

**[OCEAN AFRICA CONTAINER LINES COMBINED TRANSPORT OR PORT TO PORT SHIPMENT BILL
OF LADING]
TERMS AND CONDITIONS**

1. CONDITIONS

“Carrier” means Ocean Africa Container Lines (Pty) Ltd; “Merchant” includes the Shipper, Holder, Consignee, Receiver of the Goods, or other party to this contract any person owning or entitled to the possession of the Goods or of this Bill of Lading and anyone acting on behalf of any such person, all of whom shall be jointly and severally liable to the Carrier for the due fulfilment of all obligations undertaken by the Merchant in this Bill of Lading; “Goods” means the whole or any part of the cargo received from the Shipper and includes the packing and any equipment or Container not supplied by or on behalf of the Carrier; “Holder” means any Person for the time being in possession of this Bill of Lading to whom the property in the Goods has passed on or by reason of the proper consignment of the Goods or the endorsement of this Bill of Lading or otherwise; “Container” includes any container, trailer, transportable tank, cargo flat, flatrack or pallet, or any similar article used to consolidate goods and any equipment thereof or connected thereto; “Carriage” means the operations and services undertaken by the Carrier in respect of the Goods, and includes any part thereof; “Combined Transport” arises if the Place of Receipt and/or the Place of Delivery is/are indicated on the face hereof in the relevant spaces, or if any part of the Carriage called for by this Bill of Lading is other than by sea. “Port to Port Shipment” arises if the Carriage called for by this Bill of lading is not Combined Transport, “Freight” includes all charges for the carriage of the cargo in accordance with the applicable Tariff and the Bill of Lading as well as incidental and related expenses payable to the Carrier in respect of the cargo named on the face hereof; “Hague Rules” means: the international Convention for the Unification of certain rules of law relating to Bills of Lading signed at Brussels on 25th August 1924 (the Hague Rules); “Hague/Visby Rules” means the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968.

2. CLAUSE PARAMOUNT

2.1. If proceedings are brought before a court which adjudges the Hague or Hague/Visby or Hamburg Rules or national legislation incorporating such Rules compulsorily applicable to the contract of carriage to which this Bill of Lading relates, then in those circumstances only shall such Rules apply. If any term of this Bill of Lading be repugnant to the Rules or such legislation to any extent, such term shall be void to that extent but no further. Neither the Hague Rules nor the Hague/Visby Rules shall apply to this contract where the goods carried hereunder consist of live animals or cargo which by this contract is stated as being carried on deck and is so carried.

2.2. Where the Hague, Hague/Visby or Hamburg Rules are not compulsorily applicable to the contract of carriage in terms of (1) above, the Carrier shall be entitled to the benefits of all privileges, rights and immunities contained in Articles I to VIII of the Hague Rules, save that the limitation sum for the purposes of Article IV Rule 5 of the Hague Rules shall be £100 sterling. It is expressly provided that nothing in this Bill of Lading shall be construed as contractually applying the Hague, Hague/Visby or Hamburg Rules.

3. OCEAN AFRICA CONTAINER LINES TARIFF

The terms and conditions of Ocean Africa Container Lines applicable Tariff are incorporated herein. Particular attention is drawn to the terms and conditions therein relating to container and vehicle demurrage. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier or its agents upon request. In the case of inconsistency between this Bill of Lading and the applicable Tariff, the Bill of Lading shall prevail.

4. WARRANTY

The Merchant warrants that in agreeing to the terms and conditions hereof he is, or has the authority of the Person owning or entitled to the possession of the Goods to agree the terms of this Bill of Lading.

