

Standard Terms and conditions of BOLUDA LINES S.A.

Contract of carriage continued from the front page

## TERMS AND CONDITIONS FOR CARRIAGE

### I.- GENERAL PROVISIONS

#### 1. Definitions

- "Bill of Lading" means the present document evidencing the transport contract, whether it is issued in a negotiable form as negotiable Bill of Lading or otherwise in a non-negotiable form (as a straight Bill of lading or Seawaybill). The official language of this Bill of Lading is English.
- "Carrier" means BOLUDA LINES S.A. on whose behalf this Bill of Lading has been issued.
- "Shipper" means the person who concludes this present transport contract with the Carrier.
- "Consignee" means the person entitled to receive the Goods from the Carrier.
- "Merchant" means and includes the Shipper, Consignee, holder of this Bill of Lading, the receiver of the Goods and any person owing or entitled to the possession of the Goods or of this Bill of Lading or anyone acting on behalf of such a person.
- "Goods" means the whole or any party of the cargo and any packing carried under this Bill of Lading received from the Shipper and includes any packing materials, as well as containers, pallets or similar articles, units or vehicles of transport or packaging not supplied by the Carrier, irrespective of whether such property is to be or is carried on or under deck.
- "Container" means any container (including an open top container), flat rack, platform, trailer, transportable tank, pallet or any similar article used to consolidate Goods or any ancillary equipment.
- "Freight" includes all charges payable to the Carrier in accordance with applicable Tariff and this Bill of Lading, including storage per diem and demurrage and detention.
- "Combined Transport" arises if a Place of Receipt and/or a Place of Delivery (different from the Port of Loading and/or the Port of Discharge) are indicated on the front hereof in the relevant spaces. Combined Transport consists of Sea Transport and inland transport.
- "Sea Transport" means carriage between the Port of Loading and the Port of Discharge. Sea Transport arises if the carriage is not a Combined Transport.
- "Sub-contractor" includes but it is not limited to owners, charterers and operators of vessels (other than the Carrier), as well as stevedores, terminal and groupage operators, road and rail transport operators, warehousemen and any independent contractors employed by the Carrier performing the carriage and any direct or indirect sub-contractors, servants and agents thereof, whether in direct contractual privity or not.
- "Vessel" means the vessel named in the front hereof or any substituted vessel, feeder vessel, lighter or other watercraft utilized by the Carrier for the carriage by sea under this Bill of Lading which may be a feeder Vessel or an ocean Vessel.

#### 2. Warranty. Negotiability and title to the Goods.

- 2.1. Every person defined as "Merchant" is jointly and severally liable towards the Carrier for all the various undertakings, responsibilities and liabilities of the Merchant under or in connection with this Bill of Lading and to pay the Freight due under it without deduction or set-off. The Merchant warrants that in agreeing to the terms and conditions in this Bill of Lading he is, or has the authority of, the person owing or entitling possession of the Goods and this Bill of Lading.
- 2.2. This Bill of Lading is issued in a negotiable form unless it is marked "no negotiable" and shall constitute title to the goods. It shall be issued to the order or in favour of the bearer and the holder, by endorsement, shall be entitled to receive or to transfer the goods herein mentioned. The Carrier may require the surrender of the original Bill of Lading duly endorsed in exchange for delivery of the Goods. If a set of various original Bills of Lading has been issued, upon Shipper's request, the number of originals issued shall be indicated, and the responsibility of the Carrier shall cease if having issued a set with several originals the Carrier has in good faith delivered the Goods to any person in exchange for the surrender of one of the original Bills of Lading issued. If the Bill of Lading is issued in a no- negotiable form, it will not be a document of title of the Goods and the Carrier shall be relieved from liability by delivering the Goods to the named Consignee or to any other person in accordance with Consignee's instructions.

#### 3. Carrier's Tariff.

The Terms and Conditions of the Carrier's applicable Tariff are incorporated herein. **Special attention is drawn to terms and conditions therein relating to free storage time and to additional charges concerning container and vehicle storage demurrage or detention. A copy of the applicable Tariff can be obtained from the Carrier or its agent upon request and are available at Carrier's web site (<http://www.boluda.com.es>) and the Merchant is deemed to know and accept such Tariff.**

