

These Standard Conditions shall apply to every contract concluded with the carrier for the performance of the entire transport as undertaken by the Carrier, whether evidenced by the issuance of a document or not.

1. Definitions

The following defined terms, in either the plural or the singular, appear with a capital letter in these Standard Conditions; otherwise the word is used with its ordinary meaning in the trade:

"Carrier": Carrier under the Contract is, to the exclusion of any other party or Person, Transfennica Nederland B.V., Radarweg 36, 1042 AA Amsterdam, the Netherlands.

"Carriage": means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods covered by these terms and conditions.

"CIM": means the provisions of Annex B to the Bern Convention concerning International Carriage by Rail (COTIF), dated 9 May 1980, as amended by the Vilnius Protocol for the modification of said Convention, dated 3 June 1999.

"Combined Transport": Arises if the Place of Receipt and/or the Place of Delivery are indicated in the Offer as accepted by the Merchant.

"Contract": Shall mean the Offer as accepted in any form by the Merchant and includes these Standard Conditions, the "Transfennica Standard Container Leasing Terms" and any other addenda.

"CMR": means the provisions of the Geneva Convention concerning the International Carriage of Goods by Road, dated 19th May 1956 as amended by the Protocol amending that Convention, dated 5 July 1978.

"Goods": Shall mean the whole or any part of the cargo received from or through the Merchant and includes but is not limited to any equipment and/or Unit (including its contents) not supplied by or on behalf of the Carrier.

"Costs": Shall be deemed to include any and all costs, expenses and charges incurred, including reasonable attorney's fees.

"Hague-Visby Rules": Shall mean the provisions of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed at Brussels on 25 August 1924 and includes the amendments to the Convention by the Protocol signed at Brussels on 23 February 1968 as well as the amendments to the SDR Protocol signed at Brussels on 21 December 1979 (It is expressly provided that nothing in the Contract shall implement Article X(c) of said Rules as amended by said Protocol).

"Merchant": Shall include the Shipper, Receiver, Consignee, and any Person who owns or is entitled to the possession of the Goods or any Person acting on behalf of any such Person, all of whom are jointly and severally liable to the Carrier for payment of any and all charges, and for the performance of the Merchant's obligations under the Contract.

"Person": includes an individual, group, company or other entity.

"Port of Loading": Shall mean any port at which the Goods are loaded from any Vessel for Carriage under this Contract.

"Port of Discharge": Shall mean any port at which the Goods are discharged from any Vessel after Carriage under this Contract.

"Port-to-Port Shipments": Arises if the Carriage is not Combined Transport.

"Servants": Shall include any of Carrier's and/or Vessel's respective, registered owners, agents, sub-agents, servants, crew, employees, charterers, sub-charterers, road and rail transport operators and independent contractors and sub-contractors of any tier whether or not employed directly or indirectly by or on behalf of the Carrier in performance of the Carriage.

"Vessel": means any waterborne craft used in the Carriage under this Contract which may be a feeder vessel or an ocean vessel

"Unit": Shall include but is not limited to any single unit vehicle, articulated-unit vehicle, container, trailer, semi trailer, secu-box, cassette, huckepack trailer, van, swap body, transportable tank, flat or pallet or any other unit or similar article to consolidate goods and any equipment thereof or connected thereto.

"Terminal": Shall mean the port or terminal indicated in the Contract where the Goods are received for shipment by the Carrier and where the Goods are delivered after shipment by the Carrier to the Merchant.

"AVC": Shall mean the provisions of the latest version of the General Conditions of Transport (in Dutch: "Algemene Vervoerscondities") as deposited by the Stichting Vervoeradres.

"LOTT": Shall mean the Ley de Ordenacion de los Transportes Terrestres (Spanish act dealing with domestic road transport).

2. Warranty

The Merchant warrants to be empowered to represent the Person owning or entitled to the possession of the Goods.

3. Carrier's Tariff

The terms and conditions of the Carrier's applicable tariff are incorporated herein. Particular attention is drawn to the terms and conditions therein relating to the Transfennica Standard Container Leasing Terms. Copies of the relevant provisions of the applicable tariff are always obtainable from the Carrier or his agents upon request and free of charge. In the case of inconsistency between this Contract and the applicable tariff, this Contract shall prevail.

