

Bertschi Global
Terms and Conditions of Carriage

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Affiliate means in relation to a person, any entity that directly or indirectly **controls**, is **controlled** by, or is under common **control** with that person from time to time and **controls** means the beneficial ownership of at least 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls** or **controlled** shall be interpreted accordingly.

Applicable Law means all applicable laws, regulations, codes (including the IMDG Code) or requirements (or any combination of the foregoing) and Sanctions applicable to the performance of the Carriage or the Cargo.

Cargo means the whole or part of the cargo received from the Merchant and includes any Tank Container not supplied by or on behalf of the Carrier.

Carriage means any operations or services (including the provision of Tank Containers and all related documentary, customs and information technology processes used or produced) undertaken by or on behalf of the Carrier in relation to the Cargo.

Carrier means the entity identified as carrier on the Transport Document.

Carrier Group means Bertschi Global AG and its Affiliates from time to time.

Carrier's Agents includes the company within the Carrier Group or the independent agent of the Carrier which arranged the Carriage and/or issued the Transport Document, the company within the Carrier Group or the independent agent of the Carrier in the country where the Cargo is loaded and/or received and the company within the Carrier Group or the independent agent of the Carrier in the country where the Cargo is discharged and/or delivered.

Combined Carriage means Carriage, which is not Port to Port Carriage.

Cyber Event means an unauthorised destruction, alteration, disclosure of, access to, or control of a **digital environment**, and **digital environment** means information technology systems, operational technology systems, networks, internet-enabled applications or devices and the data contained within such systems.

Compulsory Legislation means an international convention or national law which applies compulsorily to any element of the Carriage and which cannot be departed from, including US COGSA in the case of US Carriage.

Demurrage means the demurrage charges at origin and/or destination set out in the Offer Document in respect of (i) any Tank Container supplied by, or on behalf of, the Carrier and/or (ii) any road vehicle supplied by, or on behalf of, the Carrier or its Sub-Contractor, in each case for the period of time exceeding the free time at origin/destination (as appropriate) as set out in the Offer Document and the Transport Document, or where not stated in the Offer Document or the Transport Document, the Carrier's standard demurrage charges and free time set out on the Carrier's website [<https://www.bertschi.com/global>].

Force Majeure Event includes (i) actual, threatened or reported war, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; (ii) act of piracy and/or violent robbery and/or capture/seizure; act of terrorists; act of hostility or malicious damage; (iii) blockade, generally imposed trade restriction, embargo; (iv) act (whether lawful or unlawful) of government or public authority or any Person or body acting or purporting to act as or on behalf of such government or public authority, compliance with any law or order, direction, instruction or recommendation of government or public authority or any Person or body acting or purporting to act as or on behalf of such government or public authority, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, pandemic; (vi) act of God, natural disaster or extreme natural event such as earthquake, landslide, flood, drought or extraordinary weather condition; (vii) explosion; fire; destruction of equipment; destruction of port facilities; obstruction of waterways; Cyber Event; break-down of transport, communication, information system or power supply, in each case unless caused by negligence of the Carrier; (viii) ionising radiation or contamination by radioactivity, chemical or biological contamination; (ix) general labour disturbance such as boycott, strike and lock-out, occupation of factories and premises; or (x) any other similar event or circumstance unless caused by negligence of the Carrier.

Freight includes freight, Demurrage, detention costs and all other expenses and monetary obligations, including duties, taxes and dues, incurred by the Carrier.

Hague Rules means the provisions of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924.

Hague-Visby Rules means the Hague Rules as amended by the Protocol signed at Brussels on 23 February 1968 (it is expressly provided that nothing in these Terms and Conditions shall be construed as contractually applying the Hague-Visby Rules).

IMDG Code means the IMO's International Maritime Dangerous Goods Code.

IMO means the International Maritime Organization.

Offer Document means the quotation issued by or on behalf of the Carrier to the Merchant in relation to the Carriage, specifying its commercial terms.

Merchant includes the Shipper, the Person who tendered the Cargo to the Carrier, the Consignee, the receiver of the Cargo and the Person entitled to receive the Cargo, the holder of the Transport Document, the Person who entered into the contract for the Carriage of the Cargo with the Carrier, any Person owning or lawfully entitled to the possession of the Cargo or this Transport Document, the Person on whose account the Cargo is handed to the Carrier, any Person acting on behalf of, or subrogated to, any of the above mentioned Persons, including agents, servants and sub-contractors.

Package means a Tank Container.

Person includes an individual, corporation or other legal entity.

Port to Port Carriage arises (i) if the Carrier has indicated a place of receipt and a place of delivery that are both a port on the Transport Document in the relevant spaces or (ii) where there is no place of receipt and no place of delivery indicated on the Transport Document.

Sanctions has the meaning given to it in Clause 3.1.5.

SDR means Special Drawing rights as defined by the International Monetary Fund.

SOLAS means the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the SOLAS Guidelines, as amended from time to time.

SOLAS Guidelines means the Guidelines regarding the verified gross mass of a container carrying cargo (MSC.1/Circ.1475) published by the International Maritime Organization, as amended or updated or replaced from time to time and italicised words or phrases in clauses 3.1.2, 4.4 and 9.1.6 shall have the meaning given to them by the SOLAS Guidelines.

Sub-Contractor includes owners, charterers and operators of Vessels (other than the Carrier), stevedores, terminal and/or groupage operators, road, rail and air transport operators, customs brokers, warehousemen and any independent contractors, servants or agents employed by the Carrier in the performance of the Carriage and includes their direct and indirect sub-contractors, servants and agents,

Tank Container means a cylindrical, reusable stainless steel tank surrounded by a protective frame, which conforms to ISO (International Organization for Standardization) standards specifically designed for the transportation of liquids and gases in bulk.