### II.- PERFORMANCE OF THE CONTRACT.

#### 4. Subcontracting.

- 4.1. The Carrier shall be entitled to sub-contract on any terms whatsoever the whole or any part of the carriage, including liberty to further sub-contract.
- 4.2. The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort, negligence or otherwise shall be made against any servant, agent, or Subcontractor of the Carrier. If any such claim or allegation should nevertheless be made, the Merchant agrees to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent and Subcontractor shall have the benefit of all terms and conditions, including every exemption or limitation of liability, defense or immunity of whatsoever nature contained herein applicable to the Carrier or to which the Carrier is entitled hereunder or otherwise benefitting the Carrier under this Bill of Lading, as if such terms and conditions were expressly for their benefit.
- 4.3. The provisions of clause 4.2, including but not limited to the undertaking of the Merchant contained therein, shall extend to all claims or allegations of whatsoever nature against other persons using space or slots on the Vessel.
- 4.4. The Merchant further shall procure that no claim or allegation in respect of the Goods shall be made against the Carrier by any person which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the carriage of the Goods other than in accordance with the terms and conditions of this Bill of Lading, whether or not arising out of negligence or misdelivery on the part of the Carrier, and if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

#### 5. Methods and routes of transportation. Deck Cargo.

- 5.1. The Carrier is entitled to perform the transport and all services related thereto in any reasonable manner and by any reasonable means, methods or routes. The Carrier may at any time and without notice to the Merchant (a) use any means of transport or storage whatsoever, the Carrier does not promise or undertake to load, carry or discharge the Goods on/from any particular Vessel; (b) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, even though transhipment or forwarding of the Goods by such means may not have been contemplated or provided for herein; (c) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advertised route) at any speed and proceed to, return to and stay at any port or place whatsoever (including the Port of Loading herein provided) once or more often, and in any order in or out of the route or in a contrary direction to or beyond the Port of Discharge once or more often; (d) load and unload the Goods at any place or port (whether or not any such port is named on the front hereof as the Port of Loading or Port of Discharge) and store the Goods at any such port or place, including but not limited to the use of off-dock storage at any port; (e) comply with any orders or recommendations given by any government or authority or any Person or body purporting to act as or on behalf of such government or authority or having under the terms of the insurance on any conveyance employed by the Carrier the right to give orders or directions. The liberties set out above may be invoked by the Carrier for any purpose whatsoever whether or not connected with the carriage of the Goods, including but not limited to loading or unloading other goods, bunkering or embarking or disembarking any person(s), undergoing repairs and/or drydocking, towing or being towed, assisting other vessels, making trial trips and adjusting instruments. Anything done or not done in accordance with this clause or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.
- 5.2. The Goods may be packed by the Carrier in Containers and consolidated with other goods in Containers. Goods, whether packed in Containers or not, may be carried on deck or under deck without notice to the Merchant unless it is specifically stipulated on the front hereof that the Containers or Goods will be carried under deck. If carried on deck, the Carrier shall not be required to note, mark or stamp on the Bill of Lading any statement of such on-deck carriage. Save as provided in clause 5.3. clause such Goods (except livestock) carried on or under deck and whether or not stated to be carried on deck shall participate in general average and shall be deemed to be within the definition of Goods for the purpose of the Hague-Visby Rules or any compulsorily applicable legislation and shall be carried subject to such Rules.
- 5.3. Goods which are out of gauge and/or are stowed on or in open top containers, flat racks or platforms, and which are stated on the front hereof to be carried on deck, and all livestock whether carried on deck or under deck, are carried without any responsibility whatsoever on the part of the Carrier for loss or damage of whatsoever nature or delay arising during the carriage whether caused by unseaworthiness or negligence or any other cause whatsoever and the Hague-Visby Rules shall not apply.

#### 6. Matters affecting Carrier's Performance.

- 6.1. If at any time the carriage under this Bill of Lading is or is likely to be affected by any hindrance or risk of any kind (including the condition of the Goods) not arising from any fault or neglect of the Carrier and which cannot be avoided by the exercise of reasonable endeavours, the Carrier may at its sole discretion and without prior notice to the Merchant and whether or not the carriage is commenced, either:



- (a) carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, by an alternative route to that indicated in this Bill of Lading or that which is usual for Goods consigned to that Port of Discharge or Place of Delivery; or
  - (b) suspend the carriage of the Goods and store them ashore or afloat upon the terms and conditions of this Bill of Lading and endeavor to forward them as soon as possible, but the Carrier makes no representations as to the maximum period of suspension; or
  - (c) abandon the carriage of the Goods and place them at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient, or from which the Carrier is unable by the exercise of reasonable endeavors to continue the carriage, 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 received for the carriage, and the Merchant shall pay any additional costs incurred by reason of the abandonment of the Goods. If the Carrier elects to use an alternative route under clause 6.1 (a) or to suspend the carriage under clause 6.1 (b) this shall not prejudice its right subsequently to abandon the carriage.
- 6.2. If the Carrier elects to invoke the terms of this clause 6, notwithstanding the provisions of clause 5 the Carrier shall be entitled to such additional Freight and costs as the Carrier may determine.

