



**TOC LOGISTICS**  
INTERNATIONAL

# **TOC Logistics International, Inc.**

## **Terms & Conditions of Service**

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## TOC LOGISTICS INTERNATIONAL, INC. TERMS AND CONDITIONS OF SERVICE

### 1. DEFINITIONS

“Authority” means any duly constituted legal or administrative body or Person, that exercises jurisdiction or authority within any nation, state, municipality, port, or airport;

“Carriage Document” means a document containing the terms and conditions of a contract of carriage by air, sea, or rail and includes, for carriage by air, an air waybill; for carriage by sea, a bill of lading or a sea waybill; for carriage by rail, a consignment note or similar document; and for multimodal transport, a combined transport document. “Carriage Document” shall not include any waybill, bill of lading, cartage advice or delivery order, for trucking transportation services exclusively by road and not ancillary to some other mode of transportation;

“Charges” includes all freight, costs, fees, expenses, commissions, duties, penalties, taxes, surcharges, or other amounts payable to TOC or any Authority with respect to the Services or the Goods;

“Conditions” means these Terms and Conditions of Service as amended from time to time;

“Customer” means any Person at whose request or on whose behalf TOC provides a Service;

“Dangerous Goods” includes Goods that are or may become dangerous, hazardous, noxious, toxic, explosive, inflammable, or radioactive; Goods likely to damage, taint or adversely affect other goods; Goods likely to cause contamination; or Goods likely to harbor or encourage vermin or other pests;

“Force Majeure Event” includes but is not limited to fire, strike, labor dispute, civil disturbance, riot, war, Act of God, terrorism, governmental order or regulation, cyber-attack, pandemics, epidemics, quarantine restrictions, Subcontractor carrier insolvency, or any other contingency or event beyond the reasonable control of Customer or TOC;

“Goods” means the whole or any part of the cargo, packaging, and any Transport Unit accepted from Customer in connection with the Services;

“Information” means data, messages, advice, or information (including electronic data) in any form;

“Information System” means any computer hardware, computer software, website, portal, communication lines or Information processing technologies operated or used by TOC, Customer or any third party in connection with the Services (including any computer, tablet, phone, or other mobile device);

“Instructions” means a statement of the specific requirements issued by Customer, an Authority, or any other Person;

“Owner” includes all and any of the following: the owner, shipper or consignee of the Goods, any other Person who is or who may become interested in or otherwise entitled to the possession of or title to the Goods, and anyone acting on behalf of any of the these Persons;

“Person” means an individual, corporation or other legal entity;

“SDR” means Special Drawing Rights as defined by the International Monetary Fund, calculated as at the date of the court judgment, arbitration award or settlement;

“Services” means the whole or any part of any activities whatsoever undertaken by TOC with respect to Customer or the Goods;

“Subcontractors” means carriers, forwarders, brokers, or other providers of services with respect to the Goods directly or indirectly engaged by TOC in connection with the Services;

“TOC” means TOC Logistics International and any entities that are controlled by, that are under common control with, or that control them (collectively, the “TOC Affiliates”), and their respective officers, directors, employees, agents, and Subcontractors;

“Transport Unit” includes any container, trailer, pallet, ULD, or other device used in connection with the carriage, consolidation, or storage of Goods;

“Unlawful Goods” includes Goods that (i) are intended to be used in the design, development, or production of nuclear, chemical, or biological weapons (ii) are subject to trade controls or sanctions in their country of origin, passage, or destination, (iii) contain contraband or prohibited items or any item that infringes or may infringe intellectual property or other rights of any Person, or (iv) any other Goods that may be subject to detention by Authorities;

“USD” means United States Dollars;

“Valuable Goods” means any Goods of a valuable nature, including without limitation: bullion, bank notes, cash money, coins, drafts, credit cards, documents or papers of value of all kinds, articles or materials containing information or data of value in any form, precious stones, jewelry, antiques, or works of art; and

“Warehouse” means any building, facility, yard, or other real property leased or owned by TOC or a Subcontractor for the storage and related handling of Goods.

### 2. APPLICATION

These Conditions apply for the benefit of TOC on its own behalf and also as agent for and on behalf of the TOC Affiliates. TOC, the TOC Affiliates and any Subcontractors shall be entitled to all benefits, limitations, exclusions, and defenses set forth in these Conditions. These Conditions shall govern the Services, including any advice or information provided, whether gratuitously or not, except in the following instances where:

(i) TOC and Customer have signed a bespoke written agreement, in which case these Conditions shall govern any Services not specifically within the scope of such agreement;

(ii) any mandatory law, statute, regulation, convention, or treaty compulsorily applies to all or part of the Services, in which case such law, statute, regulation, convention, or treaty shall govern to the extent inconsistent with these Conditions;

(iii) TOC has issued a Carriage Document as a carrier, in which case these Conditions shall govern any Services to which such Carriage Document does not apply; or

(iv) Customer uses or accesses any Information System operated by TOC, in which case any applicable TOC user terms as published on the relevant Information System or otherwise made available by TOC shall govern to the extent inconsistent with these Conditions.

### 3. GENERAL

3.1 The failure by TOC to exercise any rights under these Conditions shall not constitute a waiver of such rights.

3.2 In the event that any of these Conditions is found to be unenforceable, then the remainder of these Conditions shall continue to be in full force and effect.

3.3 TOC may unilaterally amend these Conditions at any time by publishing the amended version on its website or by providing the amended version to Customer. All Services provided by TOC after such publication shall be governed by the amended Conditions.

3.4 Neither TOC nor Customer shall be liable to the other for default in performance of any obligations under these Conditions if such default is caused by a Force Majeure Event.

3.5 The Services provided hereunder are provided on a non-exclusive basis. TOC may provide service to any other shippers or customers, and Customer may obtain similar services from other carriers or providers. Nothing contained herein shall obligate TOC to accept any shipment tendered to it by Customer, and nothing contained herein shall obligate Customer to tender any shipment to TOC.

### 4. CAPACITY OF TOC

4.1 TOC acts as an "agent" of Customer for the purpose of performing Services under Sections 4.2, 6, and 8 and in connection with property brokerage services under 49 CFR §371.2(a), or as an ocean freight forwarder as defined in 46 CFR §515.2(m)(1), or while providing IATA direct air services, or customs brokerage services including the entry and release of Goods and post entry services, the filing of export and security documentation on behalf of Customer and other dealings with governmental agencies, in all other respects TOC acts as a principal.

4.2 If applicable, in all dealings with any Authority in the European Union for and on behalf of Customer or Owner, TOC is deemed to be appointed as, and acts as, Direct Representative only under Article 5 of Council Regulation (EEC) No. 2913/92, such that Customer, and not TOC, is solely responsible for any customs debt that may arise as a consequence of the import or export declaration.

4.3 TOC shall operate as an independent contractor in performing the Services. Nothing contained in these Conditions nor in any dealings or activities between TOC and Customer shall be construed in any way as creating any relationship of employment, partnership, or joint venture between TOC and Customer. Except as expressly provided herein, neither party shall act or purport to act or represent itself, directly or by implication, as the agent, legal representative, partner or joint venture of the other party, nor in any manner assume or create or purport to assume or create any obligations in the name or on behalf of the other party.

### 5. CUSTOMER'S OBLIGATIONS

5.1 Customer expressly warrants that it is either the Owner or authorized agent of the Owner, and that it is authorized to accept and

does accept these Conditions not only for itself but also for and on behalf of the Owner.

5.2 Where Services are to be provided by TOC on a continuing basis, Customer shall, on a continuing basis, provide TOC with forecasts of cargo volumes at such intervals and with such details as TOC may reasonably require for the performance of the Services.

5.3 Customer acknowledges that, in preparing and submitting customs entries, export declarations, applications, security filings, documentation or other required data, TOC relies on the timeliness, completeness, accuracy, and correctness of all Information furnished by or on behalf of Customer, and Customer warrants that all Information furnished to TOC by or on behalf of Customer relating to the Goods, their description, classification, bar-coding, marks, number, weight, condition, volume and quantity of the Goods, is timely, complete, accurate, and correct. On any import or export, in no event shall TOC be responsible or liable for any increased duty, penalty, fine, or other expense unless caused by the negligence of TOC, in which event its liability to Customer shall be limited to 50 SDR per entry.

5.4 Customer represents and warrants to TOC as follows:

5.4.1 Customer is in compliance with, and shall at all times comply with, all applicable laws, rules and regulations, including, but not limited to, the import and export laws and government regulations of any country to, from, or through which the Goods may be carried, and the Goods do not require TOC to obtain any specific license or permit for transportation, storage, import, or export and, to the extent required by applicable law or regulation, the Customer has obtained all necessary export, and/or import licenses or permits. Customer understands TOC is not an agent and has no authority for determining export licensing requirements or obtaining licensing authority.

5.4.2 The transportation, storage, import, or export of the Goods by TOC, as applicable, is not prohibited by any applicable law or regulation, including comprehensive economic or trade sanctions maintained by the United States, the European Union, the United Nations, the country of origin, or the country of destination.