5. SUB-CONTRACTING AND INDEMNITY

- 5.1 *It is hereby expressly agreed that no servant, agent, direct or indirect subcontractor or other party employed by or on behalf of the Carrier, or whose services or equipment have been used in order to perform this contract (such persons so employed, or whose services or equipment have been used, hereinafter termed "Servant") shall in any circumstances whatsoever be under any liability whatsoever to the Merchant for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on the Servant's part while acting in the course of or in connection with the performance of this contract.*
- 5.2 *Without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty contained herein (other than Art III Rule 8 of the Hague/Hague-Visby Rules if incorporated herein) and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder including the right to enforce any jurisdiction or arbitration provision contained herein shall also be available and shall extend to every such Servant, who shall be entitled to enforce the same against the Merchant.*
- 5.3 *(i) The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort or otherwise shall be made against any Servant 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 this contract whether or not arising out of negligence on the part of such Servant. The Servant shall also be entitled to enforce the foregoing covenant against the Merchant; and
(ii) The Merchant undertakes that if any such claim or allegation should nevertheless be made, he will indemnify the Carrier against all consequences thereof.*
- 5.4 *For the purpose of sub-paragraphs 5.1 to 5.4 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 the Servant who shall to this extent be or be deemed to be a party to this contract.*
- 5.5 The provisions of this clause including but not limited to the undertakings of the Merchant contained therein shall extend to claims or allegations of whatsoever nature against other Persons chartering space on the carrying vessel.

6. CARRIER'S RESPONSIBILITY

A. Port to Port Shipment

If the Carriage called for by this Bill of Lading is a Port to Port shipment, the liability (if any) of the Carrier for loss of or damage to the Goods occurring from and during loading onto any seagoing vessel up to and during discharge from that vessel or from another seagoing vessel into which the Goods have been trans-shipped shall be determined as follows: if the Hague, Hague/Visby or Hamburg Rules or national legislation incorporating such Rules is not compulsorily applicable in terms of Clause 2 above, then the Carrier shall be entitled to the benefits of all privileges, rights and immunities set out in Articles I to VIII of the Hague Rules. If any court adjudges the Hague, Hague/Visby or Hamburg Rules or national legislation incorporating such Rules compulsorily applicable to this carriage or this Bill of Lading in terms of Clause 2 above, then the compulsorily applicable legislation or Rules shall apply to this carriage.

Notwithstanding the above, unless and to the extent that any applicable compulsory legislation provides to the contrary (in which case the Carrier shall have the benefit of every right, defence, limitation and liberty in the Hague Rules as applied by this clause during such additional compulsory period of responsibility, notwithstanding that the loss or damage did not occur at sea), the Carrier shall be under no liability whatsoever for loss of or damage to the Goods, howsoever occurring, if such loss or damage arises prior to the loading onto or subsequent to discharge from the vessel. Loading and discharge shall be deemed to have commenced and ended respectively when the Goods cross the ship's rail.

B. Combined Transport

If the Carriage called for by this Bill of Lading is Combined Transport, the Carrier undertakes to perform the ocean-going Carriage in his own name and to procure performance of the Carriage from the Place of Receipt or the Port of Loading, whichever is applicable, to the Port of Discharge or the Place of Delivery, whichever is applicable, and save as is otherwise provided in this Bill of Lading, the Carrier shall be liable for loss or damage to the Goods occurring during the Carriage as follows:

6.1 If the stage of the Carriage during which the loss or damage occurred is not known:

a) Exclusions

If the stage of the Carriage during which the loss or damage occurred is not known, the Carrier shall be relieved of liability for any loss or damage if such loss or damage was caused by: (i) an act or omission of the Merchant; (ii) insufficiency of or defective condition of packing or marking; (iii) handling, loading, stowage or unloading of the goods for or on behalf of the Merchant; (iv) inherent vice of the Goods; (v) strike, lock-out, stoppage or restraint of labour from whatever cause, whether partial or general; (vi) a nuclear incident; (vii) any cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence; (viii) compliance with instructions of any person entitled to give them.

b) 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 this (a) above shall rest upon the Carrier, save that if the Carrier established 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 2(a) above, it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by one or more of these causes or events.

c) Limitation of liability

Except as provided for elsewhere in this Bill of Lading and if this Clause 6(1) operates, total compensation for loss or damage shall in no circumstance whatsoever and howsoever arising exceed 2 SDR's per kilo of the gross weight of the Goods lost or damaged (SDR means Special Drawing Right as defined by the International Monetary Fund).