#### 7. Delivery. Delay in delivery. Refusal.

- 7.1. Goods shall be deemed to be delivered when they have been handed over or placed at the disposal of the Consignee or his agent at the place designated in this Bill of Lading or when the goods have been handed over to any authority or other party to whom, pursuant to the law or regulation applicable at the place of delivery, the goods must be handed over, or such other place at which the Carrier is entitled to call upon the Merchant to take delivery. If the Carrier is obliged to discharge the Goods into the hands of any customs, port or other authority, such discharge shall constitute due delivery of the Goods to the Merchant under this Bill of Lading.
- 7.2. The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff or as otherwise agreed. Delivery after the free time for delivery as per Carrier's Tariff or as otherwise agreed shall entitle the Carrier to charge the applicable storage/demurrage daily rate as per Carrier's Tariff or as otherwise agreed. If the Merchant fails to do so, the Carrier may without notice unpack the Goods if packed in Containers and/or store the Goods ashore, afloat, in the open or under cover at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the Goods, including for misdelivery or non-delivery, shall cease and the costs of such storage shall forthwith upon demand be paid by the Merchant to the Carrier.
- 7.3. If the Goods are unclaimed within a reasonable time or whenever in the Carrier's opinion the Goods are likely to deteriorate, decay or become worthless, or incur charges whether for storage or otherwise in excess of their value, the Carrier may at its discretion and without prejudice to any other rights which it may have against the Merchant, without notice and without any responsibility attaching to it, sell, abandon or otherwise dispose of the Goods at the sole risk and expense of the Merchant and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant under or in connection with this Bill of Lading.
- 7.4. Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this clause and/or to mitigate any loss or damage thereto shall constitute an absolute abandonment and waiver by the Merchant of any claim whatsoever relating to the Goods or the carriage thereof, the Carrier being discharged from any liability whatsoever in respect of the refused Goods. The Carrier shall be entitled to an indemnity from the Merchant for all costs whatsoever incurred, including legal costs, for the cleaning and disposal of Goods refused and/or abandoned by the Merchant.

### III.- CARRIER'S LIABILITY

#### 8. Paramount Clause.

- 8.1. These conditions shall 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 as stated at Clause 22 below.
- 8.2. This Bill of Lading shall be deemed to incorporate the Hague-Visby Rules. Save any compulsory provision of the national applicable law provides to the contrary, the liability of the Carrier in respect of any carriage by sea shall be determined by such Rules and such Rules shall also determine the liability of the Carrier in respect of any carriage by inland waterways as if such carriage were carriage by sea and such provisions shall apply to all goods whether carried on deck or under deck.

#### 9.-. Delay and Consequential Damages.

- 9.1. The Carrier does not promise or undertake to load, carry or discharge the Goods by any particular date or time. Advertised sailings and arrivals are only estimated times, and such schedules may be advanced, delayed or cancelled without notice, arrival times are not guaranteed by the Carrier. In no event shall the Carrier be liable for consequential damages or for any delay in scheduled departures or arrivals of any Vessel or other conveyances used to transport the Goods by sea or otherwise. If the Carrier should nevertheless be held legally liable for any such direct or indirect or consequential loss or damage caused by such alleged delay, such liability shall be limited to an amount equivalent to two and a half times the Freight payable for the carriage of the Goods affected by such alleged delay and in no event exceed the Freight paid for the carriage. The Carrier shall in no circumstance be liable for direct or indirect consequential loss or damage by any other cause whatsoever or for loss of profits.

#### 10. Carrier's liability: Sea Transport

- 10.1. Where the carriage is a Sea Transport: (a) the period of responsibility of the Carrier for any loss of or damage to the Goods shall commence only at the moment that the Goods are loaded on board the Vessel at the Port of Loading and shall end when the Goods have been discharged from the Vessel at the Port of Discharge; and (b) the liability of the Carrier shall be determined in accordance with Articles 1 to 9 of the Hague-Visby Rules save as otherwise provided in these Terms and Conditions, these articles of the Hague Visby Rules shall apply as a matter of contract, or where any national law would be otherwise compulsory applicable by such national law but in no event whatsoever shall the Carrier's liability exceed the maximum limit of liability as stated in Clause 12.2 below.
- 10.2. Notwithstanding the above, in case and to the extent that any applicable compulsory law, contractual arrangement, or custom practice, or any court decision extends the Carrier's period of responsibility whether in contract, tort, bailment or otherwise to all or any part of the period before loading, or the period after discharge, including for misdelivery, then Carrier shall have the benefit of every right, defence, immunity, limitation and liberty provided for in the Hague-Visby Rules during such additional period of responsibility, notwithstanding that the loss, damage or misdelivery did not occur during the carriage by sea.