5.4.3 No Goods tendered for any Services are Unlawful Goods, and neither the Goods nor any component thereof are intended to be used in the design, development, or production of nuclear, chemical, or biological weapons, and neither Customer, nor any party with whom Customer trades, is a party identified on the United States Department of Commerce Denied Persons List or Entity List, the United States Department of Treasury's Specially Designated Nationals List, the United States Department of State Debarred Parties List, European Union Sanction List, or any list of prohibited, denied, or blocked parties maintained by any country, territory, or other Authority.

5.4.4 Customer shall review all documents and declarations prepared or filed with any Authority, and will immediately advise TOC of any errors, discrepancies, incorrect statements, or omissions on any declaration or submission.

5.5 Except where TOC has agreed in writing to accept responsibility for the preparation, packing, stowage, labeling or marking of the Goods, Customer warrants that all goods have been properly and sufficiently prepared, packed, stowed, labeled and marked, and that the preparation, packing, stowage, labeling and marking are

appropriate to withstand the ordinary risks of handling, storage and carriage.

5.6 TOC will not knowingly accept or deal with any Unlawful Goods. TOC will not accept or deal with any Dangerous Goods, except under special arrangements previously made in writing and duly executed by both TOC and Customer. Should any Customer nevertheless deliver any Unlawful Goods or Dangerous Goods in violation of this Section 5.6, Customer shall be liable for all loss or damage caused by or to or in connection with the Dangerous Goods or Unlawful Goods however arising and shall defend and indemnify TOC from and against all penalties, claims, losses, damages, costs and expenses arising in connection therewith. Unlawful Goods tendered to TOC may be destroyed or otherwise dealt with, at Customer's sole cost and expense and in the sole discretion of TOC or any other Person having custody of such Unlawful Goods. If Dangerous Goods are accepted in accordance with this Section 5.6, such Dangerous Goods may nevertheless be destroyed or otherwise dealt with, at Customer's sole cost and expense and in the sole discretion of TOC, should such Dangerous Goods create or be deemed to reasonably create a threat or damage to other goods or property.

5.7 If TOC agrees to accept for Service any Goods that require temperature or atmosphere control, Customer warrants that it shall not tender such Goods without having previously given written notice of their nature and particular temperature range to be maintained and, in the case of a temperature controlled Transport Unit packed by or on behalf of Customer, Customer further warrants that (i) the Transport Unit has been properly pre-cooled or pre-heated as required; (ii) such Goods have been properly stuffed and packed in the Transport Unit; (iii) the Transport Unit thermostatic controls have been properly set; and (iv) the Transport Unit has been maintained in accordance with its manufacturer's directions and recommendations and is fit for transport of the Goods. TOC shall not be liable for any loss or damage of or in relation to such Goods caused by a breach of these warranties by Customer, and Customer shall defend, indemnify and hold harmless TOC from and against any claims, liabilities, losses, damages or expenses arising from such breach. TOC shall have no liability for the continued maintenance of any temperature inside the Transport Unit, whether such Goods were packed by or on behalf of Customer or TOC.

5.8 Without prior agreement in writing, TOC will not accept Valuable Goods or other Goods, whether prone to theft or otherwise, that require special handling regarding carriage, handling, or security, (including, but not limited to, human remains, livestock, pets, and plants). Should Customer nevertheless tender any such goods to TOC, or cause TOC to handle or otherwise deal with any such goods, TOC shall have no liability whatsoever for or in connection with such goods.

5.9 TOC assumes no liability to Customer, Owner, nor any other Person for any loss or expense, including, but not limited to, fines and penalties, arising from Customer's failure to comply with any applicable export laws, rules, regulations, or licenses.

## 6. CASH ON DELIVERY ARRANGEMENTS

When Goods are to be delivered upon collection of freight Charges from the consignee or any other person, such arrangement must be agreed in advance by TOC in writing, the waybill or bill of lading shall indicate "freight collect, and Customer shall remain fully liable for the same if they are not paid by such consignee or other person.

TOC shall under no circumstances be responsible or liable for collection of commercial Charges related to the sale or purchase of the Goods, absent an express agreement in writing by TOC, and if TOC must engage third parties to collect such Charges TOC does so only as an agent for Customer and shall have no liability whatsoever for such arrangements.

## 7. EXCESS VALUE DECLARATION

TOC may, but shall not be required to, agree to accept liability in excess of the limits set forth in these Conditions, specifically Section 15 hereof, only upon (i) Customer's agreement to pay TOC's additional charges for accepting such increased liability, and (ii) TOC's agreement to accept such increase in liability in writing. Details of TOC's additional charges for such increased liability will be provided upon request.

## 8. CARGO INSURANCE

No cargo insurance will be arranged by TOC unless TOC has agreed to do so in writing with Customer and applicable charges are paid. In such event, TOC will act solely as agent for Customer, in the formation of a separate contract for insurance between Customer and the insurer. TOC shall have no liability for any acts, omissions, or decisions of any such insurer whatsoever. Should any such insurer dispute coverage or refuse to settle a claim for any reason whatsoever, Customer agrees it will have no recourse against TOC.

## 9. INDEMNITY

Customer shall defend, indemnify and hold harmless TOC from and against any claim, liability, cost, or demand whatsoever and by whomsoever made in connection with any and all acts or omissions of Customer, including but not limited to breach or alleged breach of any obligation, representation, or warranty set forth in these Conditions or any agreement with TOC, the violation of any applicable law, regulation, or convention, the untimeliness, incompleteness, or inaccuracy of entry, export, security, description, weight, classification, origin, or any other attribute of the Goods, or for any duties, taxes, imposts, levies, deposits, or outlays of any kind levied by any Authority at any port or place for or in connection with the Goods or Services, and for any related payments, fines, expenses, loss or damage whatsoever, attorneys fees and costs of litigation, incurred by TOC. The foregoing indemnity excludes claims to the extent arising from the gross negligence or willful misconduct of TOC.

## 10. INFORMATION SHARING

10.1 Customer and TOC may cooperate in the exchange of Information via their respective Information Systems. Unless otherwise expressly agreed in writing, TOC shall not be liable for any loss, damage, cost, or expense arising out of or related to TOC entering or sending incorrect or incomplete Information or damaging, corrupting, losing, or disclosing Customer's or any third party's Information or Information System.

10.2 To the fullest extent allowed by law, Customer agrees that TOC shall have no liability whatsoever with respect to any Information System or Information. To the extent that TOC is held liable for any matter arising out of or related to any Information System or Information, TOC's liability shall be limited as set forth in Section 15.3(viii) of these Conditions.

## 11. QUOTATION AND PAYMENT

11.1 Quotations are given for immediate acceptance and are not binding and may be withdrawn or revised at any time until accepted by Customer. Unless otherwise agreed in writing, customs duties, levies, deposits, taxes, and other government charges or outlays are in addition to quoted rates.

11.2 Customer shall be liable for any Charges of any kind charged by any Authority at any port or place for or in connection with the Goods or Services. Customer shall, upon request, make immediate full payment, whether in advance or in arrears, to TOC to cover any such Charges.

11.3 Charges for the Services shall be deemed fully earned upon the earlier of TOC's receipt of the Goods or commencement of the Services by or for TOC. Customer shall pay to TOC all sums immediately when due, without reduction or offset on account of any claim, dispute, counterclaim or set-off. Unless otherwise agreed by TOC in writing, TOC's invoices shall be due for payment immediately upon presentation and shall be deemed delinquent if not paid within documented customer payment terms (fifteen (15) days if not established) following TOC's presentation of the invoice or other document setting forth the amounts owed by Customer.

11.4 If any money owing to TOC is not paid when due, TOC may at any time by notice in writing to Customer and without liability whatsoever immediately terminate the provision of any or all Services, whether or not such Services relate to such delinquent payment or any credit arrangements otherwise provided to Customer, whereupon all sums due and owing by Customer shall become immediately due and payable.

11.5 All billing or invoice inquiries or disputes must be presented to TOC or Customer, as applicable, within six months after date of invoice. Any inquiries or disputes not presented within the time frame set forth herein shall be deemed waived. Notwithstanding the foregoing, TOC may at any time offset any amounts owed or paid by Customer to TOC against any amounts owed by TOC to Customer, including, without limitation, unidentified payments and credits in Customer's favor, duplicate payments made by Customer, and accounts payable to Customer.

## 12. PERFORMANCE

12.1 TOC will perform the Services with a reasonable degree of care, skill, and judgment.

12.2 If, in the opinion of TOC, it becomes necessary or desirable in the interest of Customer, Owner or the Goods to deviate from any applicable Instructions provided by Customer or Owner, TOC may do so, and Customer hereby expressly authorizes any such conduct by TOC.

12.3 TOC may at any time comply with orders or recommendations of any Authority, and TOC's responsibility with respect to the Goods shall terminate upon delivery or other disposition of the Goods pursuant to any Authority's orders or requirements.

12.4 Where Goods, Transport Units, or vehicles are to be delivered to TOC or a Subcontractor, such items shall not be deemed as received unless and until the Person making such delivery has reported to TOC's or the Subcontractor's reception area and TOC or

the Subcontractor has accepted the Goods, Transport Units, or vehicles.

12.5 TOC reserves the sole right to choose the means, routes, and procedures to be followed with respect to the performance of the Services. TOC is hereby authorized by Customer, at TOC's sole discretion, to engage carriers, agents, brokers, and other service providers, without the necessity of obtaining Customer's consent or providing notice, with respect to the Services.