6.2 If the stage of the Carriage during which the loss or damage occurred is known:

Notwithstanding anything provided for in Clause 6B and subject to Clause 13, if it is known during which stage of the Carriage the loss or damage occurred the liability of the Carrier shall be determined:

- a) by the provisions contained in any international convention or national law which provisions are adjudged compulsorily applicable in proceedings before a court or
- b) if no international convention or national law would apply by virtue of Clause 6B(2)(a), (i) subject to the privileges, rights and immunities contained in Articles I to VIII of the Hague Rules if the loss or damage is known to have occurred during waterborne Carriage, or (ii) where the loss or damage is known not to have occurred during waterborne Carriage, by the terms and conditions of any agreement entered into by the Carrier with the subcontractor, or when the subcontractor is a public, semi-public and/or imposed, exclusive or monopolistic body, by the conditions applicable for such body, which terms and conditions shall be deemed to be incorporated herein; or
- c) by the provisions of Clause 6B(1) if the provisions of the Clause 6B(2)(a) or (b) above do not apply, save that where the Carrier acts as the Merchant's agent in contracting with any third party, including in relation to the carriage in the United States of America to the Port of Loading or from the Port of Discharge, the terms and conditions of any contract so concluded will determine the rights and obligations of the Merchant and such third party respectively, the Carrier having no liability relating thereto.

For the purposes of this Clause 6B (2), references in the Hague Rules to carriage by sea shall be deemed to include all references to all waterborne Carriage and the Hague Rules shall be construed accordingly.

6.3 If the Place of Receipt or Place of Delivery is not named on the face hereof:

Subject to Clauses 6A and 6B –

- a) if the Place of Receipt is not named on the face hereof, the Carrier shall be under no liability whatsoever for loss of or damage to the Goods, howsoever occurring, if such loss or damage arises prior to loading onto the vessel
- b) if the Place of Delivery is not named on the face hereof, the Carrier shall be under no liability whatsoever for loss or damage to the goods, howsoever occurring, if such loss or damage arises subsequent to discharge from the vessel.

6.4 Notice of Loss or Damage

Unless under Clause 6B(2), an international convention or national law applies, which contains

alternative provisions relating to notice of loss or damage (in which case such alternative provisions shall apply), the Carrier shall be deemed prima facie to have delivered the Goods as described in this Bill of Lading unless notice of loss of or damage to the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier or his representative and to the last carrier at the Place of Delivery for the Place of Delivery (or the Port of Discharge if no Place of Delivery is named on the face hereof) before or at the time of removal of the Goods into the custody of the Person entitled to delivery thereof under this Bill of Lading or, if the loss or damage is not apparent, within three working days thereafter. The Carrier shall be called for a joint survey before the opening of the Container in case of apparent damage to the Container or, if no such apparent damages, as soon as any loss or damage to the Goods have been stated upon opening of the Container in which case unpacking operations shall immediately be stopped, otherwise no loss or damage shall be attributable to the Carrier.

6.5 Time-Bar

Unless under Clause 6B(2) an international convention or national law applies, which contains alternative provisions relating to time bar (in which case such alternative provisions shall apply), the Carrier shall be discharged of all liability unless suit is brought and notice thereof given to the Carrier within nine months after delivery of the Goods or the date when the Goods should have been delivered.

7. SUNDRY LIABILITY PROVISIONS

7.1 US Paramount clause

If the Carriage covered by this Bill of Lading includes carriage to, from or through a port or place in the United States of America, this Bill of Lading shall be subject to the United States Carriage of Goods by sea and the entire time that the Goods are in the actual custody of the carrier in the United States of America before loading onto the vessel or after discharge therefrom, as the case may be and if and to the extent that the provisions of the Harter Act of the United States of America 1893 would otherwise be compulsorily applicable, Carriers responsibility shall be instead determined by the provisions of COGSA.

7.2 Basis of Compensation

Compensation shall be calculated by reference to the sound value of the Goods at the place and time they are delivered to the Merchant or at the place and time they should have been delivered. For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the sound value of the Goods is agreed to be the invoice value plus freight and insurance if paid.

7.3 Hague Rules Limitation

If the Hague Rules are applicable otherwise than by national law, in determining the liability of the Carrier, the liability shall in no event exceed one hundred pounds sterling per package or unit, unless Clause 7(5) shall apply.

