

Polynesian Shipping Line

Polynesian Shipping Line Limited – Contract of Carriage

1. DEFINITIONS

“Carrier” means Polynesian Shipping Line Limited of Apia Samoa on whose behalf this bill of lading has been signed.

“Merchant” includes the Shipper, Holder, Consignee, the receiver of the goods, any person owing or entitled to the possession of the Goods or this Bill of Lading and anyone acting on behalf of such persons.

“Carriage” means the whole of the operations and services undertaken by the Carrier in respect of the Goods.

“Hague Rules” means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 and includes the amendments by the Protocol signed at Brussels on 23 February 1968, but only if such amendments are compulsorily applicable to this bill of lading. (It is expressly provided that nothing in this bill of lading shall be construed as contractually applying said Rules as amended by the said Protocol).

“Goods” means the cargo accepted from the shipper and includes any Container not supplied by or on behalf of the Carrier.

“Container” includes any container, trailer, transportable tank, lift van, flat, pallet or any similar article of transport used to consolidate goods.

“Combined Transport” arises when the Place of Acceptance and/or the Place of Delivery are indicated on the face thereof.

“Port to Port Shipment” arises when the Carriage called for by this Bill of Lading is not Combined Transport.

“Freight” includes all charges payable to the Carrier in accordance with the applicable Tariff and this Bill of Lading.

2. CARRIERS TARIFF

Terms of the Carriers applicable Tariff are incorporated herein. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier or his agent on request. In the case of inconsistency between the Bill of Lading and the applicable Tariff, the Bill of lading shall prevail.

3. WARRANTY

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

4. SUB-CONTRACTING AND INDEMNITY

- a. The Carrier shall be entitled to sub-contract, on any terms, the whole, or any part of the operations and services undertaken by the Carrier in relation to the Goods.

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- b. The Merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the Carrier, including, but not limited to, the Carrier's servants or agents, any independent contractor and his servants or agents, and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken, which imposes or attempts to impose upon any of them or any vessel owned by any of them any liability whatsoever in connection with the Goods, whether or not arising of negligence on the part of any of them, and if any such claim or allegation should nevertheless be made, to defend, indemnify and hold harmless the Carrier against all consequences thereof. Without prejudice to the foregoing every such servant, agent, subcontractor shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit, and entering into the Contract the Carrier, to the extent of those provisions, does so not only on his own behalf but also as the agent and trustee for such servants, agents and sub-contractor.
- c. The expression "sub-contractor" in this Clause shall include direct and indirect sub-contractors and persons chartering space on the vessel and their respective servants and agents.
- d. The Merchant shall defend, indemnify and hold harmless the Carrier against any claim or liability (and any expenses arising there from) arising from the Carriage of the Goods insofar as such claim or liability exceeds the Carrier's liability under this Bill of Lading.

5. CARRIERS RESPONSIBILITY

A. Port to Port Shipment

Where the carriage called for in this Bill of Lading is a Port to Port Shipment, then –

1. If carriage is port to port, the liability (if any) of the Carrier for loss or damage to the Goods occurring from and during loading on to any seagoing vessel up to and during discharge from that vessel or from another vessel into which the goods have been transhipped shall be determined in accordance with any national law making the Hague Rules compulsorily applicable to this Bill of Lading, or in any other case in accordance with the Hague Rules, articles 1-8 inclusive.

B. Combined Transport

Where the Carriage called for in this Bill of Lading is Combined Transport then save as is otherwise provided in this Bill of Lading, the Carrier shall be liable for the loss or damage occurring during carriage to the extent set out below.