12.6 Customer authorizes TOC, at its option and without obligation, to open any Goods, packages, or Transport Units tendered by or on behalf of Customer, without notice, so that TOC may verify, inspect, examine, weigh, or measure the contents thereof, and any expenses associated therewith shall be the responsibility of Customer. Notwithstanding the foregoing, TOC is not obligated to perform such inspection except as mandated by applicable law.

12.7 Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods onto and off the Transport Unit, and Customer shall be responsible, at its sole cost and expense, for providing adequate and suitable facilities and equipment for loading and unloading the Goods onto and off the Transport Unit.

12.8 Unless TOC has agreed in writing to complete the performance of a Service by an agreed point in time ("Time Guaranteed Performance"), TOC agrees to perform the Services with reasonable dispatch and does not undertake that Services will be completed or the Goods (or documents relating thereto) will be delivered or made available within a particular time. Dates specified for completion of carriage or any other Service are estimates only. TOC will make commercially reasonable efforts to keep Customer reasonably advised of delays.

12.9 In addition to the foregoing, the following terms and conditions shall apply in the event the Services include warehousing, storage, or other handling services provided or performed by TOC at a Warehouse:

12.9.1 Goods may be stored at any Warehouse, and the related warehousing, storage, or other handling charges shall be at Customer's sole cost and expense. TOC shall have no obligation to accept Goods that are not properly packaged or which, in the reasonable opinion of TOC, are not suitable for movement or storage within the Warehouse. Prior to delivery at any Warehouse, Customer shall furnish TOC with a manifest showing marks, brands, or sizes to be accounted for separately, together with the class of storage desired by Customer, if applicable.

12.9.2 If TOC determines, in its sole discretion, that the original palletization of Goods must be broken down for storage purposes, TOC shall be authorized to break down the pallets without notice to Customer.

12.9.3 TOC will store the Goods at its discretion at any one or more Warehouses. The identification of any specific location on any warehouse receipt or other storage document does not guarantee that the Goods shall be stored at such location. TOC may, in its sole discretion, move Goods to any Warehouse.

12.9.4 TOC may provide services in addition to simple warehousing and storage upon Customer's request and to the extent agreed by TOC in writing. Additional handling charges will apply whenever Goods are pulled for distribution or release, whenever physical

inventories are requested by Customer, and whenever additional services are provided by TOC that are not explicitly included in the applicable storage charge quoted to Customer. Such additional charges will be provided to Customer and will be invoiced to Customer in addition to any storage charges due.

12.9.5 TOC reserves the right to terminate storage at any Warehouse where Goods are stored or otherwise being handled. In such event, TOC may require the removal of the Goods or any portion thereof by giving Customer not less than thirty (30) days prior written notice. Customer shall be responsible for the payment of all charges attributable to the storage of such Goods through the date of such termination in addition to the cost of removing and arranging for the removal of the Goods. If the Goods are not removed within the time frame required by TOC, Customer shall remain liable for any ongoing storage and handling charges, and TOC may exercise its rights under applicable law, including, but not limited to, selling or otherwise disposing of the Goods.

12.9.6 For all Goods tendered for storage, Customer shall supply such information and documents as are necessary to comply with all laws, rules, and regulations and required for the safe and proper warehousing, handling, and storage of the Goods. If such information and documents are not fully, accurately, and timely provided to TOC, Customer shall defend and indemnify TOC for any consequences of such failure.

12.9.7 Unless specifically agreed to in writing, TOC shall not be responsible for storage of any Goods in a temperature or humidity-controlled environment. Customer knowingly accepts that the Goods will be warehoused, stored, or handled in a non-temperature/humidity-controlled environment. TOC will not be responsible for any loss or damage to the Goods that results from fluctuations in temperature range or in humidity levels of the Warehouse.

### 13. DUE DELIVERY

13.1 TOC shall be deemed to have completed its performance of the Services in compliance with these Conditions ("Due Delivery"), if: (i) at any time, in the opinion of TOC, performance of the Services is, or is likely to be, affected by any hindrance, risk, delay, difficulty, or disadvantage of any kind occurring before or after commencement of the Services, whereby TOC, in its sole discretion, may treat the performance of the Services as completed; (ii) the Goods are tendered to the custody and control of any Authority in accordance with applicable customs, practices, laws, or regulations; (iii) Customer or Owner entitled to delivery of the Goods fails to take delivery of the Goods; or (iv) the Goods are delivered to any Person presenting a Carriage Document to take delivery or possession of the Goods, including any forged or fraudulent Carriage Document unless TOC had knowledge that such Carriage Document was forged or fraudulent.

13.2 In case of Due Delivery pursuant to Section 13.1, TOC shall have the right to store the Goods at any place at Customer's sole risk and expense, at which point, TOC's obligations hereunder shall be deemed fully performed. TOC's liability, if any, in relation to such storage, shall be governed by these Conditions. All costs incurred by TOC as a result of Due Delivery pursuant to Section 13.1 shall be deemed as freight earned, and such costs shall, upon demand, be paid by Customer.

13.3 TOC, in its discretion, shall be entitled, at Customer's sole expense, and subject to compliance with any applicable laws and any express Instructions issued by Customer, to: (i) immediately, and without notice, sell or dispose of any of the Goods that, in TOC's reasonable opinion, cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed, or if any Temperature Controlled Goods or other Goods appear to be perishing or deteriorating; and (ii) at least thirty days after Due Delivery, and following not less than thirty days prior written notice to Customer thereof, sell or dispose of any Goods that cannot be delivered.

### 14. LIEN

TOC shall have a general lien on any and all Goods (and documents relating thereto) of Customer or Owner, in TOC's actual or constructive possession, custody or control, for all amounts owed by Customer to TOC in connection with any Services or otherwise owed by Customer to TOC. If any claim for payment remains unsatisfied for thirty (30) days after demand for its payment is made, TOC may sell at public auction or private sale, upon ten (10) days written notice to Customer or Owner, sent certified or registered mail with return receipt requested, the Goods (and documents relating thereto), or so much thereof as may be necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of any amounts then due to TOC. The surplus, if any, from any such sale shall be transmitted to Customer by TOC, and Customer shall remain liable for any deficiency from any such sale.

### 15. LIABILITY

15.1 TOC shall not be responsible or liable for any damage, loss, non-delivery or mis-delivery of or to Goods, or for any delay or deviation howsoever arising or caused except to the extent such damage, loss, non-delivery, mis-delivery, delay, or deviation was caused by the negligence or willful misconduct of TOC while the Goods were in the actual custody and control of TOC. When TOC acts only as a "forwarder" and issues no Carriage Document, TOC shall use reasonable care in its selection of third-party carriers but assumes no responsibility for the acts or omissions of such carriers and shall not be liable for delay, loss, or damage to Goods while in the custody and control of such carriers. TOC will not be liable for loss or damage to Goods tendered for shipment in sealed containers or otherwise on a "shippers load and count" or "Said to contain" basis, or for rust, discoloration, marring, denting, scratching, oxidation, or electrical or mechanical derangement or any other damage to used Goods tendered for shipment.

15.2 TOC shall be entitled to the full benefit of all privileges, rights and immunities available to any Subcontractor, in particular but not limited to air, ocean, and ground carriers under their applicable Carriage Document, warehousemen and any other Subcontractors under their standard trading terms and conditions. Additionally, any Subcontractors utilized by TOC hereunder shall be entitled to the full benefit of all privileges, rights and immunities available to TOC under these Conditions.

15.3 In all cases where liability has not been excluded or limited by these Conditions or by any mandatory applicable statute or convention of law, the liability of TOC is limited as follows:

(i) in the case of loss of or damage to Goods where the predominant service provided or arranged by TOC is air transport, to the lesser of:

(1) the manufactured or landed cost to Customer of the Goods, excluding the value of all salvage obtained or obtainable ("Landed Cost");

(2) the replacement cost of the Goods or the equivalent of such Goods ("Replacement Cost");

(3) the cost to repair of the Goods ("Repair Cost");

(4) in the case of international air transport, the amount determined by and specified in the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929 (the "Warsaw Convention"), as amended by the Protocol to Amend the Warsaw Convention, done at the Hague on September 28, 1955 and the Montreal Protocol No. 4 to Amend the Warsaw Convention, signed at Montreal on September 25, 1975, and the Convention for the Unification of Certain Rules for International Carriage (the "Montreal Convention"), together with any subsequent amendments to the Warsaw Convention or the Montreal Convention;

5), or in the event the Warsaw Convention or the Montreal Convention do not apply, 22 SDR per kilogram; or

6) in the case of air shipments with pickup and delivery occurring in the same country the lesser of USD \$0.50 per pound or USD \$2,500.00 per occurrence.

