BILL OF LADING - TERMS AND CONDITIONS

1. DEFINITIONS
"Carriage" means the whole or any part of the operations and services undertaken or performed by the Carrier in respect of the goods covered by this Bill of Lading.
"Carrier" means BESTERN LINE LIMITED stated on the front of this Bill of Lading as being the Carrier and on whose behalf this Bill of Lading has been issued.
"Charges" includes freight and all expenses and money obligations payable to the Carrier in accordance with the applicable Tariff, this Bill of Lading and any further obligations due as per the customs of the port.
"COGSA" means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936, as amended.
"Multimodal Transport" arises where the Carriage under this Bill of Lading is not a Port to Port Shipment.
"Container" includes any container, flat rack, platform, trailer, transportable tank, lift van, pallet or any similar article of transport or equipment used to consolidate goods.
"Goods" means the cargo supplied by the Merchant for Carriage and described on the face of this Bill of Lading and includes any Container, packing or equipment not supplied by or on behalf of the Carrier.
"Hague Rules" means the provisions of the International Convention for Unification of Certain Rules relating to Bill of Lading signed at Brussels on 25th August 1924, as amended.
"Hague-Visby Rules" means the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968, as amended.
"Holder" means any Person being in possession of this Bill of Lading to or in whom rights of suit and/or liability under this Bill of Lading have been transferred or vested.
"Merchant" includes the shipper, the consignee, the receiver of the Goods, the holder of this Bill of Lading, any person owning or entitled to the possession of the Goods or this Bill of Lading, any person having a present or future interest in the Goods or any person acting on behalf of any of the above mentioned persons, all of whom shall be jointly and severally liable to the Carrier for the payment of all Charges under this Bill of Lading and for the fulfilment of all and any Merchant's undertakings or obligations as defined in this Bill of Lading.
"Person" includes an individual, a partnership, a body corporate or other entity.
"Port to Port Shipment" arises where the Place of Receipt and the Place of Delivery are not indicated on the front of this Bill of Lading or if both the Place of Receipt and the Place of Delivery indicated are ports and the Bill of Lading does not in the nomination of the Place of Receipt or the Place of Delivery on the front hereof specify any place or spot within the area of the port so nominated.
"Package or Shipping Unit" includes freight unit and the term "unit" as used in the Hague Rules and Hague-Visby Rules.
"Stuffed" includes filled, consolidated, packed, loaded or secured.
"Sub-Contractors" includes the owners, charterers and operators of any Vessel, stevedores, terminal operators, forwarders, groupage operators, consolidators, warehouse operators, road, rail and air transport operators, and other independent contractors employed by or for the Carrier or taking instructions from the Carrier directly or indirectly in the performance of any of Carrier's obligations hereunder, and including sub-contractors of any degree.
"Vessel" means any water borne craft used in the Carriage under this Bill of Lading which may be a feeder vessel, an ocean vessel or an inland navigation vessel.
"Terms and Conditions" means all terms, rights, defenses, provisions, conditions, exceptions, limitations and liberties hereof.

2. CARRIER'S TARIFF
The provisions of the Carrier's applicable Tariff, if any, are incorporated herein. Copies of such provisions are obtainable from the Carrier or his agents upon request, where applicable, from a government body with whom the Tariff has been filed. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

3. WARRANTY
In agreeing to these Terms and Conditions, the Merchant warrants that he is, or has the authority to contract on behalf of, the Person owning or entitled to the possession of the Goods and this Bill of Lading or any Person who has a present or future interest in the Goods and this Bill of Lading, and is therefore liable for any and all Charges and Duties in connection with the Goods.

4. NEGOTIABILITY AND TITLE TO THE GOODS
4.1. This Bill of Lading shall be non-negotiable unless made out "to order" in which event it shall be negotiable and shall constitute title to the Goods and the holder shall be entitled to receive or to transfer the Goods herein described.
4.2. This Bill of Lading shall be prima facie evidence of the taking in charge by the Carrier of the Goods as herein described. However, proof to the contrary shall not be admissible when this Bill of Lading has been negotiated or transferred for valuable consideration to a third party acting in good faith.