Tariff means the Ocean Transportation Intermediaries Tariffs registered with the Federal Maritime Commission and located at www.dpiusa.com, or which is available on request from the Carrier or its agents.

Transport Document means the bill of lading or sea waybill or similar transport document (whether issued in paper or electronic form) issued by or on behalf of the Carrier in relation to the Cargo, and where a Transport Document has not yet been issued, a reference in these Terms and Conditions to a Transport Document shall be deemed a reference to the order confirmation issued by the Carrier.

US COGSA means the U.S. Carriage of Cargo by Sea Act of the United States of America 1936, 46 U.S.C. § 30701.

US Carriage means Carriage to, from or through any port of the United States of America.

USD means the lawful currency of the United States of America.

Value of the Cargo means the FOB/FCA invoice value of the Cargo plus freight and insurance if paid. If there is no such invoice value, the value of the Cargo shall be determined according to the value of the Cargo at the place and time of delivery to the Merchant or the place and time when it should have been so delivered.

Vessel means any waterborne craft used in the Carriage under the Transport Document, including feeder vessels, ocean vessels and inland water vessels and whether named in the Transport Document or substituted vessels.

Waterborne Carriage means the Carriage of the Cargo by Vessel.

1.2 Interpretation

1.2.1 Any words following the word **including** shall be interpreted without limitation to the generality of the preceding words.

1.2.2 All Persons defined as Merchant shall be jointly and severally liable to the Carrier for the fulfilment of the Merchant's obligations, including the payment of the Freight.

2. ABOUT THE TRANSPORT DOCUMENT

2.1 The Transport Document is not a negotiable document of title unless consigned "to order", to the order of a named person, or "to bearer".

2.2 When a Transport Document is issued, the Carrier will issue a sea waybill in respect of the Cargo. No bill of lading will be issued unless the Carrier expressly agrees to do so in writing.

2.3 The Transport Document shall be *prima facie* evidence only of the Carrier taking the Cargo described in the Transport Document under its control, provided that, and only to the extent that, the Carrier had reasonable means of checking the Cargo.

3. MERCHANT'S WARRANTIES AND OBLIGATIONS

3.1 The Merchant represents and warrants that:

3.1.1 in agreeing to these Terms and Conditions it is, or is the agent of and has the authority of, the Person owning or entitled to the possession of the Cargo and the Transport Document or any Person who has a present or future interest in the Cargo and the Transport Document;

3.1.2 the description and particulars of the Cargo and Tanks Container(s) set out on the Transport Document including the *verified gross mass*, weight, content, measure, quantity, quality, condition, marks and value have been checked by the Merchant and are full and correct;

3.1.3 the Cargo is properly and sufficiently prepared and is loaded within the Tank Container (i) in a manner adequate to withstand the ordinary risks of Carriage having regard to its nature and (ii) in compliance with all Applicable Laws;

3.1.4 the Cargo (i) will not cause loss, damage or expense to the Carrier, the Vessel or other conveyance used in the Carriage of the Cargo or to any other cargo and (ii) contains no contraband, stolen goods, or other illegal material or substances or any Cargo which violates any intellectual or other property rights of any third party and the Merchant undertakes not to provide the Carrier with any instruction that will or may violate such rights;

3.1.5 neither the Cargo nor any party with any interest in the Cargo (whether as Merchant or otherwise) is subject to any laws, regulations, directives orders relating to economic or financial, trade, immigration, aircraft, shipping or other sanctions, export controls, trade embargoes or restrictive measures (**Sanctions**) from time to time imposed, administered or enforced by any state, country, supranational or international governmental, judicial or regulatory organisation, institution, agency, department or authority;

3.1.6 the Cargo can be carried, delivered, held and received, and all associated payments can be made and received, in each case without causing, or leading, the Carrier to contravene any

Sanction, whether by reason of the nature of the Cargo, the country or place of loading and/or discharge or the involvement of any party (whether as Merchant or otherwise);

3.1.7 when a Tank Container is supplied by the Merchant, the Tank Container (i) has been properly and sufficiently prepared having regard to the nature of the Cargo and the requirements of all Applicable Laws; (ii) complies with the safety requirements of CSC (Convention for Safe Containers) plates and the ISO standards and all applicable rules and regulations established by IMO or other competent authorities or bodies, (iii) meets or exceeds applicable stacking weight and racking test load minimums and (iv) is in good condition and fit for purpose.

3.2 The Merchant shall comply with all applicable laws, regulations and requirements (including any imposed at any time before or during the Carriage relating to anti-terrorism measures, import or export prohibition, sanctions or restriction) of customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses and losses (including without prejudice to the generality of the foregoing, freight for any additional Carriage undertaken) incurred or suffered arising out or in connection with any failure to so comply or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Cargo.

3.3 The Merchant retains the sole liability for all customs duty, import and export VAT, anti-dumping duty, countervailing duty or other import or export taxes, duties, deposits, fines and levies as may apply to the Cargo (whether actual or potential). If, notwithstanding and without prejudice to this clause 3.3, the Carrier is required or elects to pay such dues, taxes and charges, the Merchant shall reimburse the Carrier on demand in respect of such amounts.