(ii) in the case of loss of or damage to Goods where the predominant service provided or arranged by TOC is ocean transport, to the lesser of:

(1) the Landed Cost;

(2) the Replacement Cost;

(3) the Repair Cost;

(4) the amount determined by and specified in the International Convention for the Unification of Certain Rules Relating to Bills of Lading, August 25, 1924 (commonly referred to as the Hague Rules), the Protocol to Amend the Hague Rules, February 23, 1968 (commonly referred to as the Hague-Visby Rules), or the United States Carriage of Goods by Sea Act, 46 U.S.C. App. §§ 1300 et seq. (commonly referred to as COGSA), as applicable, or

(5) in the event the Hague Rules, the Hague-Visby Rules, or COGSA do not apply, the lesser of USD \$0.50 per pound or USD \$2,500.00 per occurrence.

For limitation purposes under COGSA (applies to 15.3 (ii) (4), it is agreed that the meaning of the word "package" shall be any palletized and/or unitized assemblage of cartons, regardless of whether said pallet or unit is disclosed on the front hereof. A full container load (FCL) is considered one package or customary freight unit.

(iii) in the case of loss of or damage to Goods where the predominant service arranged by TOC is ground transport (including rail) as a property broker within North America to the lesser of:

(1) the Landed Cost;

(2) the Replacement Cost;

(3) the Repair Cost;

(4) the amount determined by and specified in the mandatorily applicable treaty or national law with regard to claims concerning inland transportation (such as the Convention of the International Carriage of Goods by Road, May 19, 1956 (commonly referred to as CMR); or

(5) the lesser of USD \$0.50 per pound or USD \$2,500.00 per occurrence.

(iv) in the case of loss of or damage to Goods where the predominant service provided or arranged by TOC is warehouse, storage, or related handling services, to the lesser of:

(1) the Landed Cost;

(2) the Replacement Cost;

(3) the Repair Cost; or

(4) the lesser of USD \$0.50 per pound or USD \$2,500.00 per occurrence.

(v) in the case of an error or omission, or a series of errors or omissions not involving loss of or damage to Goods, including errors or omissions in the performance of customs brokerage Services, the actual loss incurred by Customer up to a maximum of USD \$50.00 per entry or occurrence subject to a maximum of USD \$2,500.00 per calendar year in the aggregate.

(vi) in the case of loss or damage to vehicles, Transport Units or other equipment, the lesser of:

(1) the actual value of such equipment lost or damaged;

(2) the reasonable cost to repair such equipment;

(3) the amount specified by applicable law, treaty, or accord; or

(4) USD \$500.00 per occurrence.

(vii) in the case or loss or damage to small parcel, the lesser of:

(1) the Landed Cost;

(2) the Replacement Cost;

(3) the Repair Cost; or

(4) USD \$100.00 per occurrence.

(viii) in the case of claims that are not otherwise covered in these Conditions, the lesser of:

(1) the cost to provide replacement Services, whether such replacement Services are provided by TOC or another third party;

(2) the amount specified by applicable law, treaty, or accord; or

(3) USD \$2,500.00 per occurrence.

As used in this Section 15.3 and elsewhere in these Conditions, the term "occurrence" shall mean each event or events arising from a common cause.

15.4. In the event TOC is liable for performance delays as determined pursuant to Section 15.1 hereof, TOC's liability shall be limited to the portion of the rates applicable to the relevant stage of the Services at the time such delay occurred. If TOC has agreed to Time Guaranteed Performance pursuant to Section 12.8 hereof, TOC's liability shall be limited to three times the rates applicable to such shipment.

15.5 With respect to any and all claims against TOC by Customer, and to the fullest extent allowed by applicable law, in no event shall TOC's total liability exceed USD \$100,000.00 in the aggregate for the entire time period in which Services are provided to Customer.

15.6 The defenses and limits of liability provided for by these Conditions shall apply in any action whether such action(s) are founded in contract, tort, negligence, or otherwise.

15.7. TO THE FULLEST EXTENT ALLOWED BY LAW, TOC SHALL IN NO CIRCUMSTANCES BE LIABLE FOR ANY

INDIRECT OR CONSEQUENTIAL OR ECONOMIC LOSS OR DAMAGE INCLUDING, WITHOUT LIMITATION, ANY LOSS OF OR DAMAGE TO PROFITS, MARKET, REVENUE, SAVINGS, USE CONTRACT, GOODWILL OR BUSINESS, WHATSOEVER AND HOWSOEVER CAUSED, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS REASONABLY FORESEEABLE OR TOC WAS ACTUALLY TOLD OF THE POSSIBILITY OF SUCH LOSS.

15.8 Notwithstanding anything contained herein to the contrary, in no event shall TOC have any liability to Customer if and to the extent attributable to any of the following: (i) any act or omission of Customer or Owner or any Person (other than TOC) acting on behalf of Customer or Owner; (ii) compliance with Instructions given by or on behalf of Customer, Owner, Authority, or other Person authorized to provide Instructions; (iii) insufficient packing, marking, labeling, or numbering of the Goods; (iv) handling, loading, stowing, unloading of Goods by Customer or Owner or any Person other than TOC; (v) inherent vice or defect of the Goods; (vi) any Force Majeure Event; (vii) computer software or hardware defect, problem or virus that materially interrupts the business of Customer or TOC; (viii) saving or attempts to save life during the performance of Services; or (ix) pilferage or theft unless caused by the failure of TOC to exercise reasonable care.

15.9. If Customer considers the liability limits set forth herein to be inadequate, Customer is advised to, at Customer's sole cost and expense, obtain first-party shippers' "all risk" insurance to cover its interests or to make an Excess Value Declaration in accordance with Section 7.

15.10 Notwithstanding anything contained herein to the contrary, if loss of or damage to Goods occurs at sea or on an inland waterway, and the Subcontractor ocean carrier, Authority, or any other Person entitled to do so establishes a limitation fund, the liability of TOC in such circumstances shall be limited to the lesser of (i) the limits set forth in this Section 15.3(ii) or (ii) the proportion of such limitation fund allocated to the Goods.

15.11 Should TOC provide any Services gratuitously or at no charge to Customer, such Services will be provided at Customer's sole risk, and TOC shall have no liability whatsoever or howsoever arising in connection with such Services.

15.12 Should the Services include any ground transportation into, within, or out of the United States, TOC and Customer expressly waive any or all rights and remedies under Part B, 49 USC §13101 et. seq. as provided for by 49 USC §14101(b) to the extent such rights and remedies conflict with these Conditions.

#### 16. NOTICE OF CLAIM AND FILING OF SUIT

16.1 Notice of any claim by Customer must be received in writing by TOC as follows: (i) for claims under 15.3(i), (air), within ten (10) days for damage, or errors or omissions, or any other case not explicitly stated, seventeen (17) days for delay, one hundred and fifteen (115) day for non-delivery, after the date specified in Section 16.2, (ii) for claims under 15.3(ii), (ocean), within three (3) days after the date specified in Section 16.2, (iii) for claims under 15.3(iii), (ground), within nine (9) months after the date specified in Section 16.2, except where Customer can show that it was impossible to comply with such time limit and such claim is made as soon as reasonably practicable. Unless otherwise required by applicable law,

treaty, or convention, any suit to enforce these Conditions or in connection with the Services must be filed in the proper forum as specified in Section 19 within one (1) year after the date specified in Section 16.2. Otherwise any claim shall be deemed to be forever waived and absolutely barred.

16.2 The date referred to in Section 16.1 shall be: for air, (i) in the case of damage to the Goods, the date of receipt of the cargo, (ii) in the case of error or omissions, or any other case on explicitly stated, the date of discovery of the relevant error or omission or other case giving rise to the claim, (iii) in the case of delay, the date on which the cargo was placed at the disposal of the person entitled to delivery, (iv) in the case of non-delivery, the date of issue of the air waybill (if an air waybill has not been issued, the date of receipt of the cargo for transportation by the Carrier); for all other modes, (i) in the case of damage to Goods, the date of actual delivery; (ii) in the case of delay or carriage of the Goods to an incorrect destination, the date of actual delivery; (iii) in the case of non-delivery of Goods, the date of estimated delivery; (iv) in the case of errors or omissions, the date of discovery of the relevant error or omission giving rise to such claim; and (v) in any other case, the event giving rise to the claim.

17. GENERAL AVERAGE AND SALVAGE Customer shall indemnify and hold TOC harmless from and against all claims of a general average or salvage nature, and Customer shall provide on demand such security to TOC, or to any other party designated by TOC, as may be required in connection therewith, with such security being made prior to the delivery or release of the Goods.

18. INTELLECTUAL PROPERTY Unless otherwise agreed in writing by Customer and TOC, all rights, title and interest in any intellectual property used by TOC in the performance of the Services hereunder shall belong to TOC or (if applicable) to the entity that has licensed the use thereof to TOC. With the exception of any limited, temporary, nontransferable license to access any TOC Information System necessary for customary milestone reporting or cargo track-and-trace purposes during the performance of the Services, no transfer of any right, title or interest or authority to use any technology or intellectual property is provided.