4. General Paramount Clause

- The Contract is not a Bill of Lading or a similar document of title to the Goods. At Merchant's request, no Bill of Lading will be issued and no document issued in connection with the Carriage shall be treated as if it were a Bill of Lading. However, it is agreed that the Hague-Visby Rules shall apply to the Contract. The Carrier reserves all its rights under said Convention, including the period before loading and after discharging and while the Goods are in the charge of another Carrier, and to deck cargo and live animals. In determining the liability of the Carrier, the liability shall in no event exceed 666,67 SDR per package or unit. The Carrier shall in no event be liable for any loss of use/hire of the Goods or Units or for any consequential damages.
- The Merchant shall be deemed to have guaranteed to the Carrier the accuracy, at the time the Goods were delivered to the Carrier, of the description of the Goods, marks numbers, quantity and weight, as furnished by the shipper and the Merchant shall defend, indemnify and hold the Carrier harmless from any and all loss, damage, liability and Costs arising or resulting from inaccuracies in or inadequacy of such particulars.
- It is agreed that whenever the Hague-Visby Rules or statutes incorporating same use the words "Bill of Lading" they shall be read and interpreted as meaning this Contract.

5. Package limitation

For the purpose of Carrier's rights of limitation as are or would be available under the international conventions or national laws mentioned in clause 4 or otherwise, the Merchant agrees that any and all Goods shipped in/on one Unit including such Unit itself shall be deemed to be one package notwithstanding any further enumeration of the weight/contents/quantity of any such Unit in the Contract. Such further enumeration is made merely for the Merchant's convenience and the contents of any such Unit is entirely unknown to the Carrier.

6. Period of Responsibility Port-to-Port Shipments

- In the event of Port-to-Port Shipments, the Carrier shall have no liability whatsoever in contract, bailment, tort, negligence or otherwise for any loss of or damage to the Goods, howsoever arising, before the Goods are tackled to be loaded or after the Goods are tackled to be discharged. For the purpose of this clause, "to be tackled" shall mean passing the Vessel's rail, doors or ramp inboard or outboard. Any reference made in this Contract to "Gate Terms" or any other similar terms and/or shipping terms, shall exclusively be for the purpose of apportionment of stevedoring / Terminal costs, in no event shall it limit or extend Carrier's period of responsibility as indicated in this clause.
- Notwithstanding the foregoing, in case and to the extent that any applicable law provides for any additional period of responsibility, the Carrier shall be entitled to every right, defence, exception, liberty or limitation provided elsewhere in this Contract.
- Liability for Pre and/or On-carriage:
If the Carrier arranges pre-carriage and/or storage of the Goods from a place, other than the Vessel's port of loading, or on-carriage and/or storage of the Goods to a place other than the Vessel's port of discharge, the Carrier shall act as the Merchant's forwarding agent only (making such contracts for such pre-carriage and on-carriage/storage on the terms and subject to the limitation of liability in use by the Person with whom such contracts are made) and the Carrier shall not be liable for any loss, damage or delay arising or occurring during any part of the carriage other than between the port of loading and the port of discharge even though the freight for the whole carriage may have been collected by him. All activities of the Carrier acting as the Merchant's forwarding agent are performed subject to the Dutch Forwarding Conditions of the Fenex (Netherlands Association for Forwarding and Logistics), latest edition, but excluding the arbitration clause contained therein (Art. 23).

7. Delay

The Carrier does not undertake to deliver the Goods at the port of discharge or place of delivery at any particular time or to meet any particular market or use. All departure, arrival and voyage times given by or on behalf of the Carrier are estimates only and cannot be guaranteed. The Carrier without prior notice may change sailing schedules and timetables. The Carrier shall in no circumstances whatsoever be liable for any direct, indirect or consequential loss or damage caused by delay. In the event the Carrier nevertheless is held liable for delay, its liability shall be limited to a maximum of five (5) per cent of the Freight paid or payable for the Carriage of the Goods delayed.