4. THE CARGO

4.1 Dangerous Cargo

4.1.1 Cargo which are or may become dangerous (whether or not so listed in any Applicable Law), inflammable, damaging, injurious (including radioactive materials), noxious or which are or may become liable to damage any property or Person or the environment whatsoever (**Dangerous Cargo**) shall not be tendered to the Carrier for Carriage without:

- (a) the Carrier's express consent in writing, which shall include the Carrier issuing an order confirmation in respect of the Dangerous Cargo provided the nature, characteristics and classification of the Cargo was disclosed in full prior to the Carrier issuing such order confirmation;
- (b) all information necessary for the Carrier to safely carry the Dangerous Cargo and/or perform any obligation in connection with the Cargo in accordance with all Applicable Laws, including the name, nature, characteristics and classification of the Dangerous Cargo, the appropriate manner and method of storage, handling, stowage and carriage of the Dangerous Cargo and any other information as may be required by the Carrier and all documents required under Applicable Laws for the Carriage of the Dangerous Cargo and as may be required by the Carrier, including a current (less than 2 years old) and valid Safety Data Sheet (SDS) and Dangerous Goods Declaration and the Merchant shall ensure that all such information and documents are provided within the deadlines set in the Applicable Laws and by the Carrier;

- (c) the Tank Container being distinctly marked, labelled, sealed and placarded on the outside so as to indicate the nature and characteristics of any Dangerous Cargo and so as to comply with all Applicable Laws; and
- (d) for any Dangerous Cargo requiring the use of a chemical inhibitor to maintain its stability, the Merchant represents and warrants that it has exercised reasonable care to ensure that the inhibitor will remain effective for the duration of the transit or storage through delivery at the final destination.

4.1.2 If any Cargo is delivered to the Carrier in breach of any of the provisions of clause 4.1.1, or if, at any time in the opinion of the Carrier, the Cargo is, or is liable to become, of a dangerous, inflammable and/or damaging nature, or a hazard to any property or Person or the environment, the Cargo may at any place be unloaded, destroyed or rendered harmless (or any combination of the foregoing), as circumstances may require, without compensation to the Merchant and without prejudice to the Carrier's rights to the Freight or to the Carrier's other rights and remedies.

4.2 Cargo with special handling requirements

4.2.1 The Merchant undertakes not to tender for Carriage any Cargo which require temperature control without previously giving written notice (and, where appropriate filling in the box on the front of the bill of lading if the bill of lading has been prepared by the Merchant) of their nature and the particular temperature range to be maintained.

4.2.2 The Merchant acknowledges and agrees that, unless the Carrier confirms in writing the receipt and acceptance of the notice referred to in clause 4.2.1, the Carriage shall not include a requirement that the Cargo be maintained at any particular temperature.

4.2.3 The Carrier shall not be liable for any loss of or damage to the Cargo arising from defects, derangement, breakdown or stoppage of the temperature controlling machinery, plant, insulation or any apparatus of the Tank Container, provided that the Carrier or its servants or Sub-Contractors exercised reasonable diligence before releasing the empty Tank Container to the Merchant.

4.3 Excluded Cargo

The Merchant shall not deliver to the Carrier, or cause the Carrier to deal with, handle or transport any goods listed by the Carrier as prohibited or restricted from time to time.

4.4 Weighing of Tank Containers

4.4.1 The Merchant shall provide the Carrier with the *verified gross mass* for each *packed container* carried pursuant to the Transport Document in accordance with SOLAS and any other requirements and deadlines set by the Carrier. The Merchant acknowledges and agrees that the Carrier will rely on the accuracy and timeliness of such *verified gross mass* information and use this to comply with its obligations to Sub-Contractors whether in accordance with SOLAS or otherwise.

4.4.2 In the event that the Merchant does not comply with its obligations under clause 4.4.1, or where the Carrier reasonably believes that the *verified gross mass* provided by or on behalf of the Merchant is inaccurate or incomplete, the Carrier may, at its sole discretion and at the Merchant's cost, establish the verified gross mass of each *packed container*.

4.4.3 The Carrier shall not have any liability:

- (a) in the event that the *verified gross mass* provided by or on behalf of the Merchant is inaccurate or incomplete; or
- (b) resulting from any delay from establishing the *verified gross mass* in accordance with clause 4.4.2.

5. TANK CONTAINERS

5.1 Supply of Tank Containers by, or on behalf of, the Carrier

5.1.1 Where the Carrier agrees to provide a Tank Container the Carrier is under no obligation to provide a Tank Container of any particular type or quality, unless otherwise agreed in writing by the Carrier. The Merchant shall ensure that the Tank Containers and any connected equipment and accessories requested of the Carrier are compatible for use with the Cargo and the ordinary operations of Carriage. The Carrier may refuse to carry any Tank Container that in the opinion of the Carrier is not compatible with the Cargo or the ordinary operations of Carriage.

5.1.2 These Terms and Conditions shall govern the responsibility of the Carrier in connection with or arising out of the supply of a Tank Container to the Merchant.

5.1.3 The Merchant shall inspect each Tank Container before it is filled or loaded and the use of a Tank Container shall be *prima facie* evidence of that Tank Container being suitable and sound for use in connection with the Cargo and the Carriage.

5.1.4 Any Tank Container released into the care of the Merchant for use in connection with the Carriage shall be at the sole risk of the Merchant until its redelivery in accordance with clause 5.3.

5.1.5 In the event any of the Tank Containers are lost or damaged before they are returned in accordance with clause 5.3, the Merchant shall be liable for:

- (a) where the Tank Container can, in the Carrier's reasonable opinion be repaired, the costs of repair;
- (b) in all other circumstances, the cost of replacement of the Tank Container with a similar Tank Container in a condition equal to (but no better than) its condition when new.