19. APPLICABLE LAW AND JURISDICTION These Conditions and any Services to which they apply shall be governed by and construed according to the federal laws of the United States, or, if federal law is not applicable, by the laws of the State of New York, notwithstanding its choice of law rules; provided, however, if any part of these Conditions or the Services are held to be subject to the laws of any other jurisdiction, then the federal laws of the United States or the laws of the State of New York shall continue to apply unless otherwise barred by or inconsistent with such laws. All claims, suits, actions, disputes, or questions arising from these Conditions or the Services ("Proceedings"), including but not limited to those relating to limitation of liability, shall be determined in the United States District Court for the Southern District of New York, which shall have exclusive jurisdiction over all Proceedings to the exclusion of the jurisdiction of any and all other courts. Without prejudice to any other rights or remedies that TOC may have, in the event that Customer (or Owner) brings any Proceedings against TOC in breach of this Section 19, Customer and Owner shall indemnify TOC from and against all consequences thereof including, without limitation, attorneys fees and other legal costs and expenses incurred by TOC.

# COMBINED TRANSPORT BILL OF LADING TERMS & CONDITIONS

- 1) DEFINITIONS
- 2) CONTRACTING PARTIES AND WARRANTY
- 3) CARRIER'S TARIFF
- 4) SUBCONTRACTING AND INDEMNITY
- 5) CARRIER'S RESPONSIBILITY
- 6) US. TRADE CLAUSE
- 7) HAZARDOUS GOODS AND LIABILITY PROVISIONS
- 8) SCOPE OF VOYAGE, DELAY, CONSEQUENTIAL DAMAGES
- 9) METHODS AND ROUTES OF CARRIAGE
- 10) NOTICE OF CLAIMS, TIME BAR AND JURISDICTION
- 11) MERCHANT-FURNISHED CONTAINERS
- 12) REFRIGERATION, HEATING, INSULATION
- 13) INSPECTION OF GOODS AND SPECIAL CIRCUMSTANCES
- 14) DESCRIPTION OF GOODS AND MERCHANT'S RESPONSIBILITY
- 15) HAZARDOUS GOODS AND LIABILITY PROVISIONS
- 16) FREIGHT AND CHARGES
- 17) CARRIER'S LIEN
- 18) OPTIONAL STOWAGE, DECK CARGO AND LIVESTOCK
- 19) MATTERS ADVERSELY AFFECTING CARRIER'S PERFORMANCE
- 20) NOTIFICATION AND CLAIMS
- 21) BOTH TO BLAME COLLISION CLAUSE
- 22) GENERAL AVERAGE AND SALVAGE
- 23) SEPARABILITY AND VARIATION OF TERMS, FINAL CONTRACT

**1. DEFINITIONS**  
The following definitions shall apply in this Bill of Lading:  
Carrier: means TOC Logistics International, FMC OTI #023587NF  
COGSA: means the U.S. Carriage of Goods by Sea Act, 1936.  
Combined Transport: means the Carrier has taken a Receipt and/or a Place of Delivery on the front hereof in the relevant space. Combined Transport consists of a Port-to-Port carriage and Inland Transport.  
Container: includes any container, trailer, transportable tank, flat or pallet, or any similar article used to consolidate Goods and any connected or accessory equipment.  
Freight: includes the whole or any part of the carriage charges payable to the Carrier in accordance with the applicable Tariff and this Bill of Lading, including port, demurrage and demurrage.  
Goods: includes the whole or any part of the cargo carried under this Bill of Lading, including any packing or packaging materials and Merchant owned or leased Containers.  
Hague Rules: means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at The Hague on October 1, 1924 and amended by the Protocol adopted at Brussels on 23 February 1968, and 21st December 1979 (SDR Protocol) which are applicable.  
Inland Transport: means carriage during Combined Transport other than between the Port of Loading and the Port of Discharge.  
Merchant: includes the Shipper, Consignee, holder of this Bill of Lading, the receiver of the Goods and any Person owning, entitled to or claiming the possession of the Goods or of this Bill of Lading or anyone acting on behalf of this Person.  
Party: includes an individual, corporation, company or any other legal entity.  
Place of Delivery: means the place at which the Carrier has contracted to deliver the Goods, when such place is other than the Port of Discharge.  
Place of Receipt: means the place at which the Carrier has contracted to receive the Goods, when such place is other than the Port of Loading.  
Pomeroy Act: means the United States Federal Bill of Lading Act, 1916 49 U.S.C. 801 or any amendments thereto.

Port-to-Port carriage: means carriage between the Port of Loading and the Port of Discharge.  
SDR means Special Drawing Rights as defined by the International Monetary Fund.  
Subcontractor: includes any subcontractor, agent, servant or subcontractor of the Carrier (including the Vessel) other than the Carrier, as well as stevedores, terminals and groupage operators, road and rail transport operators, warehousemen and any independent contractors employed by the Carrier performing the carriage and any direct or indirect subcontractors, servants and agents thereof whether in direct contractual privity or not.  
Tonnage: includes the weight, herein or any substituted vessel, feeder vessel, lighter or other watercraft utilized by the Carrier for carriage of the Goods.

**2. CONTRACTING PARTIES AND WARRANTY**  
The contract evidenced by this Bill of Lading is between the Carrier and the Merchant. Every person designated as "Merchant" is jointly and severally liable to the Carrier for all the various undertakings, responsibilities and liabilities of the Merchant under the connection with this Bill of Lading and to pay the Freight due under it without deduction or set-off. The Merchant warrants that in agreeing to the terms and conditions in this Bill of Lading, he is the owner of the Goods or he does so with the authority of the owner of the Goods or of the Person entitled to the possession of the Goods or of this Bill of Lading.

**3. CARRIER'S TARIFF**  
The terms and conditions of the Carrier's applicable Tariff are incorporated into this Bill of Lading. Particular attention is drawn to terms and conditions concerning additional charges including demurrage, per diem, storage expenses and legal fees, etc. A copy of the applicable Tariff can be obtained from the Carrier or its agent upon request and the Merchant agrees to be bound by the Tariff and to indemnify the Carrier against any inconsistency between this Bill of Lading and the applicable Tariff, it is agreed that this Bill of Lading shall prevail.

**4. SUBCONTRACTING AND INDEMNITY**  
4.1 The Carrier shall be entitled to sub-contract on any terms whatsoever the whole or any part of the carriage, including liberty to re-charter, in respect of the Goods and to employ any subcontractors, servants and agents upon any of them or any Vessel owned or chartered by any of them any liability whatsoever in connection with the Goods or the carriage of the Goods whether or not arising out of negligence on the part of such Person. If any such claim or allegation should nevertheless be made, the Merchant agrees to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent and subcontractor shall have the benefit of all terms and conditions of whatsoever nature contained herein or otherwise benefiting the Carrier under this Bill of Lading, as if such terms and conditions were expressly for their benefit. In entering into this contract with the Carrier, the Merchant agrees to indemnify the Carrier against all consequences thereof.  
4.2 The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort or otherwise shall be made against any servant, agent, or Subcontractor of the Carrier which imposes or attempts to impose upon any of them or any Vessel owned or chartered by any of them any liability whatsoever in connection with the Goods or the carriage of the Goods whether or not arising out of negligence on the part of the Carrier, and if any claim or allegation should nevertheless be made, the Merchant agrees to indemnify the Carrier against all consequences thereof.  
4.3 The Merchant's responsibility shall be limited to the extent of the Goods as they are received by the Carrier at the Port of Loading and shall end when the Goods have been discharged from the vessel.  
4.4 This Bill of Lading shall be subject to the Hague Rules unless the governing law makes the Hague or the Hague-Visby Rules compulsorily applicable in which case the said Hague or Hague-Visby Rules will apply to this Bill of Lading only to the extent that they are compulsorily applicable.  
4.5 Notwithstanding the above, in as much as the governing law, or a contractual arrangement, or a custom and practice, or any court or tribunal decision extends the Carrier's period of responsibility whether in contract, tort, bailment or otherwise to all or any part of the period before loading, or the period after discharge, including for misdelivery, then Carrier shall have the benefit of every right, defense, immunity, limitation and remedy provided for in the applicable Rules and regulations for that period of responsibility, notwithstanding that the loss, damage or misdelivery did not occur during the carriage by sea.  
5.2 Combined Transport - The Carrier's liability for Combined Transport shall be as follows:  
5.2.1 Where the loss or damage occurred during the Port-to-Port section of the carriage, the liability of the Carrier is in accordance with clause 5.1 above.  
5.2.2 Where the loss or damage occurred during Inland Transport, the liability of the Carrier shall be determined:  
(a) by the provisions contained in any international convention, national law or regulation applicable to the means of transport utilized, if such convention, national law or regulation would have been compulsorily applicable in the case where a separate contract had been made in respect of that particular stage of transport concerned, or  
(b) where no international convention, national law or regulation would have been compulsorily applicable, by the contract of carriage issued by the Subcontractor carrier for that stage of transport, including any limitations, or exceptions contained therein, which contract the Merchant and the Carrier adopt and incorporate by reference, it being agreed that the Carrier's rights and liabilities shall be the same as those of the Subcontractor carrier, but in no event whatsoever shall the Carrier's liability exceed 2 SDR per kilogram of gross weight of the Goods lost or damaged, or  
(c) if any court shall determine that no international convention, national law or regulation would have been compulsorily applicable and that the Carrier may not determine its liability, if any, by reference to the applicable Subcontractor's contract of carriage or when the Subcontractor carrier does not have a contract of carriage, then the Carrier's liability shall be determined as if the loss and/or damage complained of occurred during the Port-to-Port section of carriage as provided at 5.1 above, and subject to the Hague Rules which are hereby contractually incorporated by reference, but in no event whatsoever shall the Carrier's liability exceed 2 SDR per kilogram of gross weight of the Goods lost or damaged.  
(d) if the place of loss or damage is not established by the Merchant, then the loss or damage shall be presumed to have occurred during the Port-to-Port section of carriage and the Carrier's liability shall be determined as provided at 5.1 above.  
5.2.3 Any transport that the Carrier arranges for the Merchant which is not part of the carriage under this Bill of Lading shall be under the Merchant's own responsibility, time, risk and expense and the Carrier acts as agent only for the Merchant.  
5.3 Delivery to Customs or Port Authorities - Where any law or regulation applicable at the Port of Discharge or Place of Delivery provides that delivery of the Goods to the Merchant shall or may be effected by the customs or other authorities at the Port of Discharge, or Place of Delivery, movement of the Goods to the Merchant, or delivery of the Goods by the Carrier to such customs or port authorities shall be deemed to be lawful delivery of the Goods by the Carrier to the Merchant and the Carrier shall not be liable for any loss of or damage to the Goods which occurs for any reason whatsoever after delivery of the Goods by the Carrier to the customs or port authorities.