7.4 COGSA Limitation

If the COGSA limitation applies, the liability of the Carrier and the vessel shall not exceed US\$ 500 per package or customary freight unit (in accordance with Section 1034(5) thereof) unless Clause 7(5) shall apply.

7.5 Ad Valorem

The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods, and that higher compensation than that provided herein may not be claimed unless, with the consent of the Carrier, the value of the Goods declared by the Shipper prior to the commencement of the Carriage is stated on this Bill of Lading and extra Freight paid, if required in that case, the amount of the declared value shall be substituted for the limits laid down herein. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

7.6 Delay

The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or without affecting the generality of the foregoing, any particular market or use and the Carrier shall in no circumstances whatsoever and howsoever arising including negligence by the Carrier, be liable for direct, indirect or consequential loss or damage caused by delay. Where under the provisions of Clause 6B(2) above the Carrier is liable for delay, liability shall be limited to the element of the freight applicable to the relevant stage of Carriage and that part of the Goods which have been delayed.

7.7 Scope of Application

- a) The terms and conditions of this Bill of Lading shall at all times govern all responsibilities of the Carrier in connection with or arising out of the supply of a Container to the Merchant, not only during the Carriage, but also during the periods prior to and/or subsequent to the Carriage.
- b) The rights, defences, limitations and liberties of whatsoever nature provided for in the bill of Lading shall apply in any action against the Carrier for loss or damage or delay, howsoever occurring and whether the action be founded in contract or in delict and even if the loss, damage or delay arose as a result of unseaworthiness, negligence or breach of contract.
- c) Save as is otherwise provided herein, the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct or indirect consequential loss or damage.

7.8 Compulsory Inspection by Authorities

If by order of any authority at any place, or should the Carrier decide that a Container has to be opened for the Goods to be inspected, the Carrier shall not be liable for any loss or damage incurred as a result of any opening, unpacking, inspection and repacking.

7.9 Negligence

The carrier shall not be responsible for any loss, damage or claim arising out of the neglect or default of the Master, officers, engineers, pilots, crew, stevedores or agents of the Carrier, whether in relation to navigation, management, loading or discharging of the vessel or otherwise.

7.10 Time-bar

In the case of any claims of whatsoever nature other than of damage to or loss of the goods or of claims relating to the goods against the Carrier notice to be given within two days and suit to be

brought within two months after discharge, such claims otherwise being definitely waived and time barred.

7.11 Package Limitation

By accepting this Bill of Lading, the Merchant agrees that the Goods shipped in one container of whatever size shall be deemed to be one package and that the Carrier's liability is limited per Container.

8. CONTAINERS

- 8.1 The Merchant undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice (and filling in the box "kind of packages or units" on the front of this Bill of Lading if this Bill of Lading has been prepared by the Merchant or person acting on his behalf) of their nature, type of reefer units e.g. integral or clip on unit, and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Merchant, further undertakes that the Container has been properly pre-cooled, that the Goods have been properly pre-cooled, stuffed and stowed in the Container and that its thermostatic controls have been properly set by the Merchant before receipt of the Goods by the Carrier. If the above requirements are not complied with, the Carrier shall not be liable for any loss of or damage to the Goods caused by such noncompliance.
- 8.2 The Carrier shall not be liable for any loss or damage to the Goods arising from:
- a) the unsuitability of the goods for carriage in the Container supplied, or
 - b) the unsuitability or defective condition of the Container, provided that, if the container has been supplied by or on behalf of the Carrier, this unsuitability or defective condition could have been apparent upon inspection by the Merchant at or prior to the time when the Container was packed.
- 8.3 If a Container is discharged from the vessel (if no Place of Delivery is named on the face hereof) or delivered by the Carrier with its original seal or the seal affixed before loading on the vessel (if no Place of Receipt is named on the face hereof) intact, the Carrier shall not be liable for any loss of or damage to the Goods.
- 8.4 The Merchant shall indemnify the Carrier against any loss, damage, liability or expense whatsoever and howsoever arising caused by one or more of the matters referred to in Clauses 8(1) and 8(2), save that if the loss, damage, liability or expense was caused by a matter referred to in Clause 8(2)(b), the Merchant shall not be liable to indemnify the Carrier in respect thereof unless the provisions referred to in that clause apply.