5.2 Loading and discharging of Tank Containers

5.2.1 The Merchant shall ensure that:

- (a) the Cargo is properly loaded into, and properly discharged from, any Tank Container and that all the manholes and valves of the Tank Container are properly closed on completion of loading and discharge;
- (b) every Tank Container is filled to the minimum and maximum allowed limits under Applicable Law relating to the carriage of goods by sea, road, rail or barge, and is not loaded over the maximum legal weight limits at origin, destination and when in transit and remains within such allowed limits; and
- (c) representative samples of the Cargo are drawn from the Tank Container after filling is complete, and that such samples are safely retained for ninety (90) days and made available to the Carrier on request.

5.2.2 Before the Cargo is unloaded, the Merchant shall ensure that:

- (a) the Tank Container is inspected and can be safely unloaded;
- (b) the Cargo is in a sound and acceptable condition;
- (c) the Tank Container is directed to the correct discharge location and, where appropriate, the Cargo is discharged into the correct storage tank, road truck, railcar, barge or plant facilities; and
- (d) the proper unloading procedures are agreed and followed.

5.2.3 The Carrier shall not be liable for:

- (a) the manner in which the Tank Container was loaded or discharged;
- (b) a failure to properly close any manhole or valve;
- (c) the unsuitability of the Cargo for carriage in the Tank Container actually used;
- (d) the unsuitability or defective condition of the Tank Container actually used, provided that where the Tank Container has been supplied by or on behalf of the Carrier, the provisions of clause 8 shall apply;
- (e) where it is necessary to heat the Cargo for the purpose of discharge, the effects of such heating procedure.

5.2.4 In the event that:

- (a) compressors, flexible hoses, couplings and/or other equipment is required for loading or discharge and is supplied by the Carrier, the use of the equipment is at the sole risk of the Merchant;
- (b) any assistance the driver gives at the Merchant's loading facility and/or at the place of unloading, is given by the driver acting as the Merchant's agent and any such assistance shall not in any way vary the obligations and/or full responsibility of the Merchant to load or discharge the Cargo.

5.2.5 All loaded Tank Containers shall be sealed by or on behalf of the Merchant and with the seal numbers shown on the Transport Document. If the Container is delivered by the Carrier with an original seal intact, the Carrier shall not be liable for any shortage or contamination of Cargo ascertained at discharge.

5.3 Return of Tank Containers supplied by, or on behalf of, the Carrier

5.3.1 The Merchant shall ensure the proper redelivery of the Tank Container to the Carrier at the time and place prescribed by the Carrier. In the absence of the Carrier prescribing a time or place for redelivery, the Merchant must contact the Carrier or the Carrier's Agents for redelivery instructions.

5.3.2 The Merchant shall return the Tank Container with the interior empty less permitted residue of 20 litres (or 5 U.S. gallons), free of spillage, free of labels and placard, other than those labels and placards which are required under Applicable Law to remain on the Tank Container due to the nature of the Cargo the Tank Container was used to carry.

5.3.3 The Merchant shall continue to pay all Demurrage on the Tank Container until it is returned in accordance with this clause 5.3, or where the Tank Container was lost or damaged, until the repair or the replacement costs are paid in accordance with clause 5.1.5.

6. **PERFORMANCE OF THE SERVICES**

6.1 Liberties

6.1.1 The Carrier may at its, or its Sub-Contractor's, sole discretion and at any time and without notice to the Merchant:

- (a) use any route whatsoever and any means of transport or storage whatsoever;
- (b) load or carry the Cargo on any Vessel whether named on the Transport Document or not;
- (c) transfer the Cargo from one conveyance to another including transshipping and/or substitute any mode of transport at any time;
- (d) load or unload the Cargo from any conveyance at any place (whether or not named on the Transport Document) and/or store the Cargo using any means of storage at any port or place;
- (e) comply with any orders, instructions or recommendations given by any government or authority or any Person or body acting or purporting to act as or on behalf of such government or authority or having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions.

6.1.2 For Waterborne Carriage, the Carrier or its Sub-Contractor may sail with or without pilot, proceed, return to and stay at any port or place whatsoever, once or more and in any order (whether towards or away from the port or place of delivery), proceed at any speed, undergo repair, adjust equipment, dry dock, tow or be towed, assist other vessels in any situation,

deviate for the purpose of saving life or property or of landing ill or injured persons, and call for fuel at any port(s) or place(s).

- 6.1.3 Anything done in accordance with this clause 6.1 or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation of whatsoever nature or degree.

6.2 Stowage of containers

- 6.2.1 Cargo of any description may be stowed on or under deck without notice to the Merchant, unless it is specifically stipulated on the Transport Document that the Cargo will be carried under deck, and any deck stowage shall not be a deviation of whatsoever nature or degree.

- 6.2.2 If carried on deck, the Carrier shall not be required to note, mark or stamp on the Transport Document any statement of such on deck carriage. Subject to clause 6.2.3, such Cargo whether carried on deck or under deck shall participate in General Average and such Cargo shall be deemed to be within the definition of goods for the purposes of any Compulsory Legislation and the Hague-Visby Rules.

- 6.2.3 Cargo carried on deck shall be subject to the same liability regime for loss or damage or delay as Cargo carried under deck.