#### 11. Carrier's Liability: Combined Transport.

- 11.1. Where the carriage is a Combined Transport the Carrier undertakes to perform and/or in his own name to procure performance of the carriage from the Place of Receipt or the Port of Loading, whichever is applicable, to the Port of Discharge or the Place of Delivery whichever is applicable. The Carrier shall have no liability whatsoever for loss or damage to the Goods occurring before acceptance by the Carrier of custody of the Goods or after the Carrier tendering the Goods for delivery at the applicable points, and the Carrier shall be liable for loss or damage occurring during carriage only to the extent set out below.
- 11.2. The Carrier's liability for Combined Transport shall be as follows:
- (a) Where the loss or damage is known to have occurred during the Sea Transport stage of the carriage, the liability of the Carrier shall be in accordance with clause 10.1 above.
  - (b) Where the loss or damage is known to have occurred during the inland transport stage, the liability of the Carrier shall be determined: (i) by the provisions contained in any international convention, national law or regulation applicable to the means of transport utilized, if such convention, national law or regulation would have been compulsorily applicable in the case where a separate contract had been made in respect to the particular stage of transport concerned, or (ii) where no international convention, national law or regulation would have been compulsorily applicable, by the contract of carriage issued by the Subcontractor carrier for that stage of transport, including any limitations and exceptions contained therein, which contract the Merchant and the Carrier adopt and incorporate by reference, it being agreed that the Carrier's rights and liabilities shall be the same as those of the Subcontractor carrier, but in no event whatsoever shall the Carrier's liability exceed the maximum limit of liability as stated in Clause 12.2 below.
  - (c) Where the stage of the carriage where loss or damage occurred is not known or cannot be established then it is contractually agreed as between the Merchant and the Carrier that the Carrier's liability shall be determined as if the loss and/or damage complained of occurred during the Sea Transport stage of carriage as provided at 11.2. (a) above.

#### 12. Limitation of Liability.

- 12.1. Subject always to the Carrier's right to limit liability as provided for herein, if the Carrier is liable for compensation in respect of loss of or damage to the Goods, such compensation shall be calculated by reference to the invoice value of the Goods. If there is no invoice value of the Goods or if any such invoice is not bona fide, such compensation shall be calculated by reference to the market value of such Goods at the place and time they are delivered or should have been delivered to the Merchant. The market value of the Goods shall be fixed according to the current market price, by reference to the normal value of goods of the same kind and/or quality.
- 12.2. Save as is provided in clause 12.3.below regarding the Declared Value being stated on the front of this Bill of Lading, the Carrier's Liability shall in no event (whether the damage or loss has occurred during Sea Transport or otherwise and whether the carriage involved is an international or a domestic one) exceed the equivalent of 666.67 SDR per package or unit or 2 SDR per kilogramme of gross weight of the goods lost or damaged, whichever is the higher. Where a container, pallet or similar article of transport is loaded with more than one package or unit, the packages or other shipping units numerated in this Bill of Lading as packed in such article of transport are deemed packages or shipping units. Except as aforesaid, such article of transport shall be considered the package or unit.



- 12.3. The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods. Higher compensation than that provided for in this Bill of Lading may be claimed only when, with the written confirmation of the Carrier, the value of the Goods declared by the Shipper upon delivery to the Carrier has been stated by the Carrier in the box marked "Declared Value" on the front of this Bill of Lading and ad valorem charges paid. In that case, the amount of the Declared Value, as long as it is consonant with the real value of the Goods, shall be substituted for the limits provided in this Bill of Lading. Any partial loss or damage shall be adjusted pro rata on the basis of such Declared Value.
- 12.4. Nothing in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection, defence, exemption or limitation of liability authorised by any applicable laws, statutes or regulations of any country or which would have been applicable in the absence of any of the terms set out in this Bill of Lading. The Carrier shall have the benefit of the said laws, statutes or regulations as if it were the owner of the Vessel.
- 12.5. These Terms and Conditions shall apply in any action against the Carrier for any loss or damage whatsoever and howsoever occurring and without restricting the generality of the foregoing, including delay, late delivery and/or delivery without surrender of this Bill of Lading and whether the action is founded in contract, bailment, or in tort and even if the loss, damage, or delay arose as a result of unseaworthiness, negligence or fundamental breach of contract. These conditions apply whenever claims relating to the performance of the contract evidenced by this Bill of Lading are made against any Sub-contractor, servant, agent or other person (including any independent contractor) whose services have been used in order to perform the contract, and the aggregate liability of the Carrier and of such Sub-contractors servants, agents or other persons shall not exceed the limits provided in this clause 12 above.

