

BILL OF LADING FOR MULTIMODAL TRANSPORT OR PORT TO PORT SHIPMENT

I. GENERAL PROVISIONS

1. Applicability

The following conditions shall apply either if combined transport or only one mode of transport is used.

2. Definitions

- "Carrier" = TCI International Logistics GmbH.
- "Charges" = freight, dead freight, demurrage and all expenses and money obligations incurred and payable by the Merchant.
- "Container" = any open or closed container, van, trailer, flatbed, flatrack, transportable tank or any similar receptacle whatsoever.
- "Goods" = the cargo received from the shipper and described on the face side hereof and any Container not supplied by or on behalf of the Carrier.
- "Merchant" = the shipper, consignee, receiver, holder of this Bill of Lading, owner of the cargo or person entitled to the possession of the cargo and the servants and agents and principals of any of these, all of whom shall be jointly and severally liable to the Carrier for the payment of all Charges, and for the performance of the obligations of any of them under this Bill of Lading.
- "On Board" or similar words used in this Bill of Lading = in a Port to Port movement, the Goods have been loaded on board the vessel and, in the event of multimodal transportation, if the originating carrier is a Participating carrier, means that the goods have been loaded on board a feeder vessel, railcar, truck or other mode of transport at the Place of Receipt and are en route to the Port of Loading named on the reverse side.
- "Participating carrier" = any other carrier by water, land or air, performing any stage of the carriage, whether acting as sub-carrier, connecting carrier, substitute carrier or bailee.
- "Vessel" = the ocean vessel named on the face side hereof, and any substitute vessel, feeder ship, barge or other means of conveyance by water used in whole or in part by the Carrier.

3. Negotiability

- 3.1. Unless this Bill of Lading is marked "non negotiable" it is issued in a negotiable form. It shall find title to the goods and the holder, legitimated by endorsement of the Consignee named in this BL, shall be entitled to receive or to dispose the goods mentioned on the reverse side.
- 3.2. The information in this BL shall be prima facie evidence of the taking in charge by the Carrier of the goods as described by such information unless a contrary indication, such as "shipper's weight, load and count", "shipper-packed container" or similar expressions, has been made in the printed text or superimposed on this BL. However, proof to the contrary shall not be admissible when the BL has been transferred to the consignee for valuable consideration who in good faith has relied and acted thereon.

4. Carrier's Tariff

The terms of the Carrier's applicable Tariff at the date of shipment are incorporated herein. Copies of the relevant provisions of the applicable Tariff are available from the carrier. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

5. Law and Jurisdiction

Except as otherwise provided specifically herein any claim or dispute arising under a Bill of Lading or under this agreement shall be governed by the law of the Federal Republic of Germany and determined in the Hamburg Courts to the exclusion of the jurisdiction of any other courts of any other place.