6.3 Matters affecting performance

- 6.3.1 If at any time the Carriage is or is likely, in the Carrier's opinion, to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including the condition of the Cargo and any of the Merchant or Sub-Contractors becoming insolvent), or if it appears at any time that the Cargo, or any part of it, cannot safely or properly be carried, or carried further, either at all or without incurring any additional expense or taking measures in relation to the Tank Container or Cargo whenever and howsoever arising (whether or not the Carriage has commenced) the Carrier may without notice to the Merchant:

- (a) treat the performance of the Carriage as terminated and place the Cargo at the disposal and responsibility of the Merchant at any place or port;
- (b) suspend the Carriage of the Cargo and store the Cargo ashore or afloat under these Terms and Conditions and endeavour to forward it as soon as possible, but the Carrier makes no representations as to the maximum period of suspension; or
- (c) without prejudice to the Carrier's right to subsequently abandon the Carriage under Clause 6.3.1(a), continue the Carriage and (as the Merchant's agent only) take any measures and/or incur any reasonable additional expense to carry or continue the Carriage thereof.

- 6.3.2 In any event the Carrier shall be entitled to the full Freight on Cargo received for Carriage.

6.4 Delivery of the Cargo

- 6.4.1 The Cargo shall be deemed delivered:

- (a) as soon as they have:
 - (i) been unloaded from the Vessel at the port of discharge (where there is no place of delivery indicated on the Transport Document, or where the port of discharge and the place of delivery indicated on the Transport Document are the same); or
 - (ii) arrived at the place of delivery indicated on the Transport Document; or
 - (iii) (where the Carrier is required or permitted by law or custom to release the Cargo to port or other authorities of that port or delivery place) been released or are in the control (physical or legal or both) of the port or other authorities, at any location,

at which point the Carriage and the Carrier's responsibility for the Cargo ends.

- 6.4.2 Any mention herein of parties to be notified of the arrival of the Cargo is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.
- 6.4.3 If the Merchant does not take delivery of the Cargo or any part thereof at the time and place stated in Clause 6.4.1, the Merchant shall pay Demurrage and the Carrier shall be entitled, without notice and without prejudice to any other rights that it may have against the Merchant and as the Merchant's agent only, to store the Cargo and the costs of such storage shall be due and payable upon demand by the Merchant to the Carrier. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Cargo or that part thereof shall cease.
- 6.4.4 If the Cargo is unclaimed within 7 days from discharge of the Cargo from the Vessel (where there is no place of delivery indicated on the Transport Document, or where the port of discharge and the place of delivery indicated on the Transport Document are the same), or whenever in the Carrier's judgment the Cargo will deteriorate, decay, be damaged or incur charges, the Carrier may, at its sole discretion and without further notice to the Merchant and without any responsibility attaching to it, sell, abandon or otherwise dispose of the Cargo solely at the risk and expense of the Merchant and apply any proceeds of sale in reduction of the sums due to the Carrier by the Merchant.

7. SUB-CONTRACTING

- 7.1 The Carrier shall be entitled to sub-contract on any terms whatsoever the whole or any part of the Carriage and the Merchant agrees (without prejudice to clause 7.2 and to the extent that the Merchant is entitled to bring claims against any of the Sub-Contractors) that any Sub-Contractor can, at its option, apply its own terms of contract with the Carrier to defend claims brought by the Merchant.
- 7.2 The Merchant undertakes:
 - 7.2.1 that no claim or allegation shall be made against any Sub-Contractor whatsoever, whether directly or indirectly, which imposes or attempts to impose upon any Sub-Contractor any liability whatsoever in connection with the Cargo or the Carriage of the Cargo, whether or not

arising in contract, bailment, tort, negligence, breach of express or implied warranty or otherwise; and

7.2.2 if any claim or allegation should nevertheless be made against a Sub-Contractor, to indemnify the Carrier against all consequences thereof.

7.3 Without prejudice to the other provisions in this clause 7, every Sub-Contractor shall have the benefit of all terms, rights, defences, provisions, conditions, exceptions, limitations and liberties herein benefitting the Carrier, including clause 14 (Governing Law and Jurisdiction) hereof (**Defences**), as if these Terms and Conditions (including clause 14 hereof) were expressly for its benefit and in entering into the Transport Document the Carrier, to the extent of the Defences, does so not only on its own behalf but also as agent or trustee for each such Sub-Contractor and each such Sub-Contractor shall to the extent of the Defences be or be deemed to be party to the Transport Document.

8. **LIABILITY**

8.1 Save where expressly stated otherwise in these Terms and Conditions, Compulsory Legislation or any other legislation which applies by virtue of the Transport Document, the Carrier shall provide the Carriage using reasonable skill and care.

8.2 In the event of loss of or damage to the Cargo, the following provisions shall (subject to clause 8.4) apply in relation to (i) Port to Port Carriage and (ii) Combined Carriage, where it is known that the loss of or damage occurred during any element of the Combined Carriage which involves Waterborne Carriage:

8.2.1 where any Compulsory Legislation applies, the liability of the Carrier howsoever occurring will be determined and limited in accordance with such Compulsory Legislation;

8.2.2 where no Compulsory Legislation applies, the liability of the Carrier howsoever occurring will be determined and limited in accordance with the Hague Rules Article 1-8 inclusive (excluding Article 3 rule 8);

8.2.3 the Carrier shall be under no liability whatsoever for loss or damage to the Cargo while in its actual or constructive possession before loading or after discharge, howsoever caused. Notwithstanding the foregoing, in case and to the extent that any Compulsory Legislation provides to the contrary, the Carrier shall have the benefit of every right, defence, limitation and liberty in the Hague Rules, Hague-Visby Rules, or any other rules as applied by clause 8.2 during such additional compulsory period of responsibility, notwithstanding that the loss or damage did not occur at sea;

8.2.4 for US Carriage, the liability of the Carrier howsoever occurring will be determined and limited in accordance with US COGSA. US COGSA, including its limitation provision of \$500 per package, shall be applicable for Cargo carried on deck and under deck.