5. CERTAIN RIGHTS AND IMMUNITIES FOR THE CARRIER AND OTHER PERSONS
5.1. The Carrier shall be entitled to sub-contract on any Terms the whole or any part of the Carriage.
5.2. The Merchant undertakes that no claim or allegation shall be made against any Person or Vessel whatsoever, other than the Carrier, including, but not limited to, the Carrier's servants or agents, any independent contractor and his servants or agents, and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken, which imposes or attempts to impose upon any such Person or Vessel any liability whatsoever in connection with the Goods or the Carriage, and if any claim or allegation should nevertheless be made to defend, indemnify and hold harmless the Carrier against all consequences thereof. Without prejudice to the foregoing every such Person and Vessel shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for his benefit and in entering into this contract the Carrier, to the extent of these provisions, does so not only on his own behalf but also as agent or trustee for such Persons and Vessels and such Persons and Vessels shall to this extent be or be deemed to be parties to this contract.
5.3. The Merchant shall defend, indemnify and hold harmless the Carrier against any claim or liability (and any expense arising therefrom) arising from the Carriage of the Goods insofar as such claim or liability exceeds the Carrier's liability under this Bill of Lading.
5.4. The defences and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier whether the action be found in Contract or in Tort.

6. CARRIER'S RESPONSIBILITY
6.1. Clause Paramount
6.1.1. All Carriage under this Bill of Lading shall have effect subject to any legislation enacted in any country making the Hague or Hague-Visby Rules compulsorily applicable and in the absence of any such legislation, in accordance with the Hague-Visby Rules or US COGSA (in the case of Carriage to or from the United States of America).
6.1.2 If, with exception of clause 7.1.9 any Terms of this Bill of Lading are held repugnant to the Hague Rules, Hague-Visby Rules, US COGSA or any other compulsorily applicable legislation then such provision shall be null and void without invalidating the remaining provisions hereof.
6.1.3. References in the Hague, Hague-Visby or US COGSA. to carriage by sea shall be deemed to include references to inland waterways or waterborne carriage.
6.2. Port-to-Port shipment
6.2.1. When loss or damage has occurred between the time of loading of the Goods by the Carrier at the Port of Loading and the time of discharge by the Carrier at the Port of Discharge, the responsibility of the Carrier shall be determined in accordance with the Hague, Hague-Visby Rules or US COGSA, as such may be compulsorily applicable.
6.2.2. The Carrier shall not be responsible for any fault of his personnel and of the Vessel's Crew in cases of damage or loss caused by fire or explosion on board the Vessel or caused by the navigation or management of the Vessel, in the latter case save for damage or loss caused when executing measures which were predominantly taken in the interest of the Goods ("Error in Navigation and Fire Defenses").
6.2.3. The Carrier shall not be responsible for any fault of other Persons involved in the navigation or management of the Vessel, in particular pilots on board of the Vessel or the Crew of a tug boat assisting the Vessel, in cases of damage or loss caused by the navigation or the management of the Vessel, save for damage or loss caused when executing measures which were predominantly taken in the interest of the Goods.
6.2.4. Prior to loading and after discharge the Carrier is not deemed to have custody of the Goods. The carrier is not responsible for acts or omissions of a terminal operator or any other freight station to which the Goods were submitted either by the Carrier or the Merchant. In the event that the Bill of Lading covers a shipment to or from the USA, however, US COGSA shall be applicable before the Goods are loaded on and after they are discharged from the vessel.
6.2.5. Unless notice of loss or damage be given in writing to the Carrier or his agent at the Port of Discharge before or at the time of the removal of the Goods into the custody of the person entitled to delivery thereof under the contract of Carriage, or, if the loss or damage is not apparent, within three (3) consecutive days, such removal shall be prima facie evidence of the delivery by the Carrier as described in this Bill of Lading and any such loss or damage which may have occurred to the Goods shall be deemed to be due to circumstances which are not the responsibility of the Carrier. The notice must clearly specify the damage. Notwithstanding the aforesaid, if a Container has been delivered to the Merchant, the Merchant must prove that the damage to or loss of the Goods did not occur during the period after delivery, when the Container was in the custody of the Merchant.