8. Combined Transport

- If the Carriage is Combined Transport, the Carrier undertakes to perform and/or to procure in its own name the performance of the Carriage from the agreed place of receipt or the Port of Loading, whichever is applicable, to the agreed Port of Discharge or the place of delivery, whichever is applicable. Save as is otherwise provided for in the Contract, the non-maritime part of the carriage shall be governed either by the provisions contained in any International Convention or national law compulsorily applicable to the means of transport utilised or, when such conventions or laws are not compulsorily applicable, by the law of the Netherlands applicable as to means of transport utilised. Contrary to Port-to-Port Shipments, the Carrier shall be liable for loss or damage occurring during the Carriage to the extent set out below:
 - If the stage of the Carriage during which the loss or damage occurred is not known:
Carrier shall be relieved of liability for any loss or damage if such loss or damage was caused by:
 - an act or omission of the Merchant or Person;
 - insufficiency of or defective condition of packing or marking;
 - handling, loading, stowage or unloading of the Goods by or on behalf of the Merchant;
 - inherent vice of the Goods;
 - strike, lockout, stoppage or restraint of labour;
 - nuclear incident;
 - any cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence;
 - any cause or omission of the Carrier the consequences of which he could not reasonably have foreseen;
 - compliance with instructions of any Persons entitled to give them.
 - Burden of Proof:
The burden of proof that the loss or damage was due to one or more of the causes or events specified in clause 8(b) shall rest upon the Carrier, save that if the Carrier establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the causes or events specified in clause 8(b) (ii), (iii) or (iv) it shall be presumed that it was so caused. The Merchant or Person shall, however, be entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by one or more of these causes or events.
 - If the stage of the Carriage during which the loss or damage occurred is known:
Notwithstanding anything provided for in clause 8(b), if it is known during which stage of the Carriage the loss or damage occurred, the liability of the Carrier in respect of such loss or damage shall be determined:
 - by the provisions contained in any international convention or national law which provision: (i) cannot be departed from by private contract to the detriment of the Merchant or Person and (ii) would have applied if the Merchant or Person 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 and received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable, except that under no circumstances the liability of the Carrier shall extend to live animals and/or Goods that are stated to be carried on deck and are so carried, or (2) if international convention or national law would not apply by virtue of clause 8(d)(1) by the Hague Rules if the loss or damage is known to have occurred during waterborne Carriage, or (3) by the provisions of clause 8(2) if the provisions of clause 8(d)(1) and (2) do not apply. For the purpose of clause 8(c) references in the Hague Rules to carriage by sea shall be deemed to include references to all waterborne Carriage and the Hague Rules shall be construed accordingly.
 - If the place of receipt or place of delivery is not agreed in the Contract the Carrier shall be under no liability whatsoever for loss, damage or delay to the Goods, howsoever occurring, if such loss, damage or delay arises prior to loading onto a vessel. If the place of delivery is not named in the Contract, the Carrier shall be under no liability whatsoever for loss, damage or delay to the Goods, howsoever occurring, if such loss, damage or delay arises subsequent to discharge from a vessel.
 - The Carrier shall be deemed prima facie to have effected timely delivery of the Goods unless notice of loss or damage or delay to the Goods, indicating the general nature of such loss, damage or delay, shall have been given in writing to the Carrier or his representative at the Place of Delivery (or the port of discharge if no place of delivery is named in the Contract) before or at the time of removal of the Goods into the custody of the Person entitled to delivery thereof, or, if the loss or damage is not apparent at the time of delivery, within three days thereafter.
 - The Carrier shall be discharged of all liability unless suit is brought and notice thereof is given to the Carrier within twelve months of delivery of the Goods or the date when the Goods should have been delivered.
 - It is expressly agreed that every Carriage undertaken by Carrier on its own behalf, from a place of departure to a port or onwards or from an inland place of departure to a port or onwards shall be considered Combined Transport as defined in clause 1 and as elaborated on in this Clause 8. The part of this Carriage, during which the Goods are carried by sea and/or inland waterways, is subject to the provisions of the Hague Rules notwithstanding that the Goods may be carried on deck and/or that no Bill of Lading or similar document will be issued by the Carrier. In respect of every Carriage undertaken by Carrier it is furthermore expressly agreed that the Carrier will not issue any CT document as mentioned in Article 8:44 of the Dutch Civil Code.
- Amount of Compensation
 - Compensation shall be calculated by reference to the value of the Goods at the place and time they have been delivered to the Merchant, or at the place and time they should have been delivered. For the purpose of determining the extent of the liability of the Carrier for loss or damage to the Goods the sound value of the Goods is agreed to be the invoice value.
 - In the event of Combined Transport, where the stage of Carriage where loss or damage occurred is not known, or is known, but no international convention or national law is applicable by virtue of clause 8, compensation shall in no event exceed 666,67 SDRs per package or unit.
 - The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods, and that higher compensation than that provided above may not be claimed, unless with the written consent of the Carrier, the value of the Goods declared by the Shipper prior to the commencement of the Carriage is stated in the Contract and extra freight is paid, if required. In that case, the amount of the declared value shall be substituted for the limits laid down in this Contract. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.
 - The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or place of delivery at any particular time or to meet any particular market or use and the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct, indirect or consequential loss or damage caused by delay. However, unless a latest date of delivery is stated in the Contract and any required premium paid, timely delivery shall be considered to have been made if the Goods are made available to the Merchant at the Port of Discharge or place of delivery, as the case may be, within 60 days after the date published in the Carrier inbound sailing schedule against the Port of Discharge nominated therein for the relevant Vessel. The Carrier shall be entitled to all defenses, exceptions and limitations provided in the applicable international convention or national law and this Contract.
 - Scope of Application:
This Contract shall, at all times, govern all responsibilities of the Carrier in connection with or arising out of the supply of Goods to the Merchant, not only during the Carriage, but also during the period prior to and/or subsequent to the Carriage. The rights, defenses, limitations and liberties, of whatsoever nature, provided for in this Contract shall apply in any action against the Carrier for loss, damage tort and even if the loss, damage or delay arose as a result of unseaworthiness, negligence or breach of a fundamental term of this Contract. Save as is otherwise provided for in this Contract, the Carrier shall, in no circumstances whatsoever and howsoever arising, be liable for direct or indirect or consequential loss or damage or loss of profit.
- Indemnity
 - The Merchant undertakes that no claim or allegation, whether arising in contract, bailment, tort, negligence or otherwise, shall be made against the Servants which imposes or attempts to impose upon them or any vessel owned or chartered by the Servants 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 Servants. If any such claim or allegation should nevertheless be made, Merchant undertakes to defend, indemnify and hold the Carrier harmless from all consequences thereof, including Carrier's or Servants' Costs. Without prejudice to the foregoing, Servants shall have the benefit of all the terms, conditions, exceptions and limitations of this Contract as if these terms, conditions etc. were expressly for their benefit; and in entering into this Contract, the Carrier, to the extent of these terms, conditions etc., does so not only on its own behalf but also as agent and trustee for the Servants.