8.3 In relation to all Combined Carriage (save for Combined Transport covered in clause 8.2 and subject to clause 8.4) the Carrier shall (subject to any Compulsory Legislation) be relieved of any liability whatsoever for any loss of or damage to the Cargo if, and to the extent that, such loss or damage is caused by:

8.3.1 strike, lockout, stoppage or restraint of labour, the consequences of which the Carrier is unable to avoid by the exercise of reasonable diligence;

8.3.2 any cause or event which the Carrier is unable to avoid, and the consequences of which the Carrier is unable to prevent by the exercise of reasonable diligence,

and the burden of proof that the loss or damage was not due to a cause(s) or event(s) specified in clause 8.3.1 or 8.3.2 shall rest on the Merchant.

8.4 To the extent loss of or damage to the Cargo arises out of or in connection with the provision of Tank Containers by or on behalf of the Carrier, the provisions of this clause 8.4 shall apply to such loss or damage to the exclusion of clauses 8.2 and 8.3. The Carrier shall (subject to any Compulsory Legislation) be relieved of any liability whatsoever for any such loss of or damage to the Cargo if, and to the extent that, such loss or damage is caused by:

8.4.1 strike, lockout, stoppage or restraint of labour, the consequences of which the Carrier is unable to avoid by the exercise of reasonable diligence;

8.4.2 any cause or event which the Carrier is unable to avoid, and the consequences of which the Carrier is unable to prevent by the exercise of reasonable diligence,

and the burden of proof that the loss or damage was not due to a cause(s) or event(s) specified in clause 8.4.1 or 8.4.2 shall rest on the Merchant.

8.5 The Carrier's liability for any loss or damage to the Cargo in relation to all Carriage shall be limited to the lesser of:

8.5.1 the Value of the Cargo; and

8.5.2 if any Compulsory Legislation applies, the amount set out in such Compulsory Legislation; or

8.5.3 in all other cases, USD 500 per Package.

8.6 The Carrier's liability for any loss or damage to the Cargo arising out of the inland carriage within the United States is subject to the exclusive terms and conditions of the U.S. Transportation Services Agreement, terms of which are available upon request.

8.7 Exclusions

Notwithstanding any other provision of these Terms and Conditions but subject to any Compulsory Legislation, the Carrier shall have no liability for any loss or damage arising from:

8.7.1 a Force Majeure Event;

8.7.2 a failure by the Merchant to perform, or a delay by the Merchant in performing, any relevant obligation under these Terms and Conditions, including the Merchant's obligations under clause 4; or

8.7.3 the information or documents provided by or on behalf of the Merchant, including the information and documents provided under clause 4, not being accurate and/or complete.

8.8 Delay

Save as otherwise provided herein, the Carrier does not undertake that the Cargo or any documents shall arrive at any place at any particular time and shall in no circumstances be liable for any loss or damage whatsoever, whether direct, indirect or consequential caused by delay. Without prejudice to the foregoing, if the Carrier is nevertheless found liable for delay, liability shall be limited to the Freight applicable to the relevant stage of the Carriage.

8.9 General liability provisions

8.9.1 Ad valorem

If the value of the Cargo has been declared by the Merchant in writing before shipment and inserted on the Transport Document, and extra freight has been paid thereon and the Carrier has consented in writing to such declared value, the amount of the declared value shall be substituted for the liability limits laid down in these Terms and Conditions.

8.9.2 Exclusion and limitation

Notwithstanding any other provision of these Terms and Conditions but subject to any Compulsory Legislation:

- (a) the Carrier shall not be liable for any loss of profits, loss of sales, loss of business, loss of goodwill or reputation (in each case whether direct or indirect) or for any indirect or consequential loss; and
- (b) the Carrier's maximum aggregate liability for all events arising out of or in connection with the Carriage (other than for loss of or damage to the Cargo to which the limits in clause 8 applies) shall be limited to an amount equal to the Freight payable to the Carrier in respect of such Carriage.

8.9.3 Notification and time bar

- (a) The Cargo, as described in the Transport Document, shall be deemed *prima facie* to have been delivered by the Carrier in full and in good order and condition unless notice of loss of, or damage to, the Cargo, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier or to its representative at the place of delivery before or at the time of removal of the Cargo into the custody of the Person entitled to delivery thereof under the Transport Document or, if the loss or damage is not apparent at the time of delivery, within three consecutive days thereafter. The Carrier shall, subject to any Compulsory Legislation, be discharged of all liability for any loss of, or damage to, the Cargo unless notice is given as aforesaid, except where the Merchant can show that it was impossible for it to comply with this time limit, and that it has given notice as soon as it was reasonable for it to do so.
- (b) Where Compulsory Legislation applies, the time limit for bringing claims will be as prescribed by the applicable rules.

- (c) In all other cases, the Carrier shall be discharged of all liability whatsoever unless suit is brought and written notice thereof is given to the Carrier within nine months after the delivery of the Cargo or the date when the Cargo should have been delivered.