9. INSPECTION AND DESCRIPTION OF GOODS

- 9.1 The Carrier or any Person to whom the Carrier has sub-contracted the Carriage or any Person authorised by the Carrier shall be entitled, but under no obligation to open any Container or package at any time and to inspect the Goods.
- 9.2 The Bill of Lading shall prima facie give evidence of the receipt by the Carrier from the Shipper in apparent good order and condition, except as otherwise noted, of the total number of Containers or other packages or units specified on the face hereof.

9.3 Except as provided in Clause 9(2), no representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods, and the Carrier shall be under no responsibility whatsoever in respect of such description in particulars.

9.4 If any particulars of any Letter of Credit and/or import licence and/or Sale Contract and/or invoice or Order number and/or details of any contract to which the Carrier is not a party are shown on the face of this Bill of Lading, such particulars are included solely at the request of the Merchant for his convenience.

The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way affects the Carrier's liability under this Bill of Lading. The Merchant acknowledges that, except when the provisions of Clause 7(5) apply, the value of the goods is unknown to the Carrier.

9.5 Iron or steel goods of any description shipped in apparent good order and condition does not involve any admission from the Carrier as to the absence of rust or oxidation.

10. SHIPPER'S/MERCHANT'S RESPONSIBILITY

10.1 The Shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars, and any other particulars furnished by or on behalf of the Shipper, are adequate and correct. The Shipper also warrants that the Goods are lawful Goods and contain no contraband.

10.2 The Merchant shall indemnify the Carrier against all loss, damage, fines and expenses, arising or resulting from any breach of any of the warranties in Clause 10(1) hereof or from any other cause in connection with the Goods for which the Carrier is not responsible.

10.3 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, the full return Freight for the Goods if returned, or if on-carried, the full Freight from the Port of Discharge or the Place of Delivery nominated herein to the amended Port of Discharge or the amended Place of Delivery) incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof.

10.4 If Containers supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty Containers, with interiors brushed and clean, to the point or place designated by the Carrier, his servants or agents, within the time prescribed. Should a Container not be returned within the prescribed time, the Merchant shall be liable for any demurrage, loss or expenses which may arise from such non-return.

11. FREIGHT

11.1 Freight shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and nonreturnable in any event.

- 11.2 The Merchant's attention is drawn to the stipulations concerning currency in which the Freight is to be paid, rate of exchange, devaluation and other contingencies relative to Freight in the applicable Tariff.
- 11.3 Freight has been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier may at any time open any Container or other package or unit in order to identify, weigh, measure or value the contents and if the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that a sum equal to double the correct Freight less the Freight charged, shall be payable as liquidated damages to the Carrier.
- 11.4 All Freight shall be paid without any set-off, counter-claim, deduction or stay of execution before delivery of the Goods.
- 11.5 Any Person engaged by the Merchant to perform forwarding services in respect of the goods shall be considered to be the exclusive agent of the Merchant for all purposes and any payment of Freight to such Person shall not be considered payment to the Carrier in any event. Failure of such Person to pay any part of the Freight to the Carrier shall be considered a default by the Merchant in the payment of Freight.
- 11.6 Freight has been calculated on the basis of the Carrier's costs as known at the time of the contract of Carriage is made. Should there be any subsequent change in those costs, the Carrier may recover additional Freight from the Merchant, whether or not Freight is prepaid or to be collected and whether or not carriage has commenced.

12. LIEN

The Carrier shall have a lien on the goods and any documents in relation thereto for all sums payable to the Carrier under this or any other contract by any of the Persons defined as Merchant in Clause 1 and for general average contributions to whomsoever due, in any event any lien shall extend to cover the cost of recovering the sums due, and for that purpose the Carrier shall have the right to sell the Goods by public auction or private treaty, without notice to the Merchant.