- (b) The provisions of clause 10(a), including but not limited to the undertakings of the Merchant chartering therein, shall extend to claims or allegations of whatsoever nature against other Person chartering space on the carrying vessel.
- (c) The Merchant further undertakes that no claim or allegation which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage of the Goods shall be made against the Carrier by any Person other than in accordance with the Contract, whether or not arising out of negligence on the part of the Carrier. If any such claim or allegation should nevertheless be made, Merchant undertakes to defend, indemnify and hold the Carrier harmless from and against all consequences thereof, including Carrier's or Servants' Costs.
- (d) The Merchant shall comply with all regulations or requirements of Customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including without prejudice to the generality of the foregoing, Freight for any additional Carriage undertaken) incurred or suffered in respect of the Goods, and shall indemnify the Carrier in respect thereof.

11. Exemptions and Immunities of all Servants of the Carrier

It is expressly agreed that no Servants of the Carrier shall in any circumstances whatsoever be under any liability whatsoever to the Merchant for any loss, damage or delay howsoever arising or resulting directly or indirectly from any act, fault, neglect or default on his part while acting in the course of or in connection with his employment. Without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect every Servant of the Carrier acting as aforesaid. For the purpose of all the foregoing provisions of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of each Person who is or might be his Servants and such Person shall to this extent be or be deemed a party to this Contract. The Carrier shall be entitled to be paid by the Merchant on demand any sum recovered or recoverable by the Merchant or any other from such Servants of the Carrier for any such loss, damage, delay or otherwise.

12. Packing of Cargo, Seals

- (a) The Merchant warrants that the Goods are in every respect fit for carriage by sea and that the cargo in or on the Units is properly loaded, stowed, lashed and secured for carriage by sea and in accordance with European Standard for "Load Restraint Assemblies on Road Vehicles" (EN 12 195-1:2004) and the IMO/ILO/UN ECE "Guidelines for Packing of Cargo Transport Units" including any amendments thereto. The Units shall be fitted with adequate and sufficient (minimum eight per Unit) lashing points. Failure to comply with this sub-clause 12(a) entitles the Carrier at all times and at its sole discretion, to either make additional arrangements for the account of the Merchant, or suspend its obligations under this Contract without releasing the Merchant from all its obligations under this Contract, including the payment of the full Freight stated in the Contract.
- (b) If a Unit has been loaded, packed, stowed or stuffed by the Merchant, its agent, servants or independent contractors, the Carrier shall not be liable for any loss of or damage to its contents or to property belonging to others howsoever caused and the Merchant shall defend, indemnify and hold the Carrier harmless from and against any and all loss, damage, delay, liability and Costs caused by:
- Complete or partial failure to comply with clause 12(a) above, or
 - the unsuitability of the Goods for Carriage in the Unit supplied; or
 - the unsuitability of the Units/Goods for sea carriage, or
 - the opening of a Unit and inspection of the Goods by the Carrier or by order of authorities at any place, or
 - (iv) The unsuitability or defective condition of the Unit provided that, where the Unit has been provided by or on behalf of the Carrier, this sub-paragraph (iv.) shall only apply if the unsuitability or defective condition arose without any want of due diligence on the part of the Carrier or would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Unit was packed or loaded.
- (c) The Carrier shall not be responsible for checking Unit seals or seal numbers and shall not be required by the Merchant to carry out any seal check or to note seal numbers on any document at any time whatsoever. Where seal numbers are noted for whatever reason by the Carrier then no representation whatsoever is made by the Carrier as to the accuracy of the number noted nor the condition of the seal.
- (d) The Carrier shall not be liable for any loss or damage, howsoever arising, to overlength or overwidth parts of Units that are outside the standard dimensions of the ISO frame. The Merchant shall defend, indemnify and hold the Carrier harmless from and against any and all consequences thereof, including, without limitation, delays, fines, pollution and Costs.
- (e) If Units supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty Units, with interiors clean, to the point or place designated by the Carrier or his Servants within the time prescribed in the Contract. Should a Unit not be returned within the time prescribed in the Contract, the Merchant shall pay the Unit demurrage in accordance with the "Transfennica's Standard Container Leasing Terms".