**13. Notice of Loss or damage. Time bar.**

- 13.1. Unless notice of loss or damage to the goods specifying the nature of the loss or damage is given in writing by the Merchant to the Carrier when the goods are handed over to the Merchant in the Place of Delivery or Port of Discharge, as the case may be, such handing over shall be evidence of delivery by the Carrier of the Goods as described in this Bill of Lading. Where the loss or damage is not apparent, notice in writing must be given within the 24 hours following delivery of the Goods. The above is without prejudice to relevant provisions under any applicable law, statute or regulation imposing on the Merchant the obligation to give notice of damage upon delivery as a legal requirement to protect its right to sue. Nothing in the Bill of Lading shall operate as a waiver and/or exclusion of any legal requirement as might be provided or imposed by any applicable law in order to protect Merchant's right of action against the Carrier.
- 13.2. At any event, the Carrier shall be discharged of all liability unless suit is brought within a year after the date of delivery of the Goods or the date when the goods should have been delivered.

**IV- DESCRIPTION OF GOODS AND MERCHANT'S RESPONSIBILITY**

**14. Description of Goods and Merchant's responsibility.**

- 14.1. This Bill of Lading shall be only *prima facie* evidence of the receipt by the Carrier in apparent good order and condition, except as otherwise noted, of the total number of Containers or other packages or units indicated in the box entitled "Carrier's Receipt" on the reverse side hereof, but not of the Goods contained therein. No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, temperature, marks, numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.
- 14.2. The Merchant warrants to the Carrier that the particulars relating to the Goods as set out on the front hereof have been checked by or on behalf of the Merchant on receipt of this Bill of Lading and that such particulars, and any other particulars furnished by or on behalf of the Merchant, are adequate and correct.
- 14.3. The Merchant warrants that the Goods are safely and securely packed in the Container or other transport units. The Carrier shall not be liable for any loss, damage or expense caused by defective or insufficient packing of goods or by inadequate loading, stowing or packing within Containers or other transport units when such loading of packing has been performed by the Merchant or on his behalf by a person other than the Carrier or by the contents being unsuitable for carriage in containers or other transport units, 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 upon reasonable inspection by the Merchant. The Merchant shall indemnify the Carrier against all loss, damage, liability and expense so caused. The Carrier does not accept liability for damage due to the unsuitability or defective condition or operation of Containers, reefer equipment or trailers supplied by the Merchant.
- 14.4. The Merchant also warrants that the Goods and/or Shipper-packed Containers are lawful Goods, contain no contraband, drugs, other illegal substances or stowaways, and that any hazardous or potentially dangerous characteristics of the Goods have been fully disclosed by or on behalf of the Merchant and that they will not cause loss, damage liability or expense to the Carrier, or to any other cargo, Containers, Vessel or person during the carriage.
- 14.5. If any particulars of any letter of credit and/or import license and/or sales contract and/or invoice or order number and/or details of any contract to which the Carrier is not a party are shown on the front hereof, such particulars are shown at the sole risk of the Merchant and for his convenience. The Merchant agrees that such particulars shall not be regarded as a declaration of value and shall in no circumstances whatsoever increase the Carrier's liability under this Bill of Lading and the Merchant agrees to indemnify the Carrier for any increased liability so caused, including reasonable legal expenses and costs.
- 14.6. The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing Freight for any additional carriage undertaken), incurred or suffered by reason thereof, or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof, including reasonable legal expenses and costs.
- 14.7. If by order of the authorities at any place, Goods are detained and/or seized and/or a Container has to be opened for the Goods to be inspected for any reason whatsoever, including but not limited to for a breach or infringement of a trademark, patent or other intellectual property right, the Carrier will not be liable for any loss or damage whatsoever incurred as a result of any opening, unpacking, inspection, re-packing, detention, destruction or delay. The Carrier shall be entitled to recover from the Merchant all charges, fines, costs, losses and expenses, including reasonable legal expenses and costs resulting from such action, including but not limited to any detention, demurrage and storage charges for the Goods and/or the Container.
- 14.8. If it appears at any time that the Goods cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measures in relation to the Container or the Goods, the Carrier may without notice to the Merchant (but as his agent only) take any measures and/or incur any reasonable additional expense to carry or to continue the carriage of the Goods, and/or to sell or dispose of them and/or to abandon the carriage and/or to store them ashore or afloat, under cover or in the open, at any place, whichever the Carrier in its absolute discretion considers most appropriate, and any sale, disposal, abandonment or storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any additional expense so incurred.