13. OPTIONAL STOWAGE AND DECK CARGO

- 13.1 The Goods may be packed by the Carrier in Containers and consolidated with other goods in Containers.
- 13.2 Goods, whether or not packed in Containers, may be carried on deck or under deck without notice to the Merchant. All such Goods whether carried on deck or under deck shall participate in general average and shall be deemed to be within the definition of goods for the purposes of the Hague Rules.
- 13.3 Notwithstanding Clause 13(2), in the case of Goods which are stated on the face hereof as being carried on deck and which are so carried neither the Hague Rules nor COGSA shall apply and the Carrier shall be under no liability whatsoever for loss, damage or delay, howsoever arising, including through any negligence of the Carrier, its servants or agents.

14. METHODS AND ROUTE OF CARRIAGE

- 14.1 The Carrier or Ocean Africa Container Lines may at any time and without notice to the Merchant:
- a) use any means of carriage whatsoever
 - b) transfer the Goods from one conveyance to another, including but not limited to transshipping or carrying them on another vessel than named on the face hereof;
 - c) unpack and remove the Goods which have been packed into a Container and forward them in a Container or otherwise
 - d) proceed by any route in his discretion (whether or not the nearest or most direct or customary or advanced route) at any speed and proceed to or stay at any place or port whatsoever, once or more often and in any order;
 - e) load or unload the goods at any place or port (whether or not such port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such place or port;
 - f) comply with any orders 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, with or without pilots, to tow or be towed, or to be dry -docked.
- 14.2 The liberties, rights, defences and limitations set out in Clause 14(1) may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of the Goods, including loading or unloading other goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing any persons, including but not limited to persons involved with the operation or maintenance of the vessel and assisting vessels in all situations. Anything done in accordance with Clause 14(1) or any delay arising therefrom shall be deemed to be within the Carriage and shall not be a deviation.
- 14.3 By tendering the goods for Carriage without any written request and the Carriers express consent for Carriage in a specialized Container, or within a specific temperature range, or subject to any particular attention, or to Carriage otherwise than in a Container, the Merchant accepts that the Carriage may properly be undertaken in a general purpose container in the customary manner.

15. CARRIAGE AFFECTED BY CONDITION OF GOODS/MATTERS AFFECTING PERFORMANCE

- 15.1 If, at any time, it appears to the Carrier that the Goods cannot safely or properly be carried further, either at all or without incurring any additional expense or taking any measure(s) in relation to the Container or the Goods the Carrier may without notice to the Merchant take any measure(s) and/or incur any additional expense to carry or continue the Carriage thereof, and/or sell or dispose of the Goods and/or abandon the Carriage and/or store them ashore or afloat, under cover or in the open, at any place, whichever the Carrier, in his absolute discretion, considers most appropriate, which abandonment, storage, sale or disposal shall be deemed to constitute complete performance of the Carrier's obligations under this Bill of Lading. The Merchant shall indemnify the Carrier against any additional expense so incurred.
- 15.2 If at the time, the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind howsoever arising (even though 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, sell, destroy or dispose of the Goods and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.
- 15.3 If, at the place where the Carrier is entitled to call upon the Merchant to take delivery of the Goods, the Carrier is obliged to hand over the Goods into the custody of any customs, port-terminal-operator or other body whether physically or otherwise such hand-over shall constitute due delivery to the Merchant under this Bill of Lading.
- 15.4 Refusal by the Merchant to take delivery of the Goods, notwithstanding his having been notified of the availability of the Goods for delivery, shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.
- 15.5 In the case of an option Bill of Lading, the Carrier may, in the absence of the Merchant exercising the option which can only be given for the totality of the Goods, in writing four days before the arrival at the first optional port or place, elect to discharge at any optional port or place.
- 15.6. Subject to the Carrier agreeing in writing to a request of the Merchant to amend the Port of Discharge or the Place of Delivery, the terms and conditions of this Bill of Lading shall continue to apply to the extent provided by the applicable Tariff until the Goods are delivered by the Carrier to the merchant at the amended Port of discharge or the Place of Delivery whichever is applicable. If the applicable Tariff does not explicitly provide for the continued application of the terms and conditions of the Bill of Lading, then the Carrier shall act as agent only of the Merchant in arranging for delivery of the Goods to the amended port of discharge or Place of Delivery, but shall then be under no liability whatsoever for loss, damage or delay to the goods, howsoever arising.
- 15.7 At any time, if a Merchant has a shortage in Goods or numbers of Goods, the Carrier may at his discretion deliver as substitute any surplus goods of similar nature and quality whether these have different or no marks and numbers at all and the Merchant shall accept delivery of such goods which shall constitute complete performance of the Carrier's obligations under this Bill of Lading.