13. Unitization, Optional Stowage and Deck Cargo during Seatransport

- (a) The Goods may be stowed on the Vessel by the Carrier as received, or, at Carrier's option, by means of a Unit.
- (b) The Goods, whether stowed as aforesaid or not, are to be carried on or under deck of the Vessel at Carrier's option with or without notice to the Merchant, and if they are so carried, they shall be carried subject to the Hague-Visby Rules, which are applicable by Clause 4 of this Contract notwithstanding carriage on or under deck, and they shall contribute to general average, whether carried on or under deck. In the event the carriage of the Goods on deck has been agreed in the Contract and they are so carried, the Carrier shall not be liable for any and all loss or damage to the Goods of whatsoever nature, howsoever caused and howsoever arising, even if caused by unseaworthiness, and the Merchant shall defend, indemnify and hold the Carrier harmless from and against any and all claims with respect to damage to the Goods.

14. Methods and Routes of Carriage

The Carrier is allowed at any time and under any circumstances:

- use any means of carriage whatsoever;
- transfer the Goods from one conveyance to another, including but not limited to transshipping or carrying them on a Vessel other than nominated or named in the Contract;
- unpack and remove the Goods which have been packed into a Unit and forward them in a Unit or otherwise;
- proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or port whatsoever, once or more often and in any order;
- load or unload the Goods at any place or port and store the goods at any such place or port;
- comply with any order or recommendations given by any government or authority, or any Person acting or purporting to act as or on behalf of such government or authority, or having under the terms of any insurance on any conveyance employed by the Carrier the right to give orders or directions;
- permit the Vessel to proceed with or without pilots, to tow or be towed and to be dry-docked, with or without Goods and/or Units on board.

15. Loading, Discharging and Delivery

- (a) The Goods are to be loaded and discharged by the Carrier unless otherwise stated in the Contract. Any and all Costs incurred before receiving the Goods at the Terminal at port of loading and/or after delivery at the Terminal at the port of discharging shall be for Merchant's account.
- (b) The Merchant or his assign shall tender the Goods at the Terminal latest at the time indicated in the Contract, which includes outside ordinary working hours notwithstanding any custom of the port. Failure to comply with this sub-clause 15(b) shall relieve the Carrier from any obligation to load Merchant's Goods and the Vessel may leave the port without further notice and full dead freight is to be paid.
- (c) The Merchant or his assign shall take delivery of the Goods immediately upon discharging whether during or outside ordinary working hours, notwithstanding any custom of the port, if so required by the Carrier. Otherwise the Carrier shall be at liberty to discharge and store the Goods at any place and any such discharge or storage, including into custody of customs or any other authority, to be deemed a true fulfillment of this Contract. Failure to take immediate delivery of the Goods shall make the Merchant liable for Costs incurred by the Carrier, unless otherwise stated in the Contract.
- (d) After the Carrier has taken receipt of the Goods at the Terminal the Merchant will, upon request, receive a Seaway Bill. No Bill(s) of Lading shall be issued by the Carrier.

- (f) If the Goods are not claimed within 21 days of delivery, as described in clause 6 of this Contract, or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, without prejudice to any other rights which he may have against the Merchant, without notice and without any responsibility whatsoever attaching to him, destroy, dispose of or sell the Goods privately or by auction and recover all his Costs there from.

16. Freight and Charges

- (a) Freight, whether prepayable, payable at destination or otherwise, shall be deemed fully earned, due and immediately payable upon concluding the Contract and non-returnable in any event. Vessel and/or Goods lost or not lost. Freight is payable by the Merchant in freely transferable currency to Carrier's nominated bank account and in favour of Carrier's agent Transfennica Ltd. in Helsinki, Finland. The Carrier's claim for any demurrage, charges, surcharges, dues, tolls or levies etc. under this Contract shall be considered payable in like manner as soon as those have been incurred. Interest at eleven (11) per cent, per annum, compounded annually, shall run from the date when Freight and charges are due.
- (b) The Merchant shall be liable for all expenses of any fumigation and of gathering and sorting loose cargo and of weighing and all costs incurred in repairing damage to the Goods and for any and all costs caused by extra handling of the Goods for any of the aforementioned or other reasons.
- (c) Any and all dues, tolls, levies, duties, taxes, VAT, charges and surcharges which under any denomination may be levied on any basis such as but not limited to weight/measurement of the Goods, tonnage of the Vessel or amount of Freight including agency commission assessed on the basis of the amount of Freight shall be paid by the Merchant prior to the delivery of the Goods.
- (d) The Merchant shall be liable for any and all duties, taxes, VAT debts, fines, penalties, expenses or losses which the Carrier, Vessel or Goods may incur through non-observance of Custom House or import or export regulations or any anti-drug abuse act.
- (e) Freight is calculated on the basis of particulars furnished by or on behalf of the Merchant. The Merchant shall be liable for any and all consequences in case of incorrect declaration of contents, weights, measurements or value of the Goods and the Merchant shall pay, as liquidated damages, a sum equal to double the correct Freight less the Freight charged. For the purpose of ascertaining the actual facts, the Carrier reserves the right to obtain from the Merchant the original invoice and to have the contents inspected and the weight, measurement or value verified.
- (f) The Carrier reserves the right to adjust the agreed Freight at any time in order to compensate the Carrier for any increase in costs including but not limited to fuel prices, duties, taxes, charges, ISPS costs etc.
- (g) Payments shall be made in the currency in which the Freight has been agreed and/or invoiced.
- (h) All Freight shall be paid without any set-off, counter claim, deduction or stay of execution before delivery of the Goods.