1. Where the stage of Carriage where the loss or damage occurred is not known:

- a. Exclusions: Where the stage of Carriage where 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 or of defective condition of packing or marking
 - (iii) Handling, loading, stowage or unloading of the Goods by or on behalf of the Merchant
 - (iv) Inherent vice of the Goods
 - (v) Strike, lock out, stoppage or restraint of labour the consequences of which the Carrier could not avoid by the exercise of reasonable diligence.
 - (vi) A nuclear incident if the operator of the nuclear installation or a person acting for him is liable for this damage under an applicable International Convention or national law governing liability in respect of nuclear energy

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- (vii) Any cause or event which the Carrier could not avoid and the consequences of which he could not prevent by exercise of reasonable diligence.
- b. Burden of Proof: The burden of proving that the loss or damage was due to one or more of the causes or events specified in this Sub Clause 5B1 shall rest upon the Carrier save that, when 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 paragraphs 5B1 (ii), 5B1 (iii) or 5B1 (iv) 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 partially by one or more of these causes or events.
- c. Amount of Compensation: Except as provided in Sub Clause 5C3 below, compensation shall in no circumstances 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).

2. Where the Stage of Carriage where loss or damage occurred is known:

Notwithstanding anything provided for in Sub Clause 5B1 above, where it is known during which stage of Carriage the loss or damage occurred, the liability of the Carrier in respect of such loss or damage shall be determined.

- a. By the provisions contained in any International Convention or national law, which provisions:
 - (i) cannot be departed from by private contract to the detriment of the Merchant, and
 - (ii) would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of Carriage which the loss or damage occurred and received as evidence hereof any particular document which must be issued in order to make such International Convention or national law applicable. Provided that an International Convention or national law will determine the Carrier's liability, as aforesaid, only if it would have been applicable if the Contract referred to in (ii) above were governed.
 - a. Where the loss or damage occurred between the time that the Goods were accepted by the Carrier for Carriage and the time that the Goods were loaded at the port of Loading, by the National law of the country or state of the Place of Acceptance, or
 - b. Where the loss or damage occurred during Carriage by sea by the internal law of the country or state of the Port of Lading or Discharge, or of the country or state in which this Bill of Lading is issued, or
 - c. Where the loss or damage occurred between the time that the Goods were discharged at the final Port of Discharge and the time that the Goods were delivered to the Merchant, by the internal law of the country or state of the Place of Delivery, or
- b. Where no international convention or national law would apply by virtue of Clause 5B2a above, by the Rules as set out in the Fifth Schedule of the New Zealand Maritime Transport Act 1994.
- c. If any term of this Clause 5B2 is inconsistent with or repugnant to any International Convention or national law as referred to in 5B2 above, it shall to the extent of such inconsistency or repugnance, and no further, be null and void.

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C. General (applicable to both Port to Port and Combined Transport)

1. Delay

The Carrier does not undertake that the goods shall arrive at the Port of Discharge or the Place of Delivery at any particular time or to meet any particular market or use and the Carrier shall in no circumstances be liable for the direct, indirect or consequential loss or damage or loss of profits whether caused by the delay or otherwise.

2. 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 in this Bill of Lading 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 extras Freight paid, if required. In that case the amount of the declared value shall be substituted for the limits laid down in this Bill of Lading. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

3. Scope of Application

- a. The terms 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 any Container to the Merchant not only during the Carriage but also during the periods prior to and/or subsequent to the Carriage
- b. The exemptions from liability, defences and limits of liability provided for in this 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 tort and even if the loss, damage or delay arose as a result of negligence.
- c. Save as is otherwise provided herein, the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct or indirect or consequential loss or damage.

4. Notice of Loss or Damage

The Carrier shall be deemed prima facie to have delivered the Goods as described in this Bill of Lading unless notice of loss or damage to the Goods, including the general nature of such loss or damage shall have been given in writing to the Carrier or to his representative at the Place of Delivery 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 consecutive days thereafter.

5. Time Bar

Subject to any provision of this Clause 5C5 to the contrary, the Carrier shall be discharged of all liability under this Bill of Lading unless it is bought 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.

6. CARRIERS CONTAINERS

- a. The terms of this Bill of Lading shall govern the responsibility of the Carrier in connection with or arising out of the supply of a Container or Containers to the Merchant whether before or after the Goods are received by the Carrier for carriage or delivery to the Merchant.

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- b. The Merchant shall assume full responsibility for, and shall indemnify the Carrier against, any loss of or damage to the Carrier's Container(s) and other equipment which occurs while in the possession or control of the Merchant or any other carrier engaged by the Merchant.
- c. The Carrier shall in no event be liable for, and the Merchant shall indemnify and hold the Carrier harmless from and against, any loss or damage to property of other persons or injuries to other persons caused by the Carrier's Container(s) or the contents thereof during handling by or while in then possession or control of the Merchant or any other carrier engaged by the Merchant.