II. CARRIERS AND MERCHANTS OBLIGATIONS

1. Port to Port Shipment

- (a) When loss or damage has occurred between the time of loading of the Goods by the Carrier at the Port of Loading and the time of discharge by the Carrier at the Port of Discharge, the responsibility of the Carrier shall be determined in accordance with German law making the Hague-Visby Rules compulsorily applicable to the Bill of Lading. In the event the Bill of Lading has been issued in Germany or a country in which the Hague Rules are compulsorily applicable and this Bill of Lading covers a shipment from or to Germany and such aforesaid country or between such aforesaid countries, the responsibility of the Carrier shall be determined in accordance with German law, making the Hague Rules compulsorily applicable. The Carrier is different from § 498 HGB ff. and Art. 16 CMNI ff. not responsible for default in navigation of the ship, fire in board or damages caused by unseaworthiness of the ship. The parties agree, that the Carrier is only liable for fault of his own part in case of risks provided in § 512 paragraph 2 no. 1 HGB such as default in navigation of the ship or fire on board and the carrier as defined in 2 CMNI is relieved of liability in compliance with the requirements provided in Art. 25 paragraph 2 CMNI such as default in navigation of the ship, fire on board or defects of vessel.
- (b) However the Carrier shall be under no liability whatsoever for loss of or damage to the Goods occurring, if such loss or damage arises prior to loading on or subsequent to the discharge from the vessel. Notwithstanding the above, in the event that the applicable compulsory law provides the contrary, the Carrier shall have the benefit of every right, defence, limitation and liberty in the Hague-Visby Rules or the Hague Rules, notwithstanding that the loss or damage did not occur after loading or after discharge from the vessel. In the event that the Bill of Lading or any transport under this agreement covers a shipment to or from the USA, however, US COGSA shall be compulsory applicable before the Goods are loaded on, during the sea voyage or after they are discharged from the vessel.
- (c) Unless notice of loss or damage be given in writing to the Carrier or his agent at the Port of Discharge before or at the time of the removal of the Goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage is not apparent, within three (3) days, such removal shall be prima facie evidence of the delivery by the Carrier as described in this Bill of Lading and any such loss or damage which may have occurred to the Goods shall be deemed to be due to circumstances which are not the responsibility of the Carrier. The notice must clearly specify the damage. Notwithstanding the aforesaid, if a container has been delivered to the Merchant, the Merchant must prove that the damage to or loss of the Goods did not occur during the period after delivery, when the container was in the custody of the Merchant.
- (d) Compensation shall be calculated by reference to the value of the Goods at the place and the time they are delivered to the Merchant, or at the place and the 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.
- (e) In the event that the Bill of Lading has been issued in the USA or in a country making the Hague Rules applicable and this Bill of Lading covers a shipment from or to the USA COGSA shall apply. COGSA shall also be applicable before the goods are loaded on or after they are discharged from the vessel.

2. Multimodal Transport

- (a) If the place of damage or loss of the Goods is known, the responsibility of the Carrier is determined by the law which applies to this leg of Carriage.
- (b) In the event that part of the multimodal transport is a shipment to or from the USA an7898d the damage to or loss of the Goods occurs at the time between the loading at the Port of Loading and the discharging at the Port of Discharge the responsibility of the Carrier shall be determined in accordance with German law making the Hague Rules compulsorily applicable. COGSA however applies before the Goods are loaded on or after they are discharged from the vessel.
- (c) With respect to road carriage between countries in Europe liability shall be determined in accordance with the Convention on the Contract for the International Carriage of Goods by Road (CMR), dated May 19, 1956; and during rail carriage between countries in Europe according to the International Agreement on Railway Transport (CLM), dated February 25, 1961 [or any amendments to this Convention or Agreement].
- (d) Unless notice of loss or damage be given in writing to the Carrier or his agent at the Port of Discharge before or at the time of the removal of the Goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage is not apparent within seven (7) days, such removal shall be prima facie evidence of the delivery by the Carrier as described in this Bill of Lading. The notice must clearly specify the damage. Notwithstanding the aforesaid, if a container has been delivered to the Merchant, the Merchant must prove that the damage to or loss of the Goods did not occur during the period after delivery, when the container was in the custody of the Merchant.
- (e) Compensation shall be calculated by reference to the value of the Goods at the time they were delivered to the Carrier for carriage.

(f) IN THE EVENT THAT THE LAW WHICH IS APPLICABLE IS NOT MANDATORY AND PROVIDES FOR LIABILITY EXCEEDING 2 SDRS, THE MAXIMUM LIABILITY SHALL BE 2 SDRS. SDRS MEANS SPECIAL DRAWING RIGHTS AS DEFINED BY THE INTERNATIONAL MONETARY FUND.

(g) IF THE STAGE OF THE CARRIAGE DURING WHICH LOSS OR DAMAGE OCCURRED IS NOT KNOWN, THE CARRIER'S MAXIMUM LIABILITY SHALL IN NO EVENT WHATSOEVER AND HOWSOEVER ARISING EXCEED 2 SDRS PER KILO OF GROSS WEIGHT OF THE GOODS LOST OR DAMAGED.

