event. Charges shall be paid by the Merchant in full, without any offset, counter claim or deduction before delivery of the Goods.

(c) The Merchant shall remain responsible for all Charges, regardless of whether the Sea Waybill is marked, in words or symbols, "Prepaid", "To be Prepaid", or "Collect".

(d) In arranging for any services with respect to the Goods, the Carrier shall be considered the exclusive agent of the Merchant for all purposes, including but not limited to Charges, and any payment of Charges to other than the Carrier shall not, in any event, be considered payment to the Carrier.

(e) The Merchant shall defend, indemnify and hold the Carrier, any Participating Carrier, their agents and servants, harmless from and against all liability, loss, damage and expense which may be sustained or incurred by the Carrier in relation to the above.

(f) The shipper, consignee, holder hereof, and owner of the goods, and their principals, shall be jointly and severally liable to Carrier for the payment of all freight and charges, including advances and detention charges and shall, in any referral for collection or action for monies due to Carrier, upon recovery by Carrier, pay the expenses of collection and litigation, including reasonable attorneys' fees. This provision shall apply regardless of whether the front of this bill of lading has been marked "prepaid" or "freight prepaid" so long as freight and charges remain unpaid.

(g) The shipper, consignee, holder hereof, and owner of the goods, and their principals, shall jointly and severally indemnify Carrier for all claims, fines, penalties, damages, costs and other amounts which may be incurred or imposed upon Carrier by reason of any breach of any of the provisions of this Bill of Lading or of any statutory or regulatory requirements.

## **15. CARRIER'S LIEN**

The Carrier shall have a lien on Goods and any Charges and documents relating thereto for all sums due under the contract evidenced by this Sea Waybill or any other contract or undertaking to which the Merchant was a party or otherwise involved. Such lien shall extend to General Average contributions, salvage and the cost of recovering such sums, including lawyers' fees. It may be exercised at any time and place, whether the Carriage has been completed or not, and it may be enforced by the Carrier by public or private sale at the expense of and without notice to the Merchant.

## **16. MATTERS AFFECTING PERFORMANCE**

If at any time, the Carriage is or, in the judgment of Carrier is, likely to be affected by any hindrance, risk, delay or disadvantage of whatsoever kind, whether existing before the Carriage or thereafter, the Carrier may without notice, but considering the circumstances and nature of the Goods:

(a) carry the Goods to the Port of Discharge or Place of Delivery, whichever is applicable, by an alternate route to that indicated on this Sea Waybill; or

(b) suspend the Carriage of the Goods, store them, and/or attempt to forward them as soon as possible; or

(c) terminate the Carriage, discharge the Goods, devan the contents of any Containers if such Containers are owned or leased by the Carrier, require the Merchant to take delivery of the Goods and, upon the Merchant's failure to do so, warehouse the Goods at the risk and expense of the Merchant.

Notwithstanding the above, the Carrier shall be entitled to full Charges and any additional freight and storage fees and all other expenses incurred by or on behalf of Carrier, all of which shall be due and owing from the Merchant, and the Carrier shall have a lien on the Goods for the same.

Notice of the Carrier's election and disposition of the Goods shall be sent to the Merchant identified in the Sea Waybill.

All actions taken by the Carrier hereunder shall be deemed within the contractual and contemplated Carriage and not be an unreasonable deviation.

## **17. METHODS AND ROUTES OF CARRIAGE**

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

(a) use any means of transport (water, land and/or air) or storage whatsoever;

- (b) transship or carry the Goods on another vessel or conveyance or by any other means of transport than that indicated on the reverse side of this Sea Waybill;
- (c) carry Goods on or under deck at its option;
- (d) proceed by any route in its sole and absolute discretion and whether the nearest, most direct, customary or advertised route or in or out of geographical rotation;
- (e) proceed with or without pilots and permit the Vessel to tow or be towed;
- (f) carry livestock, explosives, munitions, war like stores, dangerous or hazardous Goods or lawful Goods of any and all kinds;
- (g) dry dock or stop at any unscheduled port for bunkers, repairs or for any purpose whatsoever;
- (h) comply with any orders, directions or recommendations given by any government or authority or by any person or body acting or purporting to act with the authority of any government or authority or having under the terms of the insurance on the Vessel employed by the Carrier the right to give such orders, directions or recommendations;
- (i) take any other steps or precautions as may appear reasonable to the Carrier under the circumstances.