16. FCL MULTIPLE BILLS OF LADING

- 16.1 Save where agreed to the contrary between the Carrier and the Merchant, Goods will only be delivered in a Container to the Merchant if all the Bills of Lading in respect of the contents of the Container have been surrendered authorizing delivery to a single Merchant at a single place of delivery. In the event that this requirement is not fulfilled, the Carrier may unpack the Container and, in respect of Goods for which Bills of Lading have been surrendered, deliver these to the Merchant on an LCL basis. Such delivery shall constitute due delivery hereunder, but will only be effected against payment by the Merchant of LCL Service Charges and any charges appropriate to LCL Goods (as laid down in the Tariff) together with the actual costs incurred for any additional services rendered.
- 16.2 If this is an FCL multiple Bill of Lading (as evidenced by the qualification of the tally acknowledged overleaf to the effect that it is "One of part cargoes in the Container"), then the Goods detailed overleaf are said to comprise part of the contents of the Container indicated. If the

Carrier is required to deliver the Goods to more than one Merchant and if all or part of the total Goods within the Container consists of bulk Goods or unappropriated Goods, or is or becomes mixed or unmarked or unidentifiable, the Holder of Bills of Lading relating to Goods within the Container shall take delivery thereof (including any damaged portion) and bear any shortage in such proportions as the Carrier shall in his absolute discretion determine and such delivery shall constitute due delivery hereunder.

17. GENERAL AVERAGE & SALVAGE

- 17.1 In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, due to negligence or not, for which or for the consequences of which the Carrier is not responsible, by statute, contract or otherwise, the Merchant shall contribute in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the Goods.
- All expenses in connection with a general average or salvage act to avoid damage to the environment always to be considered general average expenses.
- 17.2 Any general average on a vessel operated by the Carrier shall be adjusted according to the York/Antwerp Rules of 1974 as amended 1990 at any port or place and in any currency at the option of the Carrier. Any general average on a vessel not operated by the Carrier (whether a seagoing or inland waterways vessel) shall be adjusted according to the requirements of the operator of that vessel. In either case the Merchant shall give such cash deposit or other security as the Carrier may deem sufficient to cover the estimated general average contribution of the Goods before delivery if the Carrier requires, or, if not so required, within three months of the delivery of the Goods, whether or not at the time of delivery the Merchant had notice of the Carrier's lien. The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.
- 17.3 Conversion into the currency of the adjustment shall be calculated at the rate prevailing on the date of payment for disbursements and on the date of completion of discharge of the vessel for allowances, contributory values, etc.
- 17.4 In the event of any general average credit balances due to Merchants still being unclaimed 2 years after the date of issue of the adjustment, these shall be paid to the owner or disponent owner of the vessel, who will hold such credit balances pending application by the Merchants entitled thereto.
- 17.5 In the event of the Master considering that salvage services are needed, the Merchant agrees that the Master may act as his agent to procure such services to Goods and that the Carrier may act as his agent to settle salvage remuneration.
- 17.6 If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers.

18. BOTH-TO-BLAME COLLISION

The Both-to-Blame collision clause as published by the Baltic and International Maritime Conference is hereby incorporated into this Bill of Lading.

19. VARIATION OF THE CONTRACT & VALIDITY

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

19.2 In the event that anything herein contained is inconsistent with any applicable international convention or national law which cannot be departed from any private contract, the provisions hereof shall to the extent of such inconsistency but no further be null and void.

20. CONTRACTING PARTIES

The contract evidenced by this Bill of Lading is between the Carrier and the Merchant. If, however, it should be adjudged that anyone other than Ocean Africa Container Lines is the carrier or the Bailee of the Goods, all limitations and exonerations from liability provided by law or by the terms and conditions of this bill of lading shall be available to such other party.