- 8.10 Nothing in these Terms and Conditions shall operate to limit or deprive the Carrier of any statutory protection, defence, exception or limitation of liability authorised by any applicable laws, statutes or regulations of any country. The Carrier shall have the full benefit of all laws, statutes or regulations as if it were the owner of any carrying Vessel.
- 8.11 The defences, limits and exclusions of liability provided for in these Terms and Conditions shall apply in any action against the Carrier whether the action be found in contract, bailment, tort (including negligence), breach of statutory duty, express or implied warranty or otherwise.
- 8.12 Save as set out in these Terms and Conditions the Carrier shall not be liable for loss of or damage to any Cargo or delay howsoever arising (whether caused by negligence or otherwise).

9. INDEMNITY

- 9.1 The Merchant shall promptly indemnify the Carrier against all costs (including the costs of investigating and defending any claims), expenses, claims, losses, liabilities, orders, awards, fines, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered by the Carrier, the Carrier's Agents, the Sub-Contractors or any member of the Carrier Group (and their respective employees, servants, agents, insurers or reinsurers) as a result of or in connection with any of the following:
 - 9.1.1 any breach by the Merchant of any of the warranties given or obligations undertaken by the Merchant under these Terms and Conditions, including the provisions of clauses 3 (Merchant's warranties and obligations), clause 4 (The Cargo) or clause 5.3 (Return of Tank Containers supplied by, or on behalf of, the Carrier) (including all expenses for additional cleaning, including the drumming, trucking and disposal of the residue which exceeds the permitted residue under clause 5.3.2);
 - 9.1.2 the Carrier becoming liable to any other party (including to any authority having legal jurisdiction over the Carriage and/or the Cargo) and/or incurring or suffering additional costs by reason of the Carrier carrying out the Merchant's instructions (including instructions regarding the discharge of the Cargo into the third party's facilities or equipment), including any additional costs resulting from or incurred or suffered in connection with any of the circumstances mentioned in clauses 5.2.3, 6.3.1(a), 6.3.1(b) or 6.3.1(c);
 - 9.1.3 the Carriage of any Dangerous Cargo (as defined in clause 4.1), including in connection with any of the circumstances mentioned in clause 4.1.1 or 4.1.2;
 - 9.1.4 any cause arising from, or with respect to, the Cargo for which the Carrier is not responsible, including under clauses 5.2, 4.2 and 6.4.1;
 - 9.1.5 the Carrier incurring liability in excess of its liability under the provisions of these Terms and Conditions regardless of whether such liability arises from, or in connection with a breach of contract, negligence or breach of duty by the Carrier, its agents (including the Carrier's Agents), servants, members of the Carrier Group or Sub-Contractors;

9.1.6 delayed, inaccurate or incomplete information, including *verified gross mass* information, provided by the Merchant on which the Carrier relies.

9.2 The parties agree that for the purposes of the Carrier enforcing and pursuing a claim under clause 9.1, the losses, damages, liabilities, costs and expenses of the Carrier's Agents, the Sub-Contractors and/or any member of the Carrier Group (and their respective employees, servants, agents, insurers or reinsurers) suffered as a result of any of the matters listed in clause 9.1 shall be deemed to be losses, damages, liabilities, costs and expenses of the Carrier in relation to such enforcement action and claim.

10. FREIGHT AND CHARGES

10.1 The provisions of the Tariff are incorporated herein and will apply to US Carriage. Particular attention is drawn to the provisions therein, if any, relating to free storage time and to Tank Container demurrage. In the case of inconsistency between these Terms and Conditions and the Tariff, these Terms and Conditions shall prevail. For the avoidance of doubt, where the applicable free storage time and demurrage set out in the Tariff is different from the Demurrage, or where there is no applicable free storage time and demurrage stated in the Tariff, the Carrier shall be entitled to charge the Demurrage.

10.2 Freight shall be deemed earned and due on the earlier of (i) receipt of the Tank Container by, or on behalf of, the Merchant or (ii) receipt of the Cargo by the Carrier. The Freight shall be paid and non-returnable in any event, ship lost or not. The Carrier shall invoice the Demurrage at origin and/or destination to the Merchant at the intervals set out in the Offer Document, or where no such intervals are set out in the Offer Document, the Demurrage shall be invoiced monthly by the Carrier.

10.3 The Freight has been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier shall be entitled to production of the commercial invoice for the Cargo or true copy thereof and to inspect, re-weigh, re-measure and re-value the Cargo and if the particulars are found by the Carrier to be incorrect, it is agreed that the Merchant shall pay the Carrier the Freight that would have been applicable had the correct particulars been provided (credit being given for the Freight charged) and the costs incurred by the Carrier in establishing the correct particulars.

10.4 The Merchant shall reimburse the Carrier on demand 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 a Force Majeure Event.

10.5 All sums due to the Carrier (including the Freight) are payable within the payment terms set out in the Offer Document, or where no payment terms are set out in the Offer Document for some or all sums, such sums are due on demand. All sums due to the Carrier (including the Freight) shall be paid by the Merchant to the Carrier or any member of the Carrier Group or Carrier's Agents without any set-off, counterclaim (unless the counterclaim is not in dispute or confirmed by final court decision), deduction or stay of execution at the latest before delivery of the Cargo, unless expressly agreed otherwise in writing.

11. NON-PAYMENT PROTECTION

11.1 If the Merchant fails to pay any sum due to the Carrier (including the Freight) when due, the Merchant shall pay to the Carrier interest on such sum at 8% per annum over the Bank of England's official

Bank Rate from time to time from the due date until payment (whether before or after judgment), such interest to accrue on a daily basis provided that this right shall not prejudice any other right or remedy in respect of any such sum.