**15. Shipper-Packed Containers.**

- 15.1. Unless otherwise expressly stated in the front page of this Bill of Lading (such as reference to Less than Container Load –LCL- in which case LCL service charges shall be paid to the Carrier), in transportation of Goods in Containers, vehicles or any other article or unit of transport or packaging (whether or not supplied by the Carrier), the Shipper shall be the sole responsible for the packing, stuffing, stowage, lashing and securing of the Goods inside the Container or the unit of transport or packaging as well as for the unloading, unstuffing and unpacking of the Goods. Therefore any Container shall be deemed to be received by the Carrier and delivered to the Merchant on FCL/FCL (Full Container Load) basis and this Bill of Lading shall be a receipt only for such a Container but not for the Goods contained inside such a Container.
- 15.2. The Shipper shall inspect the Container for suitability for carriage of the Goods before packing it. The Merchant's use of the Container shall be *prima facie* evidence of its being sound and suitable for use.
- 15.3. If a Container has not been packed by or on behalf of the Carrier, the Carrier shall not be liable for loss of or damage to the Goods and the Merchant shall indemnify the Carrier against any loss, damage, liability or expense whatsoever and howsoever arising if caused by any matter beyond Carrier's control including but not limited to damages caused by:
- (a) the manner in which the Goods have been packed, stowed, stuffed or secured in the Container, or
  - (b) the unsuitability of the Goods for carriage in the Container supplied or for carriage in Containers between the Ports or Places specified herein, or
  - (c) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereof, provided that, if the Container has been supplied by or on behalf of the Carrier, this unsuitability or defective condition or incorrect setting would have been apparent upon inspection by the Merchant at or prior to the time when the Container was packed, or
  - (d) packing refrigerated Goods that are not properly pre-cooled to the correct temperature for carriage or before the refrigerated Container has been properly pre-cooled to the correct carrying temperature.
- 15.4. The Shipper is responsible for the packing and sealing of all shipper-packed Containers and, if a shipper-packed Container is delivered by the Carrier with an original seal as affixed by the Shipper or customs or security control intact, or the Carrier can establish bona fide circumstances in which the original seal was replaced, the Carrier shall not be liable for any shortage of Goods ascertained upon delivery.
- 15.5. The provisions above also apply with respect to vehicles, trailers, transportable tanks, flats and pallets or other transport units which have not been filled, packed or stowed by the Carrier.

**16. Return of containers.**



- 16.1. Containers, pallets or similar articles of transport supplied by or on behalf of the Carrier shall be returned to the Carrier in the same order and condition, normal wear and tear excepted, with interiors clean and within the time prescribed by the Carrier.
- 16.2. Containers released into the care of the Merchant for packing, unpacking or any other purpose whatsoever are at the sole risk of the Merchant until redelivered to the Carrier. The Shipper shall be liable for any loss of, damage to, or delay, including demurrage, of such articles during the period between handing over the Shipper and return to the Carrier for carriage.
- 16.3. The Carrier allows a period of free time for the use of the Containers and other equipment in accordance with the Tariff. Free time commences from the day the Container and other equipment is collected by the Merchant or is discharged from the Vessel or is delivered to the Place of Delivery as the case may be. The Merchant is required and has the responsibility to return to a place nominated by the Carrier the Container and other equipment before or at the end of the free time allowed at the Port of Discharge or the Place of Delivery. Should a Container not be returned within the time prescribed, demurrage, per diem and detention charges will be levied and payable by the Merchant thereafter in accordance with the Tariff.
- 16.4. The Merchant shall redeliver, to a place nominated by the Carrier, the Containers and other equipment in like good order and condition, undamaged, empty, odour free, cleaned and with all fittings installed by the Merchant removed and without any rubbish, dunnage or other debris inside. The Merchant shall be liable to indemnify the Carrier for any and all costs incurred reinstating or replacing Containers and other equipment not returned in the condition as specified above, including the reasonable legal expenses and costs of recovering the costs incurred and interest thereon.