7. CONTAINER NOT PACKED BY OR ON BEHALF OF THE CARRIER

If a container has not been packed by or on behalf of the Carrier the following provisions shall apply:

- a. The Carrier shall be under no liability in the event of loss or delay, detention or damage of or to the Container or the Goods directly or indirectly caused by the manner in which the Goods have been packed and/or stowed inside the Container or by the unsuitability of the Container.
- b. The Merchant shall indemnify the Carrier against any loss which the Carrier may suffer, or liability to any person which the Carrier may incur, on account of death or personal injury or loss, delay, detention or damage of or to any property due to the manner in which the Goods have been packed inside the Container or due to the unsuitability of the Container.

8. INSPECTION AND CONDITION OF THE GOODS

The Carrier shall be entitled, but under no obligation, to open any Container(s) or packages(s) at any time and to inspect, weigh, measure or value the Goods. If it thereupon appears that the Goods or any part thereof cannot safely or properly be carried further without incurring any additional expense or taking any measures in relation to the Container(s), packages(s) or Goods or any part thereof, the Carrier may, in his absolute discretion, and without notice to the Merchant (but as his agent only) take any such measures and/or incur any such reasonable expense as he deems necessary to transport or continue the transport and the Merchant hereby indemnifies the Carrier for any costs and expenses incurred by the Carrier and its agents or contractors.

Alternatively, if it appears that the Goods or any part thereof cannot safely or properly be carried, the Carrier may, again in his absolute discretion, and without notice to the Merchant (but as his agent only), abandon the carriage thereof, and sell or dispose of the Goods or part thereof, and/or store them ashore or afloat, under cover or in the open at any place which the Carrier considers most appropriate. Any such abandonment, sale, disposal or storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant further agrees to indemnify the Carrier against any reasonable expense incurred in fulfillment of this Clause.

9. DESCRIPTION OF GOODS

This Bill of Lading shall be prima facie evidence of the receipt of the Goods by the Carrier in apparent good order and condition, except as otherwise noted, and of the total number of Containers or other packages or units shown on the face hereof. No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks,

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numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

10. MERCHANTS RESPONSIBILITY

The Merchant warrants to the Carrier that the particulars relating to the Goods set out on the face of this Bill of Lading have been checked by the Merchant on receipt of this Bill of Lading and are correct. The Merchant shall indemnify the Carrier against all loss, damage and expenses arising or resulting from inaccuracies or inadequacy of such particulars.

11. FREIGHT AND CHARGES

- a. Freight shall be deemed to be fully earned on receipt of the Goods by the Carrier and shall be paid and nonrefundable in any event.
- b. 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 all as contained in the Carriers applicable Tariff, which is incorporated in this Bill of Lading.
- c. The Freight has been calculated on the basis of the particulars furnished by or on behalf of the Merchant. The Carrier may, at anytime, open any Container or other package or unit in order to reweigh, remeasure or revalue the Goods and if the particulars furnished by or on behalf of the Merchant are incorrect it is agreed that a sum equal to either five times the difference between the correct Freight 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 by the Merchant to the Carrier.
- d. Freight and liquidated damages under Sub Clause (c) of this clause may be recovered by the Carrier from any person falling within the definition "Merchant" in Clause 1 of this Bill of Lading.

12. LIEN

- a. The Carrier shall have a lien on the Goods and any documents relating thereto for all sums whatsoever due at any time to the Carrier from the Merchant under this contract or any previous contract, and for General Average contributions to whomsoever due, and for the cost of recovering the same, and for that purpose shall have the right to sell the Goods by public auction or private treaty without notice to the Merchant. If, on sale of the cost incurred, the Carrier shall be entitled to recover any deficit from the Merchant.
- b. If the Goods are unclaimed within a reasonable time, or if, in the Carriers opinion, the goods will become deleterious, decayed or worthless, the Carrier may, at his discretion and without notice to the Merchant and without prejudice to any responsibility attaching to him, sell, abandon or otherwise dispose of such Goods solely at the risk and expense of the Merchant.