**5. TRADE CLAUSE**  
6.1 Notwithstanding the provisions of clause 5, for carriage to or from any part of the United States, its territories or possessions, or if suit is brought in the United States, this Bill of Lading shall have effect subject to the provisions of COGSA and to the provisions of the Pomeroy Act regardless of whether said Act would apply of its own force. The provisions of COGSA are incorporated herein and save as otherwise provided herein shall apply throughout the entire time the Goods are in the Carrier's custody, including before loading and after discharge as long as the Goods remain in the custody of the Carrier or its Subcontractors, including cargo carried on deck. Nothing contained herein is to be deemed a surrender by the Carrier of its rights, immunities, exemptions or limitations or an incineration of its responsibilities or liabilities under COGSA. Except for clause 5, every other term, condition, limitation, defense and remedy whatsoever contained in this Bill of Lading shall apply to carriage in the U.S. Trade.  
6.2 For limitation purposes under COGSA, it is agreed that the meaning of the word "package" shall be any packaged and/or unitized assembly of goods, regardless of whether said package or unit is disclosed on the front hereof. A full container load (FCL) is considered a package or customary freight unit.  
**7. RESPONSIBILITY AND LIABILITY PROVISIONS**  
7.1 Subject always to the Carrier's right to limit liability as provided for herein, if the Carrier is liable for compensation in respect of loss of or damage to the Goods, such compensation shall be calculated by reference to the invoice value of the Goods plus Freight and insurance, if paid. If there is no invoice value of the Goods or if any such invoice is not bona fide, such compensation shall be calculated by reference to the market value of such Goods at the place and time they are delivered or should have been delivered to the Merchant. The market value of

the Goods shall be fixed according to the current market price, by reference to the normal value of goods of the same kind and of the same quality.  
7.2 Save as provided in clause 7.3:  
7.2.1 (a) If and to the extent the Hague Rules or Hague-Visby Rules are compulsorily applicable to this Bill of Lading by virtue of clauses 5.1, 5.2.1 or 5.2.2 (c) or (d) or otherwise, the Carrier's liability for breaches or wrongs occurring during such period of compulsory application shall in no event whatsoever exceed the maximum provided in the Hague Rules or the Hague-Visby Rules, whichever is compulsorily applicable.  
(b) If and to the extent the Hague Rules apply only contractually pursuant to clause 5, the Carrier's maximum liability shall in no event whatsoever exceed 2 SDR per kilogram of gross weight of the Goods lost or damaged.  
7.2.2 Where COGSA applies by virtue of clause 6, neither the Carrier nor the Vessel shall in any event be or become liable in an amount exceeding US\$500 per package or customary freight unit.  
7.3 The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods. Higher compensation than that provided for in this Bill of Lading may be claimed only when, with the written confirmation of the Carrier, the value of the Goods declared by the Shipper upon delivery to the Carrier has been ascertained by the Carrier and the Merchant has agreed to pay the additional charges payable by sea or other charges paid. In that case, the amount of the Declared Value shall be substituted for the limits provided in this Bill of Lading. Any partial loss or damage shall be adjusted pro rata on the basis of such Declared Value.  
7.4 Nothing in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection, defense, exemption or limitation of liability authorized by any applicable laws, statutes or regulations of any country or which would have been applicable in the absence of any terms set out in this Bill of Lading. The Carrier shall have the benefit of the said laws, statutes or regulations as if it were the owner of the Vessel.  
7.5 When any claim is paid by the Carrier to the Merchant, the Carrier shall be automatically subrogated to all rights of the Merchant against any third party. The Merchant shall sign a subrogation receipt, release and indemnity immediately upon payment by the Carrier.

**8. SCOPE OF VOYAGE, DELAY, CONSEQUENTIAL DAMAGES**  
The scope of voyage herein contracted for may or may not include usual or customary or advertised ports of call whether named in this Bill of Lading contract or not and may include transport of the Goods to or from any facilities used by the Carrier as part of the carriage, including but not limited to off-dock storage. The Carrier does not promise or undertake to discharge the Goods on or by any particular Vessel, date or time.  
Advised sailings and arrivals are only estimated times, and such schedules may be advanced, delayed or cancelled without notice. In no event shall the Carrier be liable for consequential damages for any delay in sailing or arrival of the Goods or in the arrival of any Vessel or other cargo or equipment on the Goods by sea or otherwise. If the Carrier shall nevertheless be held liable for any such direct or indirect or consequential loss or damage caused by such alleged delay, such liability shall in no event exceed the Freight paid for the carriage.  
**9. METHODS AND ROUTES OF CARRIAGE**  
9.1 The Carrier shall be entitled to transport the Goods to:  
(a) use any means of transport or storage whatsoever;  
(b) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, even though such means may not have been contemplated or provided for herein;  
(c) sail without pilots, proceed via the route (whether or not the nearest or most direct or customary or advertised route) at any speed and proceed to, return to and stay at any port or place whatsoever (including the Port of Loading herein provided) once or more often, and in any order in or out of the route or in a contrary direction to or beyond the Port of Loading, at any one or more times;  
(d) load and unload the Goods at any port or place (whether or not any such port is named on the front hereof as the Port of Loading or Port of Discharge) and store the Goods at any such port or place, including but not limited to the use of off-dock storage at any port;  
(e) comply with any orders or recommendations given by any government or authority or any Person or body empowered to act as or on behalf of such government or authority or having under the terms of the insurance on an agency employed by the Carrier the right to give orders or directions.  
9.2 The liberties set out in clause 9.1 may be invoked by the Carrier for any purpose whatsoever whether or not connected with the carriage of the Goods, including but not limited to loading or unloading other goods, bunkering, stowage, embarking or disembarking, repairs and/or drying, cleaning, towing or being towed, and assisting other vessels, making trial trips and adjusting instruments. Anything done or not done in accordance with clause 9.1 or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.

**10. NOTICE OF CLAIMS, TIME BAR AND JURISDICTION**  
10.1 Notice of loss or damage to Goods shall be given in writing to the Carrier or its agent at the Port of Discharge before or at the time of delivery. If the loss or damage is not apparent before or at the time of delivery, notice must be given within three (3) days of delivery to the Merchant or its agent. Claims shall be submitted in writing addressed by the Merchant to the Carrier or its agent at the Port of Discharge.  
10.2 Time bar: In any event, the Carrier shall be discharged from all liability if suit is not commenced within the shorter of one (1) year after delivery of the Goods or the date that the Goods should have been delivered or any time limit provided for by any mandatorily applicable international convention, national law, or regulation.  
10.3 Jurisdiction - It is hereby specifically agreed that any suit by the Merchant, and save as additionally provided below, shall be brought in the District Court of the Southern District of New York and U.S. law shall exclusively apply. The Merchant agrees that it shall not institute suit in any other court and agrees to be responsible for the reasonable legal expenses and costs of the Carrier in removing a suit filed in another forum. The Merchant waives any objection to the personal jurisdiction over the Merchant of the court in which the suit is brought.  
In the case of any dispute relating to Freight or other sums due from the Merchant to the Carrier, the Carrier may, at its sole option, bring suit against the Merchant in the forum agreed above, or in the countries of the Port of Loading, Port of Discharge, Place of Delivery or in any jurisdiction where the Merchant has a place of business, including the United States of America.