The liberties set out in subdivision (a) through (i) may be invoked for any purpose whatsoever even if not connected with the Carriage. Any action taken or omitted to be taken, and any delay arising there from, shall be deemed to be within the Carriage and not an unreasonable deviation.

#### **18. BOTH TO BLAME COLLISION CLAUSE**

The prevailing version of the Both-to-Blame Clause published by the Baltic and International Maritime Council and obtainable from the Carrier or its agents upon request is hereby incorporated into this Sea Waybill.

#### **19. TIME BAR**

Unless compulsorily applicable law provides otherwise, the Carrier shall be discharged from all liability of whatsoever nature unless suit is brought within nine months after delivery of Goods or the date the Goods should have been delivered, provided however that if any claim arises during a part of transport subject by applicable law to a shorter period for commencement of suit, any liability whatsoever of the Carrier shall cease unless suit is brought within such shorter period.

Suit shall not be deemed "brought" unless jurisdiction is obtained over the Carrier and/or the Participating Carrier by service of process or a written agreement to appear. If compulsorily applicable law invalidates this provision it shall nevertheless apply during all non-compulsory periods for which the Carrier bears responsibility.

Nothing herein contained shall be construed as a waiver of limitation.

#### **20. GENERAL AVERAGE AND SALVAGE**

In event of accident, danger, damage or disaster, before or after commencement of voyage, from any cause whatsoever, for which the Carrier is not responsible by statute, contract or otherwise, the Merchant shall contribute with the Carrier in General Average to payment of any sacrifices, losses or expenses of General Average nature that may be made or incurred, and the Merchant shall pay salvage and special charges incurred in respect of the Goods.

General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994 at any place at the option of the Carrier, whether declared by the Carrier or anyone other than the Merchant. The Merchant shall give such cash deposit or other security as the Carrier may deem sufficient to cover the estimated General Average contribution of the Goods. Such deposit or security must be provided before delivery if the Carrier so requires, or if not so required, within three months of delivery of Goods, whether or not at the time of delivery the Merchant had notice of the Carrier's lien. The Carrier shall be under no obligation to exercise any lien for General Average contribution due to the

Merchant. The Merchant's contribution in General Average shall be paid even when such Average is result of fault, neglect or error of the Master, pilot, officers or crew.

If the Master considers (in his sole discretion or in consultation with owners) that salvage services are needed, the Merchant agrees that the Master may act as the Merchant's agent to procure such services to Goods and to settle salvage remuneration, without any prior consultation with the Merchant. If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully and in same manner as if such salving ship was owned or operated by strangers.

## **21. LAW AND JURISDICTION**

Unless otherwise agreed with the Carrier in writing prior to the Carriage, this Sea Waybill shall be governed by the laws of Australia and any claim, dispute, suit or proceeding arising thereunder or in connection therewith shall exclusively be decided by the courts of the state of New South Wales.

In case of any dispute relating to Charges, the Merchant hereby agrees to submit to the jurisdiction of the courts of New South Wales, or the Carrier, at its option, may apply to any tribunal in New South Wales having jurisdiction.

Notwithstanding the foregoing, if the Merchant and the Carrier agree in writing, the claim or dispute may be referred to mediation or arbitration upon such terms and at such place as may be mutually agreed upon by the parties.

## **22. NON-WAIVER AND SEPARABILITY**

Nothing in this Sea Waybill shall operate to deprive the Carrier of any statutory protection or defense, immunity, exemption, limitation of or exoneration from liability contained in applicable laws. These Terms and Conditions (including all the terms and conditions of the Carrier's applicable tariff(s)) shall be separable, and if any part or term of these Terms and Conditions shall be held invalid, such holding shall not affect the validity or enforceability of any other part or term.