(h) THE CARRIER SHALL NOT BE ENTITLED TO THE BENEFIT OF THE LIMITATION OF LIABILITY IF IT IS PROVED THAT THE DAMAGE RESULTED FROM AN ACT OR OMISSION OF THE CARRIER DONE WITH INTEND TO CAUSE DAMAGE, OR RECKLESSLY AND WITH KNOWLEDGE THAT DAMAGE WOULD PROBABLY RESULT. HOWEVER, IF THE LOSS OR DAMAGE HAS OCCURRED DURING THE CARRIAGE OF GOODS BY SEA TO WHICH MARITIME LAW APPLIES, THE CARRIER IS ENTITLED TO THE BENEFIT OF LIMITATION OF LIABILITY, WHERE A LAW APPLIES MAKING THE HAGUE-VisBY RULES COMPULSORILY APPLICABLE AND IT IS PROVED THAT THE DAMAGE RESULTED FROM AN ACT OR OMISSION OF THE CARRIER WITH INTEND TO CAUSE DAMAGE; OR RECKLESSLY AND WITH KNOWLEDGE THAT DAMAGE WOULD PROBABLY RESULT.

In the event that the Bill of Lading or any transport under this agreement covers a shipment to or from the USA, however, US COGSA shall be compulsory applicable before the Goods are loaded on, during the sea voyage or after they are discharged from the vessel.

3. General obligations

- 3.1. The Carrier shall be entitled to subcontract the whole or any part of the contract. For the provisions of this Bill of Lading the Carrier shall be responsible for the acts and omissions of his subcontractors.
- 3.2. The Carrier is entitled to perform the transport in any reasonable manner and by any reasonable methods and routes. He is also entitled to carry the goods on or under deck without notice to the Merchant. The Carrier may at any time and without notice to the Merchant: (a) use any means of transport or storage whatsoever; (b) transfer the Goods from one conveyance to another including, but not limited to, transhipping or carrying them on another Vessel than that named on the face of this bill of lading or by any other means of transportation whatsoever (any references to feeder and ocean Vessel on this bill of lading are merely statements as to the Vessels intended by the Carrier to be used at the date of the issue of this bill of lading and do not form part of the contract evidenced by this bill of lading. The Carrier always being at liberty to substitute other Vessels and methods of conveyance for those referred to on the face of this bill of lading); (b) use or proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and use or proceed to or stay at any place or port whatsoever, once or more often and in any order; (c) load or unload the Goods at any place or port (whether or not any such port is named on the face of this bill of lading as the Port of Loading or Port of Discharge) and store the Goods at any such port or place.
- 3.3. Anything done in accordance with the matters set out in Clause 3.2. or any delay arising therefrom shall be deemed a) to be within the contractual Carriage to which this bill of lading relates and b) not to be a deviation.
- 3.4. Arrival times are not guaranteed by the Carrier. If the goods have not been delivered within ninety consecutive days following to an estimated time of arrival or the time that would be reasonable to require of a diligent carrier having regarded the circumstances of the case, the merchant may, in the absence of evidence to the contrary, treat the goods as lost.

3.5. If the Carrier is liable in respect of loss following from delay in delivery, or consequential loss or damage other than loss of or damage to the goods, the liability of the Carrier shall be limited to an amount not exceeding the equivalent of twice the freight under the multimodal contract for the multimodal transport under this BL.

3.6. The aggregate liability of Carrier shall not exceed the limits of liability for total loss of the goods.

3.7. The Carrier complies with his duty of delivery when the goods have been handed over or placed at the disposal of the Consignee or his agent in accordance with this Bill of Lading, or when the goods have been given into the custody of any authority or other party to whom, pursuant to the law or applicable regulation at the place of delivery, the goods must be handed over, or any other place at which the Carrier is entitled to call upon the Merchant to take delivery.

3.8. The Carrier shall also be entitled to store the goods at the sole risk of the Merchant, and the Carrier's liability shall cease, and the cost of such storage shall be paid, upon demand, by the Merchant to the Carrier.

3.9. If at any time the carriage under this Bill of Lading is or is anticipated to be affected by any hindrance or risk of any kind not arising from any fault or neglect of the Carrier or a person referred to in Clause II. 4.1. and which cannot be avoided by reasonable efforts the Carrier may abandon the carriage of the goods and, where reasonably possible, place the goods or any part of them at the Merchant's disposal at any place which the Carrier may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Carrier in respect of such goods shall cease. In any event, the Carrier shall be entitled to full freight under this Bill of Lading and the Merchant shall pay any additional costs resulting from the above mentioned circumstances.