17. Demurrage

The Carrier shall be paid demurrage by the Merchant at the daily rate of one and a half (1.5) EURO per ton of the Vessel's gross tonnage if any delay to the Vessel is caused by the Merchant. The demurrage shall be pro rata for any part of a day and payable day by day. Each Merchant shall be liable towards the Carrier for a proportionate part of the demurrage due, based upon the total Freight on the Goods to be loaded or discharged at the port in question. No Merchant shall be liable in demurrage for any delay arising or in connection with Goods belonging to other Merchants.

18. Lien

The Carrier shall have a lien (which includes a right of retention) on the Goods and any documents relating thereto for any and all sums, including but not limited to Freight, dead freight, demurrage, detention, Costs, dues, taxes, tolls, fines, penalties or claims for damages or indemnity payable to the Carrier or related with the Carriage under this Contract or any previous shipments by the Merchant and for general average and/or salvage contributions to whom due, and for the cost of recovering the same, and for that purpose the Carrier shall have the right to sell the Goods by public auction or private treaty and recover all his Costs there from without notice to the Merchant. Whether or not the lien can be enforced at the loading or discharging port, the Master may discharge and lien the Goods at any other convenient port or place. Such discharge of any of the Goods shall be deemed due fulfillment of this Contract and shall not be deemed to be a contractual deviation. The Carrier shall be entitled to claim from the Merchant the difference between the total amount due to him including any extra expenses (including Costs) incurred under the provisions of this clause and the net proceeds of the Goods.

19. Person(s) Accompanying the Goods

The Carrier may, at its sole discretion, allow any person on board to accompany the Goods during the Carriage after signing Carrier's indemnity from. The Merchant warrants that any such person is fully authorised to do so and has all the documentation on him required by immigration, customs, health and other regulations and authorities. Such person shall be considered to be an employee of the Merchant and the Merchant shall defend, indemnify and hold the Carrier and its Servants harmless from any whatsoever loss, damage, liability and Costs they may incur arising or resulting from such person being on board the Vessel. Any person accompanying the Goods shall at all times follow and carry out all lawful directions or instructions given by the Carrier and/or the crew of the Vessel, relating but not limited to the personal safety issues. In the interest of safety and security of the Vessel, its crew and the Goods, the Carrier reserves the right to refuse or to remove any such person on or from board, irrespective of any prior permission granted to board the Vessel. The Carrier shall not be liable for any loss, damage or Costs suffered by the Merchant or any such person following Carrier's decision to refuse or remove such person.

20. Hazardous and Noxious Substances

- (a) The Merchant warrants that the Goods are safe and fit for Carriage, properly packed and marked in all respects and are not of a damaging, dangerous, hazardous or noxious nature. No hazardous and/or noxious substances (including Goods) which are or may become dangerous, inflammable or damaging (including radio-active materials), or which are or may become liable to damage any property whatsoever, shall be tendered to the Carrier for Carriage without his written consent and without the Unit, in or on which the substances are carried, and the substances being distinctly marked on the outside so as to indicate the nature and character of any such substances so as to comply with any applicable laws, regulations or requirements. If any such substances are delivered to the Carrier without such written consent and marking or if in the opinion of the Carrier the substances are or are liable to become of a dangerous, inflammable or damaging nature, the same may at any time be discharged at any port, destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Freight.
- (b) Whether or not the Merchant was aware of the nature of the substances, the Merchant shall defend, indemnify and hold the Carrier harmless from and against all claims, losses, damages or expenses arising out of the Carriage of dangerous, hazardous and noxious substances.
- (c) Nothing contained in this clause shall deprive the Carrier of any of its rights provided for elsewhere.