6.2.6. Compensation shall be calculated by reference to the value of the Goods at the place and the time they are delivered to the Merchant, or at the place and the time they should have been delivered. For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the sound value of the Goods is agreed to be the invoice value plus Freight and insurance if paid.
6.2.7. In the event that the Bill of Lading covers a shipment from or to the USA US COGSA shall apply. US COGSA shall also be applicable before the Goods are loaded on or after they are discharged from the vessel in the USA.
6.3. Multimodal Transport
6.3.1. Where the Carriage is Multimodal Transport, the Carrier undertakes to perform and/or in its 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 be under no liability whatsoever for loss or damage to the Goods occurring before or after the applicable points, and the Carrier shall be liable for loss or damage occurring from the time that the Goods are taken into its charge until the time of delivery only to the extent provided herein.
6.3.2. If the stage of Carriage where the loss or damage occurred is known, the Carriers' liability shall be determined as follows:
(a) by the provisions contained in any international convention or national law, which provisions cannot be departed from by private contract to the detriment of the Merchant, and would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of the Carriage where the loss or damage occurred ; or
(b) If no international convention or national law is applicable as described in clause 6.3.2 (a),or when national law provides for liability exceeding 2 SDRs per kilogram of the gross weight of the goods lost or damaged or US $ 500 per Package or Shipping unit, then the liability of the Carrier shall in no event exceed US $ 500 per Package or Shipping unit or 2 SDRs per kilogram of the gross weight of the Goods lost or damaged whichever is lesser at Carrier's option, or in respect of which the claim arises, or the value of such Goods, whichever is lesser.
(c) If it is established that loss or damage occurred during the port-to-port leg the "Error in Navigation and Fire Defenses" as per Clause 6.2.2. apply.
(d) If it is established that loss or damage occurred during the port-to-port leg for reasons stipulated in Clause 6.2.3 above, Clause 6.2.3. applies.
(e) In the event that part of the Multimodal Transport is a shipment to or from the USA and the damage to or loss of the Goods occurs at the time between the loading at the Port of Loading and the discharging at the Port of Discharge, US COGSA shall apply. US COGSA also applies before the Goods are loaded on or after they are discharged from the vessel in the USA.
(f) With respect to road Carriage between countries in Europe liability shall be determined in accordance with the Convention on the Contract for the International Carriage of Goods by Road (CMR), dated May 19, 1956 ; and during rail Carriage between countries in Europe according to the International Agreement on Railway Transports (CIM), dated February 25, as amended
6.3.3. If the stage of Carriage when the loss or damage occurred is not known, the loss or damage shall be presumed to have occurred during the ocean voyage and shall in no event whatsoever and howsoever arising, as defined in this Bill of Lading, exceed 2 SDRs per kilogram of gross weight of the Goods lost or damaged or US $500 or SDR 666,67 per Package or Shipping unit, lost or damaged, or the value of such Goods, whichever is lesser.
(a) Compensation shall be calculated by reference to the value of the Goods at the time they were delivered to the Carrier of Carriage.
(b) In the event that the law which is applicable under clause 6.2.1 is not mandatory and provides for liability exceeding 2 SDRs per kilogram, of the gross weight of the Goods lost or damaged or US $ 500 per Package or Shipping unit lost or damaged the maximum liability shall be 2 SDRs per kilogram of the gross weight of the goods lost or damaged, or US $ 500 per Package or Shipping unit lost or damaged whichever is lesser at Carrier's option, or in respect of which the claim arises, or the value of such Goods, whichever is lesser.
6.4. Subject to the applicable restrictions in statutory law and international conventions, the Carrier shall not be liable for damage caused by error in navigating or handling the vessel, including errors caused by the arrangement of a group of tugs or pushers.
6.5. Change of Destination by Merchant
In the event that the Merchant requests the Carrier to deliver the Goods at a port or place other than the Port of Discharge or the Place of Delivery originally designated in this Bill of lading and the Carrier in its absolute discretion agrees to such request, such further Carriage will be undertaken on the basis that the Bill of Lading Terms and Conditions are to apply to such Carriage.