4. Liability of servants and other Persons

4.1. These conditions apply whenever claims relating to the performance of the contract evidenced by this Bill of Lading are made against any servant, agent or other person, including any independent contractor, whose services have been used in order to perform the contract, whether such claims are founded in contract or in tort, and the aggregate liability of the Carrier and of such servants, agents or other persons shall not exceed the limits in clause II. 1 and 2.

4.2. In entering into this contract as evidenced herein, the Carrier, to the extent of these provisions, does not only act on his own behalf, but also as agent or trustee for such persons, and such persons shall to this extent be or be deemed to be parties to this contract.

4.3. However, if it is proved that the loss of or such loss or damage to the goods resulted from a personal act or omission of such a person referred to in Clause 4.1., done with intent to cause damage, or recklessly and with knowledge that damage would probably result, such person shall not be entitled to benefit of limitation of liability provided for in Clause II. 2.

4.4. The aggregate of the amounts recoverable from the Carrier and the persons referred to in Clause II. 4.1. shall not exceed the limits provided for in these conditions.

5. Merchant's responsibility

5.1. The Consignee shall be deemed to have guaranteed to the Carrier the accuracy, at the time the goods were taken in charge by the Carrier, of all particulars relating to the general nature of the goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the goods as furnished by him or on his behalf for insertion on this Bill of Lading. The Consignor shall indemnify the Carrier against all loss, damage and expense resulting from any inaccuracy or inadequacy of such particulars. The Consignor shall remain liable even if the Bill of Lading has been transferred by him. The right of the Carrier to such an indemnity shall in no way limit his liability under this Bill of Lading to any person other than the Consignor.

5.2. The Carrier shall not be liable for any loss, damage or expense caused by defective or insufficient packing of goods or by inadequate loading or packing within containers or other transport units when such loading or packing has been performed by the Merchant or on his behalf by a person other than the Carrier, or by the defect or unsuitability of the containers or other transport units supplied by the Merchant, or if supplied by the Carrier if a defect or unsuitability of the container or other transport unit would have been apparent on reasonable inspection by the Merchant. The Merchant shall indemnify the Carrier against all loss, damage, liability and expense so caused.

6. Dangerous Goods

6.1. The Merchant shall comply with all internationally rules which apply according to the national law or by reason of International Convention, relating to the carriage of goods of a dangerous nature, and shall in any event inform the Carrier in writing of the exact nature of the danger, before goods of a dangerous nature are taken in charge by the Carrier and indicate to him, if need be, the precautions to be taken.

6.2. If the Merchant fails to provide such information and the Carrier is unaware of the dangerous nature of the goods and the necessary precautions to be taken and if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation and the Merchant shall be liable for all loss, damage, delay or expense arising out of their being taken in charge, or their carriage, or of any service incidental thereto. The onus of proof for the Carrier's knowledge of the exact nature of the danger generated by the carriage of the said goods shall rest on the Merchant.

6.3. If any goods shall become a danger to life or property and unless such danger was caused by the fault and neglect of the Carrier he shall have no liability and the Merchant shall indemnify him against all loss, damage, liability and expense arising there from. The Carrier is entitled to unload or land such goods at any place or destroy them or render them harmless.

III. FREIGHT, CHARGES AND LIEN

1. Freight and Charges

1.1. "Freight Prepaid" or "Freight Paid" means freight payable at port of shipment. This does not certify that the freight charges have been received by the carrier/agent. Freight shall be considered as earned by the Carrier at the moment when the goods have been taken in his charge, and not to be returned in any event. The carrier/agent reserves the right to collect the freight charges from the party being entitled to receive the goods, if the merchant has failed to fulfil his obligations, paying the freight to the carrier/agent. Freight shall be paid in cash, without any reduction or retention on account of any claim, counterclaim or set-off, whether prepaid or payable at destination.

1.2. Freight and all other amounts mentioned in this Bill of Lading are to be paid in the currency named herein or, at the Carrier's option, in the currency of the country of dispatch or destination at the highest rate of exchange for bankers sight bills current for prepaid freight on the day of dispatch and for freight payable at destination on the day when the Merchant is notified on arrival of the goods there or at the option of the Carrier on the date of this Bill of Lading.