13. OPTIONAL STOWAGE

- a. The Goods may be stowed by or on behalf of the Carrier in Containers and consolidated with other Goods in Containers.
- b. Goods stowed in Containers, (or not), whether by or on behalf of the Carrier, or on behalf of the Merchant, may be carried on deck or under deck without notice to the Merchant. Such Goods whether carried on deck or under deck, shall participate in General Average and such Goods (other than live animals) shall be deemed to be within the definition of "Goods" for the purposes of the Hague Rules.

14. DECK CARGO AND LIVE ANIMALS

- a. The Hague Rules shall not apply to Goods (not being Goods stowed in Containers) which are stated in this Bill of Lading to be carried on deck, and are so carried, or to live animals where they are not carried on deck.
- b. The Carrier shall have no responsibility for loss or damage of whatsoever nature arising during carriage by sea whether caused by unseaworthiness or negligence or any other cause whatsoever, for Goods which are stated in this Bill of Lading to be carried on deck and are so carried.
- c. Live animals are carried at the sole risk of the Merchant. The Carrier shall be under no liability whatsoever for any injury, illness, death, delay or destruction howsoever arising even though caused or contributed to by the act, neglect or default of the Carrier or by the unseaworthiness or unfitness of any vessel, craft, conveyance, Container, or place existing at any time. In the event of the Master, in his sole discretion, considering that any live animal(s) is/are likely to be injurious to health of any other live animal(s) or of any person or persons onboard or to cause the vessel to be endangered or delayed or impeded in the prosecution of the voyage, such live animal(s) may be destroyed and thrown overboard without any liability whatsoever attaching to the Carrier. The Merchant shall indemnify the Carrier against all and any extra costs incurred for any reasons whatsoever in connection with the Carriage of such live animal(s).

15. REFRIGERATED CARGO

- a. The Merchant undertakes not to tender for Carriage any Goods which require refrigeration without previously giving written notice of their nature and particular temperature range to be maintained and, in the case of a refrigerated Container packed by the Merchant, further undertakes that the Goods have been properly stowed in the Container and that the thermostatic controls have been adequately set by him 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 howsoever arising.
- b. The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, derangement, breakdown, stoppage of the refrigerating machinery, plant, insulation and of any apparatus of the Container, vessel, conveyance and any other facilities, provided that where the Carrier supplies a refrigerated container it shall before or at the beginning of the Carriage exercise due diligence to maintain such refrigerated Container in a efficient state.

16. METHODS AND ROUTES OF TRANSPORTATION/CARRIAGE

- a. The Carrier may at any time and without notice to the Merchant
 - (i) Use any means of Carriage or stowage whatsoever
 - (ii) Transfer or Transship the Goods from one conveyance to another or carry the same on another vessel than that named on the face of this Bill of Lading or by any other means of transport whatsoever.
 - (iii) Unpack or remove the Goods which have been stowed into a Container and forward the same in a Container or otherwise.
 - (iv) Proceed by any route in his discretion (whether or not by the nearest or most direct or customary or advertised route) and proceed to or stay at any place or port whatsoever once or more often and in any order.
 - (v) Load or unload the Goods at any place or port and store the Goods at any such place or port at the sole risk of the merchant.
 - (vi) Comply with any orders or recommendations given by any government or authority or by any person or body acting or purporting to act as or on behalf of such government

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- or authority or having, under the terms of the insurance on the vessel or other conveyance employed by the Carrier, the right to give any such orders or directions.
- (vii) Permit the vessel to proceed with or without pilots.
- b. The liberties set out in Sub Clause (a) above may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of the Goods including undergoing repairs, towing or being towed, adjusting instruments, dry docking and assisting vessels in all situations, and anything done in accordance with Sub Clause (a) above or any delay arising there from shall be deemed to be within the contractual Carriage and shall not be a deviation.
- c. By tendering the Goods for Carriage without any written request for Carriage in a specialised Container or for Carriage other than in a Container the Merchant accepts that the Carriage may properly be undertaken in a general purpose Container.