21. Contraband

The Merchant warrants that there will be no arms, stowaways, contraband or any other illegal drugs, cigarettes, alcohol or other unlawful merchandise stowed in the Goods or in/on the Units or carried by any person referred to in clause 19 of this Contract. The Merchant shall indemnify and hold harmless the Carrier and its Servants for any and all Costs, liabilities, fines, penalties the Carrier may suffer as a result of the Merchant breaching its warranty hereunder and irrespective whether the Merchant acted in good faith or not.

22. Notification

Any reference stated in the Contract or anywhere else to names or parties who desire to be notified of the Vessel's arrival at the port of loading, departure there from, or arrival at destination, is solely for the information of the Vessel's agents and failure to notify shall not involve the Carrier in any responsibility, or relieve the Merchant from any obligation hereunder.

23. General Average

General average shall be adjusted at any place or port in Carrier's option according to the York-Antwerp Rules, 1994 (with the addition that in all cases when the Vessel is grounded all expenditure made and damage sustained by the Vessel in endeavoring to refloat her will be allowed in general average, even if the Vessel and the Goods were not in immediate or prospective peril). The Merchant expressly waives and renounces article 148, part II of the Belgium Commercial Code. The Carrier shall be under no obligation to exercise any lien and/or to collect any security in respect of general average sacrifice of the Goods. If the Carrier delivers the Goods to the Merchant without claiming any security for contribution to general average the Merchant, by receiving the Goods, becomes personally liable for contribution up to the C.I.F. value of the Goods provided the Carrier notifies the Merchant within three (3) months after receipt by the Merchant of the Goods of his intention to declare general average.

24. Government Directions, War, Epidemics, Ice, Strikes, etc.

- (a) For the purpose of this clause, the words:

- (i) "Risks" shall include any war (whether actual or threatened and whether or not existing or anticipated at the commencement of the voyage), acts of terrorists, acts of piracy, acts of hostility or malicious damage, seizure, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership or otherwise howsoever), by any person, body, organisation, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Carrier, may be dangerous or are likely to be or to become dangerous to the Vessel, the Goods, crew or other persons on board the Vessel or may cause delay; and
- (ii) "Orders" shall include any orders or directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destination, zones, waters, discharge, delivery or any other matter involving the navigation or management of the Vessel or the prosecution of her voyages (including any direction or recommendation not to go to the port of destination or to delay proceeding thereto or to proceed to some other port) given by any Government or any department thereof, or by any belligerent or by any organised body, hostilities or warlike operations, or by any Committee or person having, under the terms of any insurance or mortgage on the Vessel, the right to give any such orders or directions or recommendations.
- (b) The Carrier shall at any time have liberty to comply with any Orders given. If by reason of or in compliance with any such Orders anything is done or is not done, the same shall not be deemed a deviation and delivery in accordance with such Orders shall be due fulfillment of this Contract and the full Freight shall be payable.
- (c) If at any time before the Vessel commences loading or being en route to the port of loading or during loading it appears that, in the reasonable judgment of the Carrier, performance of this Contract, or any part of it, may expose or is likely to expose the Vessel, her cargo, crew or any other persons on board the Vessel to Risks, the Carrier may give notice to the Merchant cancelling this Contract or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or any other persons on board the Vessel to Risks.
- (d) Should it appear that epidemics, quarantine, ice, bad weather, swell, labour troubles, labour obstructions, blockades, port congestion, strikes, lockouts, any of which on board on shore or elsewhere, difficulties in loading or discharging would prevent the Vessel from reaching, entering, using or leaving the port of loading or there loading or reaching the port of discharge or there discharging in the usual manner and leaving again, all of which safely and without delay, or the performance of this Contract would expose the Vessel or any cargo on board to risk of seizure, damage, delay, to Risks or any person on board to Risks, the Carrier may discharge the cargo at port of loading or any other safe and convenient port and this shall constitute complete and final delivery and due fulfillment of this Contract and the full Freight shall be payable.
- (e) If in connection with the exercise of any liberty under this clause 24 any extra expenses, including any extra insurance costs in respect of Vessel, blocking and trapping, loss of hire, ice risks, crew and crew war bonus, are incurred, they shall be paid by the Merchant in addition to the full Freight, together with return Freight if any and a reasonable compensation for any extra services rendered to the Goods all for which the Carrier shall have a lien on the Goods.
- (g) If any situation referred to in this clause may be anticipated, or if for any such reason the Vessel cannot safely and without delay approach, reach or enter the loading port or must undergo repairs or is likely to prejudice the interest of the Vessel including her future engagements whether by delay or otherwise, the Carrier may cancel this Contract without any liability towards the Merchant. The Merchant shall be informed if possible.