11.2 Lien

11.2.1 The Carrier shall have a general lien on the Cargo and any documents relating thereto, funds held and any other cargo in respect of which the Carrier is providing services to the Merchant or which come into the possession or control of the Carrier or member of the Carrier Group (**Other Cargo**) and any documents relating thereto for all sums whatsoever due at any time to the Carrier and/or the Carrier Group under the Transport Document, or otherwise, and for General Average contributions to whomsoever due.

11.2.2 The Carrier shall also have a general lien against the Merchant on the Cargo and any documents relating thereto, funds held and Other Cargo and any documents relating thereto for all sums due from the Merchant to the Carrier or any member of the Carrier Group or both under any other contract.

11.2.3 The Carrier may exercise its lien at any time and at any place in its sole discretion, whether the Carriage is completed or not and with or without notice. In any event any lien shall:

- (a) survive the delivery of the Cargo and/or the Other Cargo; and
- (b) extend to cover all cost and expenses of exercising its lien (including any costs incurred in enforcing and preserving its lien (including storage charges) and in recovering or attempting to recover any sums due from the Merchant).

11.2.4 To enforce and satisfy the Carrier's lien, the Carrier shall have the right, at the Merchant's expense, to sell the aforementioned Cargo, Other Cargo and documents by public auction or private treaty, without notice to the Merchant and without any liability towards the Merchant.

12. GENERAL AVERAGE

12.1 General Average shall be adjusted at any port or place at the Carrier's option, and be settled according to the York-Antwerp Rules 1994, this covering all Cargo whether carried on or under deck. The New Jason Clause as approved by BIMCO at the date of the Transport Document is deemed to be incorporated herein and is available on request.

12.2 Notwithstanding clause 12.1, the Merchant shall indemnify the Carrier in respect of any claims of a General Average nature and or salvage which may be made against the Carrier in respect of the Cargo and any Tank Containers supplied by or on behalf of the Carrier and shall provide such security as may be required by the Carrier in this connection.

12.3 The Merchant shall, if required by the Carrier and prior to delivery of the Cargo, promptly provide such security, including a cash deposit, as the Carrier deems sufficient to cover the estimated contribution of the Cargo and any salvage and special charges in relation to the Cargo and any Tank Containers supplied by or on behalf of the Carrier. The Carrier's lien at clause 11.1 shall extend to such security and the Merchant shall indemnify the Carrier against all consequences of failing to comply with this obligation.

- 12.4 The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant or to notify the Merchant of any event that could give rise to General Average being declared.

13. **BOTH TO BLAME**

If a Vessel on which the Cargo is being carried collides with another ship as the result of (i) the negligence of that other ship, and (ii) any act, neglect or default of the master, mariner, pilot of the Vessel (or other servant of the owner or operator of the Vessel) in the navigation or management of the Vessel, and the Merchant recovers payment for loss of or damage to the Cargo from the other ship, and the other ship obtains from the Carrier (or the Sub-Contractors) a contribution towards the payment it made to the Merchant, then the Merchant will reimburse the Carrier in respect of that contribution and shall indemnify the Carrier for any other loss, liability or expenses incurred by the Carrier (or the Sub-Contractor) to the other ship whatsoever arising out of the other ship's claim for contribution.

14. **LAW AND JURISDICTION**

- 14.1 Subject to clause 14.2, disputes arising under the Transport Document shall be determined by the courts of England and in accordance with the laws of England. No proceedings may be brought before other courts, unless both parties expressly agree the choice of the other court or arbitration tribunal and the law to be then applicable.
- 14.2 The Carrier shall have the right to bring any claim in connection with or arising out of the Carriage against the Merchant in the court of any jurisdiction.

15. **MISCELLANEOUS PROVISIONS**

15.1 Conflicts

Except where expressly agreed otherwise in writing, the Transport Document shall, in so far as it is inconsistent with the terms of any contractual arrangement the Carrier, or any member of the Carrier Group, and the Merchant may have entered into, be paramount and govern the Services.

15.2 Variation and invalidity

- 15.2.1 No servant or agent of the Carrier shall have power to waive or vary any term of these Terms and Conditions unless such waiver or variation is in writing and is specifically authorised or ratified in writing by the Carrier.
- 15.2.2 If any provision in these Terms and Conditions is held to be invalid, illegal or unenforceable, it shall be deemed deleted and such invalidity or unenforceability shall attach only to such provision and not affect the validity of the remaining provisions of these Terms and Conditions.

- 15.3 Except as expressly stated in these Terms and Conditions, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law. Any representations or statements whether made orally or written elsewhere are hereby excluded, provided that this clause 15.3 shall not exclude or limit any liability or any right which

either the Carrier or the Merchant may have in respect of pre-contractual statements made or given fraudulently.

- 15.4 The Sub-Contractors and the members of the Carrier Group shall have the benefit of, and the right to enforce, the Defences (as defined in clause 7.3) in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this clause, any person who is not either the Carrier or the Merchant may not enforce, or otherwise have the benefit of, any provision of these Terms and Conditions. The rights of the Carrier and the Merchant to agree to rescind, amend or otherwise vary or to waive any of the provisions of these Terms and Conditions or to settle any dispute or other matter arising out of or in connection with these Terms and Conditions on such terms as they shall in their absolute discretion think fit shall not be subject to the consent of the Sub-Contractors or any member of the Carrier Group.
- 15.5 The Merchant shall keep confidential and not disclose to any other person or publish any information relating to the Freight or the Carrier's customers or Sub-Contractors except in so far as such disclosure is required by law.