17. MATTERS AFFECTING PERFORMANCE

If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Goods or any part thereof safely or properly to be carried or to be carried further) and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time the contract was entered into or when the Goods were accepted for Carriage) and which cannot be avoided by the exercise of reasonable endeavours, the Carrier (whether or not the Carriage is commenced) may either:

- a. Without notice to the Merchant, abandon the Carriage of the Goods and place the Goods or any part of them at the Merchant's disposal at any place or port, which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full Freight on the Goods accepted for Carriage, and the Merchant shall pay any additional costs of Carriage to, and delivery and storage at such place or port, or
- b. Without prejudice to the Carrier's right subsequently to abandon the Carriage under (a) above, upon notice to the Merchant, suspend Carriage of the Goods or any part of them and store them ashore or afloat upon the terms of this Bill of Lading against payment of such reasonable additional charges as the Carrier may determine. The Carrier undertakes to use reasonable endeavours to forward the Goods, the Carriage of which has been suspended, as soon as possible after the cause of hindrance, risk, delay, difficulty or disadvantage has been removed but makes no representations as to the maximum period between such removal and the forwarding of the Goods to the Place of Delivery or Port of Discharge, as the case may be, named in this Bill of Lading.

18. DANGEROUS GOODS

- a. No Goods which are, or may become dangerous, inflammable or damaging (including radioactive materials) or which are, or may become, liable to damage any property whatsoever, be tendered to the Carrier for Carriage without his express consent in writing, and without the Container or other covering in which the Goods are to be carried, and also the Goods, being distinctly marked on the outside thereof so as to indicate the nature and character of any such Goods, and so as to comply with any applicable laws, regulations or requirements. If any such Goods are delivered to the Carrier without such written consent and or marking, or, if in the opinion of the Carrier, the Goods are, or are liable to become, of a dangerous, inflammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Freight.

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- b. The Merchant undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and or compliance with all laws or regulations, which may be applicable during Carriage.
- c. Whether or not the Merchant was aware of the nature of the Goods the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of any kind or breach of the provisions of this Clause.
- d. Nothing contained in this Clause shall deprive the Carrier of any of his rights provided for otherwise or elsewhere.

19. REGULATIONS RELATING TO GOODS

The Merchant shall comply with all regulations or requirements of Customs, port or other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses or losses incurred or suffered by reason thereof, or by reasons of any illegal, incorrect or insufficient packing, marking, numbering or addressing of the Goods and shall indemnify the Carrier in respect thereof.

20. INDEMNITY RELATING TO GOODS

The Merchant shall defend, indemnify and hold harmless the Carrier against any claim or liability (or any expenses related thereto) arising from any discharge from the Carrier's vessel or any part thereof, or from any Container or other article of transport carried by the Container or the Carrier, of any oil, water, pollutant, hazardous substance, or any other matter, the discharge of which is contrary to or prohibited by any national, international, state, municipal or other law, statute or convention.

21. NOTIFICATION AND DELIVERY

- a. Any mention in this Bill of Lading of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability or relieve the Merchant of any obligation hereunder.
- b. The Merchant shall take delivery of the Goods within the time provided for in the Carriers applicable tariff. In any case, where there has been made between the Carrier and the Merchant the arrangement that the Merchant shall take delivery of the Goods directly from alongside at the Port of Discharge, the Merchant shall do so as soon the vessel is ready to discharge them at any wharf or place in that port on any day and at any time.
- c. If the Merchant fails to take delivery of the Goods or any part of them in accordance with Sub Clause 21b above, the Carrier may, without notice, discharge the Goods or that part thereof and/or store the same ashore or afloat, in the open or under cover. Such storage shall constitute due delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of such Goods shall cease.
- d. The Merchants attention is drawn to the stipulations concerning free storage time and demurrage contained in the Carriers applicable Tariff, which is incorporated in this Bill of Lading.