1.3. All dues, taxes and charges or other expenses in connection with the goods shall be paid by the Merchant or the Consignee as joint and several debtors.

1.4. For any cargo shipped on "freight collect"-basis, the carrier reserves the right to collect the freight from the merchant in case the consignee/receiving party fails to pay the freight charges at destination. This right also applies for any disbursements. Any additional destination charges occurring from non-payment and/or non-pick up of cargoes by the consignee/receiving party, such as demurage, detention and storage fees etc. will also be for the account of the Merchant. Where equipment is supplied by the Carrier, the Merchant remains liable additional to the consignee for all demurrage and charges which are not due to a fault or neglect of the Carrier.

1.5. The Merchant shall reimburse the Carrier in proportion to the amount of freight for any costs for deviation or delay or any other increase of costs of whatever nature caused by war, warlike operations, epidemics, strikes, government directions or force majeure.

1.6. For the purpose of verifying the freight basis the Carrier has the liberty to have the contents of Containers or other articles of transport inspected. If on such inspection it is found that the Merchant's declaration is not correct it is agreed that a sum equal either to five times the difference between the correct figure and the freight charged, or to double the correct freight less the freight charged, whichever sum is the smaller, shall be payable as liquidated damages to the Carrier notwithstanding any other sum having been stated on this Bill of Lading as freight payable. The Merchant shall in any case remain responsible for such monies on receipt of evidence of demand and the absence of payment for whatever reason.

2. General Average

The Merchant shall indemnify the Carrier in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Carrier in this connection. 3. Both-to-Blame-Collision If the vessel on which the goods are carried comes into collision with any other vessel or object as a result of the negligence of the non-carrying vessel or object or the owner of, charterer of or person responsible for the non-carrying vessel or object, the Merchant undertakes to defend, indemnify and hold harmless the Carrier against all claims by or liability to any vessel or person in respect of any loss, or damage to, or any claim whatsoever of the Merchant paid or payable to the Merchant by the non-carrying vessel or object or the owner of charterer or person responsible for the non-carrying vessel or object and set off recouped or recovered by such vessel, object or person against the carrier the carrying vessel or her owners or charterers.

4. Lien

The Carrier shall have a lien on the goods and any documents relating thereto for any amount due to the Carrier under this contract including storage fees and the cost of recovering same, and may enforce such lien in any reasonable manner including sale or disposal of the goods.

IV. MISCELLANEOUS PROVISIONS

1. Paramount Clause

1.1. These conditions shall only take effect to the extent that they are not contrary to the mandatory provisions of International Conventions or national law applicable to the contract evidenced by this Bill of Lading.

1.2. The Hague Rules contained in the International Convention for the unification of certain rules relating to Bills of Lading, dated Brussels 25th August 1924, or in those countries where there are already in force the Hague-Visby Rules contained in the Protocol of Brussels, dated 23rd February 1968, as enacted in the Country of Shipment, shall apply to all carriage of goods by sea and also to the carriage of goods by inland waterways, and such provisions shall apply to all goods whether carried on deck or under deck.

1.3. The Carriage of Goods by Sea Act of the United States of America (COGSA) shall apply to the carriage of goods by sea, whether on deck or under deck, if compulsorily applicable to this Bill of Lading or would be applicable but for the goods being carried on deck in accordance with a statement on this Bill of Lading.

2. Applicability to Actions in Tort

These conditions apply to all claims against the Carrier relating to the performance of the contract evidenced by this Bill of Lading, whether the claim be founded in contract or in tort.

3. Time bar

All liability, whatsoever, of the Carrier shall cease, unless suit is brought within 9 months after the delivery of the goods, or the date when the goods should have been delivered, or the date when the failure of delivery would give the consignee the right to treat the goods as lost.

4. Partial Invalidity

If any provision in this Bill of Lading is held to be invalid by any court or regulatory or inconsistent with an applicable international convention that is mandatory applicable, this shall only attach such provision. All remaining provisions and this Bill of Lading contract shall be carried out and not be affected.