If a Container has not been packed by or on behalf of the Carrier:  
11.1 The Merchant shall inspect the Container for suitability for carriage of the Goods before packing it. The Merchant's use of the Container shall be prima facie evidence of its being sound and suitable for use.  
11.2 The Carrier shall not be liable for loss of or damage to the Goods caused by:  
(a) the unsuitability of the Goods for carriage in the Container supplied or for carriage by Container between the Ports or Places specified herein, or  
(b) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereto, or  
(c) the unsuitability of the Goods for such means as may not have been contemplated or provided for herein, if a defective condition would have been apparent upon inspection by the Merchant or prior to the time when the Container was packed, or  
(d) packing, containing, securing, properly pre-cooled to the correct temperature for carriage and before the refrigeration controls were set, or  
(e) the Merchant's responsibility for the packing and sealing of all Merchant-owned Containers and, if a Merchant-packed Container is delivered by the Carrier with an original seal as affixed by the Merchant or customs or security control intact, or the Carrier can establish bona fide circumstances in which the original seal was broken, or the Merchant's responsibility for any damage to the Goods caused by any person or persons who are not the Carrier, or  
(f) the unsuitability of the Goods for carriage in the Container supplied or for carriage by Container between the Ports or Places specified herein, or  
(g) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereto, or  
(h) the unsuitability of the Goods for such means as may not have been contemplated or provided for herein, if a defective condition would have been apparent upon inspection by the Merchant or prior to the time when the Container was packed, or  
(i) packing, containing, securing, properly pre-cooled to the correct temperature for carriage and before the refrigeration controls were set, or  
(j) the Merchant's responsibility for the packing and sealing of all Merchant-owned Containers and, if a Merchant-packed Container is delivered by the Carrier with an original seal as affixed by the Merchant or customs or security control intact, or the Carrier can establish bona fide circumstances in which the original seal was broken, or the Merchant's responsibility for any damage to the Goods caused by any person or persons who are not the Carrier, or  
(k) the unsuitability of the Goods for carriage in the Container supplied or for carriage by Container between the Ports or Places specified herein, or  
(l) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereto, or  
(m) the unsuitability of the Goods for such means as may not have been contemplated or provided for herein, if a defective condition would have been apparent upon inspection by the Merchant or prior to the time when the Container was packed, or  
(n) packing, containing, securing, properly pre-cooled to the correct temperature for carriage and before the refrigeration controls were set, or  
(o) the Merchant's responsibility for the packing and sealing of all Merchant-owned Containers and, if a Merchant-packed Container is delivered by the Carrier with an original seal as affixed by the Merchant or customs or security control intact, or the Carrier can establish bona fide circumstances in which the original seal was broken, or the Merchant's responsibility for any damage to the Goods caused by any person or persons who are not the Carrier, or  
(p) the unsuitability of the Goods for carriage in the Container supplied or for carriage by Container between the Ports or Places specified herein, or  
(q) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereto, or  
(r) the unsuitability of the Goods for such means as may not have been contemplated or provided for herein, if a defective condition would have been apparent upon inspection by the Merchant or prior to the time when the Container was packed, or  
(s) packing, containing, securing, properly pre-cooled to the correct temperature for carriage and before the refrigeration controls were set, or  
(t) the Merchant's responsibility for the packing and sealing of all Merchant-owned Containers and, if a Merchant-packed Container is delivered by the Carrier with an original seal as affixed by the Merchant or customs or security control intact, or the Carrier can establish bona fide circumstances in which the original seal was broken, or the Merchant's responsibility for any damage to the Goods caused by any person or persons who are not the Carrier, or  
(u) the unsuitability of the Goods for carriage in the Container supplied or for carriage by Container between the Ports or Places specified herein, or  
(v) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereto, or  
(w) the unsuitability of the Goods for such means as may not have been contemplated or provided for herein, if a defective condition would have been apparent upon inspection by the Merchant or prior to the time when the Container was packed, or  
(x) packing, containing, securing, properly pre-cooled to the correct temperature for carriage and before the refrigeration controls were set, or  
(y) the Merchant's responsibility for the packing and sealing of all Merchant-owned Containers and, if a Merchant-packed Container is delivered by the Carrier with an original seal as affixed by the Merchant or customs or security control intact, or the Carrier can establish bona fide circumstances in which the original seal was broken, or the Merchant's responsibility for any damage to the Goods caused by any person or persons who are not the Carrier, or  
(z) the unsuitability of the Goods for carriage in the Container supplied or for carriage by Container between the Ports or Places specified herein, or  
(aa) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereto, or  
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## NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY

IF THE CARRIAGE INVOLVES AN ULTIMATE DESTINATION OR STOP IN A COUNTRY OTHER THAN THE COUNTRY OF DEPARTURE, THE WARSAW CONVENTION OR THE MONTREAL CONVENTION MAY BE APPLICABLE AND MAY LIMIT THE LIABILITY OF CARRIER IN RESPECT OF LOSS OF, DAMAGE OR DELAY TO CARGO. DEPENDING ON THE APPLICABLE REGIME, LIABILITY OF THE CARRIER PER KILOGRAM MAY BE LIMITED TO 22 SPECIAL DRAWING RIGHTS, UNLESS A SPECIAL DECLARATION OF VALUE OR INTEREST IN DELIVERY IS MADE IN ADVANCE BY THE SHIPPER AND A SUPPLEMENTARY CHARGE IS PAID IF REQUIRED.

IN CARRIAGE TO WHICH NEITHER THE WARSAW CONVENTION NOR MONTREAL CONVENTION APPLY OR TO WHICH FOR ANY REASON THE LIABILITY LIMIT UNDER THE CONVENTION IS DETERMINED TO EXCEED THE FOREGOING LIMITATIONS, THE SHIPPER EXPRESSLY AGREES HEREIN THAT THE CARRIER'S LIABILITY SHALL NOT EXCEED 22 SPECIAL DRAWING RIGHTS OR THE EQUIVALENT PER KILOGRAM (OR US\$.50 PER POUND FOR DOMESTIC CARRIAGE ENTIRELY WITHIN THE UNITED STATES) OR ANY OTHER LIMITATION AS MAY BE SET FORTH HEREIN, WHICHEVER IS LOWEST, IN RESPECT OF LOSS OF OR DAMAGE TO CARGO INCLUDING DAMAGE OCCASIONED BY DELAY UNLESS A SPECIAL DECLARATION OF VALUE OR INTEREST IN DELIVERY AT DESTINATION IS MADE IN ADVANCE BY THE SHIPPER AND A SUPPLEMENTARY CHARGE IS PAID IF REQUIRED."

## CONDITIONS OF CONTRACT

- In this contract and the Notices appearing hereon:  
CARRIER includes the air carrier issuing this air waybill and all carriers that carry or undertake to carry the cargo or perform any other services related to such carriage. SPECIAL DRAWING RIGHT ("SDR") is a Special Drawing Right as defined by the International Monetary Fund. WARSAW CONVENTION means whichever of the following instruments is applicable to the contract of carriage: the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929; that Convention as amended at The Hague on 28 September 1955; that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2, or 4 (1975) as the case may be. MONTREAL CONVENTION means the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999.
- 2.1. Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicable Conventions.
  - 2.2. To the extent not in conflict with the foregoing, carriage and other related services performed by each Carrier are subject to:
    - 2.2.1. applicable laws and government regulations;
    - 2.2.2. provisions contained in the air waybill, Carrier's conditions of carriage and related rules, regulations, and timetables (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier, which are made part hereof, and which may be inspected at any airports or other cargo sales offices from which it operates regular services. The Carrier's conditions of carriage include, but are not limited to:
      - 2.2.2.1. limits on the Carrier's liability for loss, damage or delay of goods, including fragile or perishable goods;
      - 2.2.2.2. claims restrictions, including time periods within which shippers or consignees must file a claim or bring an action against the Carrier for its acts or omissions, or those of its agents;
      - 2.2.2.3. rights, if any, of the Carrier to change the terms of the contract;
      - 2.2.2.4. rules about Carrier's right to refuse to carry;
      - 2.2.2.5. rights of the Carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate Carrier or aircraft and rerouting.
- The agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and place of destination, set forth on the face hereof or shown in Carrier's timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive Carriers is regarded as a single operation.
- For carriage to which the Montreal Convention does not apply, Carrier's liability limitation for cargo lost, damaged or delayed shall be 22 SDRs per kilogram or US\$.50 per pound for domestic carriage entirely within the US, unless a greater per kilogram monetary limit is provided in any applicable Convention or in Carrier's tariffs or general conditions of carriage.
- 5.1. Except when the Carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for the carriage due in accordance with Carrier's tariff, conditions of carriage and related regulations, applicable laws (including national laws implementing the Warsaw Convention and the Montreal Convention), government regulations, orders and requirements.
  - 5.2. When no part of the consignment is delivered, a claim with respect to such consignment will be considered even though transportation charges thereon are unpaid.
- 6.1. For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.
  - 6.2. In carriage to which neither the Warsaw Convention nor the Montreal Convention applies Carrier shall, in accordance with the procedures set forth in its general conditions of carriage and applicable tariffs, permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if so required.
- 7.1. In cases of loss of, damage or delay to part of the cargo, the weight to be taken into account in determining Carrier's limit of liability shall be only the weight of the package or packages concerned.
  - 7.2. Notwithstanding any other provisions, for "foreign air transportation":
    - 7.2.1. in the case of loss of, damage or delay to a shipment, the weight to be used in determining Carrier's limit of liability shall be the weight which is used to determine the charge for carriage of such shipment; and
    - 7.2.2. in the case of loss of, damage or delay to a part of a shipment, the shipment weight in 7.2.1 shall be prorated to the packages covered by the same air waybill whose value is affected by the loss, damage or delay. The weight applicable in the case of loss or damage to one or more articles in a package shall be the weight of the entire package.
- Any exclusion or limitation of liability applicable to Carrier shall apply to Carrier's agents employees, and representatives and to any person whose aircraft or equipment is used by Carrier for carriage and such person's agents, employees and representatives.
- Carrier undertakes to complete the carriage with reasonable dispatch. Where permitted by applicable laws, tariffs and government regulations, Carrier may use alternative carriers, aircraft or modes of transport without notice but with due regard to the interests of the shipper. Carrier is authorized by the shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof.
- Receipt by the person entitled to delivery of the cargo without complaint shall be prima facie evidence that the cargo has been delivered in good condition and in accordance with the contract of carriage.
  - 10.1. In the case of loss, damage, errors or omission, delay to cargo or other case not explicitly stated, the person entitled to delivery must make a written complaint to Carrier. Such complaint must be made:
    - 10.1.1. in the case of damage to the cargo, immediately after discovery of the damage and at the latest within 10 days from the date of receipt of the cargo.
    - 10.1.2. in the case of errors or omission or other case not explicitly stated, within 10 days from the discovery of the relevant error or omissions, or other case giving rise to the claim.
    - 10.1.3. in the case of delay, within 17 days from the date on which the cargo was placed at the disposal of the person entitled to delivery.
    - 10.1.4. in the case of non-delivery of the cargo, within 115 days from the date of issue of the air waybill, or if an air waybill has not been issued, within 115 days from the date of receipt of the cargo for transportation by the Carrier.
  - 10.2. Such complaint may be made to the Carrier whose air waybill was used, or to the first Carrier or to the last Carrier or to the Carrier, which performed the carriage during which the loss, damage or delay took place.
  - 10.3. Unless a written complaint is made within the time limits specified in 10.1 no action may be brought against Carrier.
  - 10.4. Any rights to damages against Carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
- The Shipper warrants that he is either the owner of the goods or the authorized agent of the owner of the goods described on the face hereof and further warrants that he is authorized to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the owner of the goods and all other persons who are or may hereafter become interested in the goods.