#### 17. Perishable Goods. Refrigeration, heating, insulation.

- 17.1. Special Containers with refrigeration, heating, electrically ventilation or insulation or otherwise specifically equipped shall not be furnished unless contracted for and so noted on the front page of this Bill of Lading and extra Freight paid. The Merchant undertakes not to tender for carriage any Goods which require refrigeration, ventilation or any other special attention without giving written notice of their nature and the required supply air temperature or other setting of the thermostat, ventilation or other special controls. If the above requirements are not complied with, the Carrier shall not be responsible for any loss of or damage to the Goods howsoever arising.
- 17.2. If a supply air temperature is noted on the front of this Bill of Lading, the Carrier shall exercise due diligence to maintain such supply air temperature, plus or minus 2 degrees Celsius while the Goods are in its possession. **It is the Merchant's obligation to set and/or check that the temperature controls on the container are at the required carrying temperature and to properly set the vents.**
- 17.3. The Merchant must take note that refrigerated Containers are not designed:  
(a) to cool or freeze Goods which have been loaded into a Container at a temperature higher than their designated carrying temperature. The Carrier shall not be responsible for the consequences of the Goods being loaded at a higher temperature than that required for the carriage; nor  
(b) to monitor and control humidity levels, even if a setting facility exists, and because humidity is influenced by many external factors the Carrier does not guarantee and is not responsible for the maintenance of any intended level of humidity inside any Container.
- 17.4. The Carrier shall not be liable for any loss or damage to the Goods arising from latent defects, breakdown, defrosting, stoppage of the refrigerating or any other specialised machinery, plant, insulation and/or apparatus of the Container and any other facilities, provided that the Carrier exercised due diligence to maintain the Container supplied by the Carrier in an efficient state. The term "apparent good order and condition" when used in this Bill of Lading with reference to Goods which require refrigeration, ventilation or other specialised attention does not mean that the Goods, when received, were verified by the Carrier as them being actually at the carrying temperature, humidity level or other condition designated by the Merchant. The Carrier will not accept responsibility for the recording of temperatures in any form other than the data logger or any reefer log book or records maintained on board the Vessel.
- 17.5. The only duty and liability of the Carrier regarding refrigerated Containers is to plug-in the Container and maintain the equipment properly functioning during the carriage.

#### 18. Dangerous Goods.

- 18.1. The Carrier will not accept any Goods of a dangerous or hazardous nature without prior written notice of their full and true particulars and the Carrier's written approval to carry them. The Merchant shall comply with rules which are mandatory 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 case 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, in need be, the special precautions or handling to be taken. Such Goods shall be distinctly marked on the outside of the Container as well as on the outside of the packaging inside the Container so as to indicate the nature thereof and the marking must comply with the requirements of any applicable regulations including those contained in any relevant treaty.
- 18.2. Any such Goods are delivered to the Carrier without obtaining his consent and/or such marking or 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 without prejudice to the Carrier's right to Freight. The Merchant shall indemnify the Carrier against all loss, damage, personal injury, liability, costs, fines and/or expense causing to the Carrier, the Vessel, any cargo and/or other property whether on board or ashore, arising out of their being taken in charge, or their carriage, or of any service incidental thereto, whether or not the Merchant was aware of the nature of the Goods.