25. Heavy Lift

Single Units, pieces or packages exceeding 10.000 kilograms gross weight, shall be carried on Free In Out (Stowed) basis (F.I.O.(S.)) which shall mean, even if not expressly agreed, that the loading, discharging, stowing and other handling of the Goods shall be for the risk and account of the Merchant, who, if so required by the Carrier, shall provide the necessary and certified lifting gear.

26. Special Requirements

- (a) The Goods, including goods of a perishable nature, shall be carried without special protection, services or other measures unless it is expressly stated in the Contract that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specifically equipped Unit and are to receive special attention in any way. The Carrier shall not be liable for the consequences of any and all malfunctioning (including shortage of fuel supply) of the refrigerating, heating, electrically ventilating or any other machinery, plants or apparatus (collectively "Machinery") attached to or fit in any Unit used for carriage. The Merchant releases and indemnifies the Carrier and its Servants from and against any claims, losses and expenses whatsoever in respect of any loss, deterioration or damage to the Units, its Machinery or to the Goods which arises from or as a consequence of:
- (i) Failure by the Merchant to provide or delay in providing a suitable electricity supply to operate the Unit's Machinery or failure to provide suitable electrical or other equipment to enable the electricity supply of the Vessel or the Terminal to be connected to the Unit's Machinery; or
- (ii) refusal to connect the Vessel's or Terminal's electricity supply to the Unit's Machinery and the Carrier shall in this respect have an absolute right to refuse to permit such a connection if the Carrier considers, at its sole discretion, that the Unit or its Machinery is unsuitable for connection with electricity supply of the Vessel or the Terminal or would be unsafe if so connected; or
- (iii) failure by the Merchant to timely provide the Carrier with clear and adequate written instructions including but not limited to temperature settings, operating instructions and accurate details regarding the electrical or fuel supply connections of the Machinery, irrespective of the Carrier having asked for such instructions or not; or
- (iv) failure by the Merchant to check the Machinery and that it is properly and exactly set before receipt of the Unit(s) by the Carrier.
- (b) The Carrier shall have no liability whatsoever if such refrigerated or heated Goods are carried in a range of plus or minus two and a half (2.5) degrees centigrade in regard to any carrying temperature designated in writing by the Merchant in this Contract or otherwise.
- (c) Whenever the Carrier provides any Machinery attached to a Unit with fuel, in order to allow it to keep operating during the Carriage, and/or checks the temperature data as they appear from the setting and the thermostat of the said Machinery, then this shall be done at the sole responsibility of the Merchant. The Carrier shall thus not be liable for any damage resulting from the fact that the Carrier does not provide such fuel or provides not enough fuel and/or does not check such temperature data or checks them incorrectly and/or does not provide the Merchant with the results of such check.

27. Both-to-Blame Collision Clause

The Both-to-Blame Collision clause published and/or approved by BIMCO and obtainable, free of charge, upon request from the Carrier or his agent is hereby incorporated herein.

28. ISPS Code

The Merchant shall provide the Carrier with its full style contact details and any other information the Carrier deems necessary in order to comply with the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel. Any delay resulting from Merchant's failure to comply with this clause shall count as demurrage as referred to in clause 17 of this Contract.

29. Currency Clause

The Carrier has the liberty to charge Freight, detention, demurrage and any other charges due under this Contract in EURO's at the mean rate of exchange prevailing at the European Central Bank on the date the Contract was concluded.

30. Non-Waiver and Validity

Nothing in this Contract shall operate to deprive the Carrier from any statutory protection or any defence, right, liberty, immunity, exemption or limitation provided elsewhere in this Contract and irrespective whether any action against the Carrier be founded in contract or in tort and even if the loss, damage or delay arose as a result of unseaworthiness, negligence or fundamental breach of contract. Insofar as any provision contained in this Contract is inconsistent with mandatory law, the provisions of this Contract shall to the extent of such inconsistency but no further be null and void.

31. Limitation of Liability

For the avoidance of doubt, it is hereby agreed by the Merchant that the Carrier qualifies and shall be regarded as a Person entitled to limit liability under the relevant Convention on Limitation of Liability for Maritime Claims, notwithstanding that the Carrier may have procured space on board the Vessel by means of a Slot Charter party, Bill of Lading or some other Contract of Carriage. Except to the extent that mandatory law to the contrary applies in the appropriate jurisdiction (in which case said law shall apply), the size of the fund to which the Carrier may limit liability shall be identical to that proportion of the limitation fund by which the actual carrier is entitled to limit which is (or would be) available for the Carrier's claim against the actual carrier.

32. Law and Jurisdiction

This Contract shall be governed by and construed in accordance with the laws of the Netherlands, except as provided elsewhere herein, and any dispute or action under this Contract shall be decided by

the District Court of Amsterdam, the Netherlands, to the exclusive jurisdiction of which the Carrier and the Merchant submit themselves.