22. SPECIAL DELIVERY

- a. The special arrangements for receiving Goods as full Container Load and delivering them as less than Container Load (FCL/LCL) and/or for split delivery of the Goods to more than one receiver shall be undertaken by the Carrier at his absolute discretion and on condition that the Carrier shall not be liable for any shortage, loss, damage or discrepancies of the Goods, which are found upon unpacking the Container. The Merchant shall be liable for an appropriate adjustment of Freight and shall pay additional cost incurred, including storage.

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- b. The special arrangements for receiving the Goods as less than container load and delivering then as Full Container Load (LCL/FCL) shall be undertaken by the Carrier at his absolute discretion and on condition that the Carrier shall not be liable for any shortage, loss, damage, or discrepancies of the Goods which are not apparent at the time of such delivery, provided that the Carrier shall have exercised ordinary care in packing the Container.

23. BOTH TO BLAME COLLISION

If the carrying vessel comes into collision with another vessel as a result of the negligence of such other vessel and also of any act, neglect or default in the navigation or the management of the carrying vessel, the Merchant undertakes to pay the Carrier or, where the Carrier is not the owner and/or operator and/or demise charterer and in possession of the carrying vessel to pay the Carrier a trustee for the Owner and/or operator and/or demise charterer of the carrying vessel, a sum sufficient to indemnify the Carrier and/or owner and/or operator and/or demise charterer of the carrying vessel against all loss or liability to the other or non-carrying vessel and/or her owner and/or operator and/or demise charterer insofar as such loss or liability represents loss of or damage to their Goods or any claim whatsoever of the Merchant paid or payable by the other or non-carrying vessel and/or her owner and/or operator and/or demise charterer to the Merchant and set off, recouped or recovered by such other or non-carrying vessel and/or her owner and/or operator and/or demise charterer as part of their claim against the carrying vessel and/or her owner and/or the Carrier. The foregoing provisions shall apply also where the owners and/or operators and/or demise charterers and/or those in charge of any vessel or vessels or objects or things other than, or in addition to, the colliding vessels or objects or things are at fault in respect to a collision, contact, stranding or other accident.

24. GENERAL AVERAGE AND SALVAGE

- (1) The Carrier may declare general average which shall be adjustable according to the York/Antwerp Rules of 1974 at any place at the option of the Carrier and the amended Jason clause as approved by BIMCO is to be considered as incorporated herein and the Merchant shall provide such security as may be required by the Carrier in this connection.
- (2) Notwithstanding (1) above the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claims (and any expense arising therefrom) of a general average nature which may be made on the Carrier and shall provide such security as may be required by the Carrier in this connection.

25. LAW AND JURISDICTION

Any claim or dispute arising under this Bill of Lading shall be determined by the courts of the country where the Carrier has its principal place of business and according to the law of those courts or, at the option of the Merchant, by the New Zealand courts according to New Zealand law.

26. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have the power to waive or vary any 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.

27. USA CLAUSE PARAMOUNT (if applicable)

- (1) If Carriage includes Carriage to, from or through a port in the United States of America, this Bill of lading shall be subject to the United States Carriage of Goods by Sea Act 1936 (US COGSA), the terms of which are incorporated herein and shall be paramount throughout Carriage by sea and the entire time that the Goods are in the actual custody of the Carrier or his Sub-Contractor at the sea terminal in the United States of America before loading onto the vessel or after discharge therefrom, as the case may be. As thus applied other than at sea, US COGSA is applied to determine the liability of the Carrier who shall be entitled to the benefits of the defences and limitation therein, notwithstanding that the loss or damage did not occur at sea.
- (2) The Carrier shall not be liable in any capacity whatsoever for loss, damage or delay of or to the Goods while the Goods are in the United States of America away from the sea terminal and are not in the actual custody of the Carrier. At these times the Carrier acts as agent only to procure Carriage of Persons under the usual terms and conditions and those Persons if, for any reason, the Carrier is denied the right to act as agent only at these times, his liability for loss, damage or delay to the Goods shall be determined in accordance with Clause 6 hereof.
- (3) If US COGSA applies the liability of the Carrier and/or the vessel shall not exceed US\$500 per package or customary freight unit (in accordance with Section 1304(5)), unless the value of the Goods has been declared on the face hereof, in which case Clause 7(3) shall apply.