#### V. - FREIGHT.

#### 19. Freight.

- 19.1. Freight shall be paid without any reduction or deferment on account of any claim, counter claim or set-off, or stay of execution before delivery of the Goods and the Carrier shall be entitled to refuse delivery of the Goods to the Consignee if Freight has not been paid, except if the Carrier has otherwise, at its sole discretion, granted credit on any sums payable to it in which case the relevant credit terms and conditions as stated in the invoice or otherwise agreed by the Carrier shall apply but any granting of credit by the Carrier must be expressly agreed and approved in writing by the Carrier. Freight, whether prepaid or collect, shall be deemed fully earned by the Carrier at the moment when the Goods have been taken in his charge, and shall be paid in any event.
- 19.2. Freight and all other amounts mentioned in this Bill of Lading are to be paid in the currency named in this Bill of Lading.
- 19.3. All dues, taxes and charges or other expenses in connection with the goods shall be paid by the Merchant. Where any Container is supplied by the Carrier, the Merchant shall also pay all demurrage/detention charges when due. Despite the acceptance by the Carrier of instructions to collect Freight, demurrage/detention charges or other expenses from the Shipper or Consignee or any other Person, every person defined as Merchant in clause 1 shall be jointly and severally liable for the payment of all Freight and charges due in respect of the carriage under this Bill of Lading on receipt of evidence of demand and the absence of payment for whatever reason.
- 19.4. The Merchant warrants the correctness of the declaration of contents, weight, measurements and/or particulars of the Goods furnished, but for the purposes of verifying the freight basis the Carrier reserves the right to have the contents of Containers, trailers or similar units of transport inspected and if it is found that the declaration is not correct the Merchant shall be liable for the correct Freight and also for any expense thereby incurred.
- 19.5. Payment of Freight and charges to a freight forwarder, broker or anyone other than the Carrier shall not be deemed payment to the Carrier and shall be made at Merchant's sole risk.
- 19.6. The Carrier shall have a lien on the Goods for Freight and all sums due at any time to the Carrier under this contract, including those sums due by Carrier's Tariffs charged concerning container or vehicle storage, demurrage or detention (as per Clause 3 above), any other storage fees and the cost of recovering, and for general average contributions whenever due and may enforce such lien in any reasonable manner which he may think fit, including sale or disposal of the Goods

#### VI. - MISCELLANEOUS PROVISIONS

#### 20. General average and Salvage.

- 20.1. General Average shall be adjusted according to current version of York-Antwerp Rules, this covering all goods whether carried on deck or under deck. For these purposes, it is agreed that any adjustment of General Average shall be made at Madrid by an independent General Average adjuster duly appointed by the Carrier in accordance with the mentioned York-Antwerp Rules, the Merchant hereby expressly waiving and excluding any law or practice inconsistent thereof. General Average on a Vessel not operated by the Carrier shall be adjusted according to the requirements of the operator of that Vessel.
- 20.2. 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 as determined by the General Average adjuster appointed as provided in Clause 20.1. above and such determination as to liability for General Average contribution and his computation shall be final and binding for all parties to the adventure. If a salving ship is owned by the Carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

#### 21. Both to Blame.

The Both-to-Blame Collision Clause as adopted by BIMCO shall be considered as incorporated herein.

#### 22. Jurisdiction and Applicable Law.

Any action against the Carrier shall be determined by the courts of Spain, where the Carrier has his principal place of business, to the exclusion of the jurisdiction of the courts of any other country and in accordance with Spanish law (and in particular in accordance with Spanish Maritime Navigation Act 14/2014). In case of any dispute relating to Freight or other sums due to the Carrier, the Carrier may, at its sole option, bring suit proceedings



against the Merchant in the forum above referred or in the countries of the Port of Loading, Port of Discharge, Place of Delivery or in any jurisdiction where the Merchant has a place of business.

**23. Acceptance of the Terms and Conditions of Carriage by the Merchant.**

In accepting this bill of lading the Merchant becomes party to the contract of carriage and expressly accepts and agrees to all the terms and conditions, whether printed, stamped or otherwise incorporated on the front side and on the reverse side of this Bill of Lading and the terms and conditions of the Carrier's applicable Tariff as if they were all signed by the Merchant. If this Bill of Lading is issued in a non-negotiable form as a Sea-waybill the Shipper undertakes to provide the Merchant and in particular the Consignee with a legible copy of all the Terms and Conditions contained in this Bill of Lading.

Furthermore, in acceptance this Bill of Lading, every person defined as Merchant and in particular the Consignee and any holder of this Bill of Lading expressly acknowledges, accepts and agrees that the Carrier shall be entitled to avail himself of the defences, benefits, exemptions and limits of liability stated herein in any action against the Carrier in respect of loss or damage to Goods covered by the Bill of Lading. The above is notwithstanding the fact that the statements in the front page of this Bill of Lading as to the state and condition of the Goods shall be conclusive evidence of the receipt by the Carrier of the Goods as therein described when the Bill of Lading has been transferred to a third party acting in good faith.

The General Terms and Conditions of Carriage as stated herein apply to any carriage undertaken by the Carrier unless otherwise agreed by the Carrier. These General Terms and Conditions are available from Carrier or at Carrier's web page (<http://www.boluda.com.es>) and the Merchant acknowledges, accepts and agrees on such Terms and Conditions of Carriage and accepts them in their entirety as fully incorporated and applicable to any contract of transport even though they are not printed or stamped in the Bill Lading issued for a particular shipment.