The Shipper shall comply with all applicable laws, rules and regulations of any government or government agency of any country to, from, through, or over which the goods may be carried or which may be issued by any inter-governmental agency including those relating to:
  - (i) the packing, carriage, sealing, identification or delivery of the goods or,
  - (ii) any aviation, road, rail, water or other general freight transport security requirements which must or ought to be complied with by the Shipper.The Shipper shall furnish such information and attach such documents to this Air Waybill as may be necessary to comply with such laws, rules and regulations. Carrier is not liable to the Shipper or any other person for loss or expense due to the Shipper's failure to comply with this provision. The Shipper warrants that:
  - (i) the description and particulars of any goods furnished by or on behalf of the Shipper are complete, timely and accurate;
  - (ii) all goods have been properly and sufficiently prepared, packed, stowed, labelled, sealed, identified and/or marked;
  - (iii) the goods do not comprise or contain any explosive, incendiary or other device, substance or weapon which may endanger life or the safety of any airplane, vehicle or other transport conveyance to be used in connection with the carriage of the goods or which may cause or may be likely to cause loss, damage, injury to or death of any person or property; and
  - (iv) the goods do not comprise or contain any dangerous or hazardous materials within the meaning of the IATA Dangerous Goods Regulations or the Accord Dangereux Routier Regulations from time to time in force (collectively "the Regulations") and the Shipper will not tender such goods to the Carrier for Carriage and/or attendant services without obtaining the Carrier's prior written consent thereto. Where such consent is granted the Shipper warrants that all such goods are packed, labelled and specified and otherwise meet all the requirement and provisions of the Regulations.**THE SHIPPER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CARRIER FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSS, EXPENSE OR DAMAGE INCURRED OR OCCASIONED BY A BREACH BY THE SHIPPER OF ANY OF THE WARRANTIES CONTAINED HEREIN OR BY THE FAILURE BY THE SHIPPER TO COMPLY WITH THESE PROVISIONS.**

  - No agent, employee or representative of Carrier has authority to alter, modify or waive any provisions of this contract.
  - If any legislation, statute, law, treaty, or other rule ("law") is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to any such law, and nothing in these Conditions shall be construed as a surrender by the Carrier of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such law. If any part of this Air Waybill is repugnant to or inconsistent with any such law, such law shall prevail and shall be considered a part of this contract for as long as such applies by their own force, and no further, except as may be expressly invoked and incorporated by reference elsewhere herein. If any provision of these Conditions is declared void, invalid or unenforceable by any court of law, the remaining provisions of these Conditions shall to the extent permitted by such declaration remain in full force and effect as though the void, invalid or unenforceable provisions were never a provision of these Conditions.
  - Except as the Convention or other applicable law may otherwise require, the Carrier is not liable for any loss, damage, or delay, directly or indirectly arising out of compliance with laws, government regulations, orders, or requirements, fire, strike, labor dispute, civil disturbance, riot, war, terrorism, cyber-attack, pandemics, epidemics, quarantine restrictions or from Acts of God, or subcontracted carrier insolvency, or any other cause or event which the Carrier is unable to avoid and the consequences whereof the Carrier is unable to prevent by the exercise of reasonable diligence.
  - EXCEPT AS THE CONVENTION OR OTHER APPLICABLE LAW MAY OTHERWISE REQUIRE, THE CARRIER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INDIRECT LOSS, LOSS OF PROFITS OR SALES, LOSS OF MARKET, LOSS OF CONTRACT, LOSS OF REPUTATION OR GOODWILL, LOSS OF REVENUE OR USE CLAIMS, PUNITIVE OR EXEMPLARY DAMAGES, THE CONSEQUENCES OF DELAY OR DEVIATION HOWSOEVER CAUSED, ANY DAMAGE OR DELAY CAUSED BY THE SHIPPER, THIRD PARTY CLAIMS AGAINST THE SHIPPER OR ANY DAMAGE OCCURRING OUTSIDE THE CUSTODY OF THE CARRIER OR ITS SUBCONTRACTORS.**
  - The goods or packages said to contain the goods described on the face hereof are accepted for Carriage from their receipt at Carrier's terminal or airport premises at the place of departure to the airport at the place of destination. If so specifically agreed the goods or packages said to contain the goods described on the face hereof are also accepted for forwarding to the airport of departure and for forwarding beyond the airport of destination. If such forwarding or reforwarding is by carriage operated or arranged by the Carrier issuing this Air Waybill such carriage shall be upon the same terms as to liability as are herein contained. The Shipper, owner and consignee hereby authorize the Carrier to do all things deemed advisable to effect such forwarding or reforwarding including but without limitation selection of the means of forwarding or reforwarding and the routes thereof (unless these have been herein specified by the Shipper), execution and acceptance of documents of Carriage (which may include provisions exempting or limiting liability), and consigning of goods with no declaration of value notwithstanding any declaration of value in this Air Waybill.
  - Notice of arrival of goods will be given promptly to the consignee or to the person indicated on the face hereof as the person to be notified. On arrival of the goods at the place of destination, subject to the acceptance of other instructions from the shipper prior to arrival of the goods at the place of destination, delivery will be made to, or in accordance with the instructions of the consignee. If the consignee declines to accept the goods or cannot be communicated with, disposition will be in accordance with instructions of the shipper.
  - If carrier offers insurance and such insurance is requested, and if the appropriate premium is paid and the fact recorded on the face hereof, the goods covered by this air waybill are insured under an open policy for the amount requested as set out on the face hereof (recovery being limited to the actual value of goods lost or damaged provided that such amount does not exceed the insured value). The insurance is subject to the terms, conditions and coverage (from which certain risks are excluded) of the open policy, which is available for inspection at an office of the issuing carrier by the interested party. Claims under such policy must be reported immediately to an office of carrier.
  - The Shipper expressly agrees that the Carrier shall have a general lien on goods and any documents relating thereto for all sums whatsoever due at any time to the Carrier from the Shipper, for all sums due including interest under this contract or any other contract or undertaking to which the Shipper was party or otherwise involved, inclusive of all costs, including but not limited to attorney fees and costs and other legal fees, incurred in exercise of said lien plus interest on those costs. The Carrier shall have the right to sell the goods and documents by public auction or private treaty or sale, without notice to the Shipper and at the Shipper's expense and without any liability towards the Shipper.
  - THE SHIPPER, UNDERSTANDING THAT THE ORDINARY RATES OF THE CARRIER ARE PREMISED UPON THE CARRIER'S LIMITATION OF LIABILITY, AND IN CONSIDERATION FOR SUCH RATES, IN ADDITION TO ALL OTHER RESPONSIBILITIES SET FORTH HEREIN, THE SHIPPER EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CARRIER FOR ANY AND ALL LIABILITY OR CLAIMS, REGARDLESS OF HOW AND BY WHOM MADE, AGAINST THE CARRIER FOR ANY AMOUNT IN EXCESS OF THE LIMITATION OF LIABILITY TO WHICH CARRIER IS ENTITLED AS AGAINST SHIPPER.**
  - Shipper includes the shipper, consignor, consignee, receiver, holder of this Air Waybill, owner of the goods or other person entitled to the possession of the goods and the servants and agents of any of these, including without limitation any freight forwarder other than Carrier, consolidator, customs broker or other intermediary involved in arranging this shipment, 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 Air Waybill, and subject to all Conditions herein.