7. GENERAL PROVISIONS
7.1. Sundry Liability Provisions
7.1.1. Hague Rules/Hague-Visby Rules
In the event that suit is brought in a Court other than the Court as provided for in Clause 26 and such Court contrary to Clause 26 accepts jurisdiction, then the Hague-Visby Rules are compulsorily applicable, if this Bill of Lading has been issued in a country where the Hague-Visby Rules are compulsorily applicable the Carrier's liability shall not exceed 2 SDRs per kilo of gross weight of the Goods lost or damaged, or SDR 666,67 per shipping unit, or the value of such Goods whichever is lesser. If this Bill of Lading has been issued in a country in which the Hague Rules apply, the Carrier's liability shall not exceed GBP 100 per Package or unit.
7.1.2. US COGSA
Notwithstanding any of the foregoing to the contrary, in the event that suit is brought in a court in the USA and such court, contrary to Clause 26 accepts jurisdiction, then US COGSA shall be compulsorily applicable to this contract of Carriage if this Bill of Lading covers a shipment to or from the USA. The provisions set forth in US COGSA shall also govern before the Goods are loaded on and after they are discharged from the Vessel. The Carrier's maximum liability in respect to the Goods shall not exceed US $ 500 per Package or, where the Goods are not shipped in packages, US $ 500 per customary freight unit unless the nature and value of the Goods has been declared by the Merchant and inserted in writing on page 2 of the Bill of Lading and said Merchant shall have paid the applicable ad valorem freight rate set forth in Carrier's Tariff.
7.1.3. Delay and Consequential loss
Save as otherwise provided herein, the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the transport. It is hereby agreed that ad valorem arrangements pursuant to clause 7.1.5 shall have no application to any claim for delay.
(a) Unless expressly agreed, the Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or to meet any particular market or use, and the Carrier shall not be liable for any loss or damage caused by delay.
(b) If notwithstanding the foregoing the Carrier is held responsible for the consequences of any delay, the Carrier's liability is limited to an amount to one time the freight applicable to the relevant stage of the transport. The limitation does not apply if it is proved that the delay in delivery resulted from an act or omission of the Carrier himself done with the intent to cause damage, or recklessly and with knowledge that damage would probably result.
7.1.4. Package or Shipping Unit Limitation
Where the Hague Rules, the Hague-Visby Rules, or any legislation making such Rules compulsorily applicable (such as COGSA) to this Bill of Lading apply, the Carrier shall not, unless a declared value has been noted in accordance with clause 7.1.5 below, be or become liable for any loss or damage to or in connection with the Goods in an amount per Package or Shipping unit in excess of the Package or Shipping unit limitation as laid down by such Rules or legislation.
7.1.5. Ad Valorem: Shipper's declared Value of Package or Shipping Unit
The Merchant agrees that higher compensation than that provided for in this Bill of Lading may not be claimed unless the nature and value of the Goods have beendeclared by the Merchant prior to the commencement of the Carriage, and inserted on the front of this Bill of Lading in the space provided and extra freight paid on such declared value, if required. In such case, the declared value if embodied in the Bill of Lading shall be the basis for calculating the Carrier's liability (if any), provided that such value shall only be prima facie evidence, but shall not be conclusive evidence of such value and further provided that such declared value does not exceed the true value of the Goods at destination. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.
7.1.6. Definitions of Package or Shipping Unit and Limitation
(a) A "Package or Shipping Unit" is the largest individual unit of partially or completely covered or contained cargo made up by or for the Shipper which is delivered and entrusted to the Carrier, including palletized units and each container stuffed and sealed by the Shipper or on its behalf, although the Shipper may have furnished a description of the contents of such sealed container on this Bill of Lading.
(b) Where a Container is used to consolidate Goods and such Container is stuffed by the Carrier, the number of Packages or Shipping Units stated on the face of this Bill of Lading in the box provided shall be deemed the number of Packages or Shipping Units for the purpose of any limit of liability per Package or Shipping Unit provided in any international convention or national law relating to the carriage of Goods by sea.
(c) Except as aforesaid the Container shall be considered the Package or Shipping Unit. The words "Shipping Unit" shall mean each physical unit or piece of cargo not shipped in a Package, including articles or things of any description whatsoever except Goods shipped in bulk, and irrespective of the weight or measurement unit employed in calculating freight charges, the limitations applicable thereto shall be the limitation provided in such convention or law which may be applicable, and in no event shall anything herein be shipped construed to be a waiver of limitation as to Goods shipped in bulk.
(d) Where the Hague Rules or Hague-Visby Rules or any legislation making such rules compulsorily applicable (such as COGSA) to this Bill of Lading apply, the Carrier shall not, unless a declared value has been noted, be or become liable for any loss or damage to or in connection with the Goods in an amount per Package or Shipping Unit in excess of the Package or Shipping Unit limitation as laid down by such rules or legislation. Such limitation amount according to COGSA is US $ 500, and according to Hague-Visby is 666.67 SDRs per Package or Shipping Unit. If no limitation amount is applicable under such rules or legislation, the limitation shall be US $500 per Package or Shipping Unit.
7.1.7. Rust, etc.
It is agreed that superficial rust, oxidations or any like condition due to moisture, is not a condition of damage but is inherent to the nature of the Goods and acknowledgement of receipt of the Goods in apparent good order and condition is not a representation that such conditions of rust, oxidation or the like did not exist on receipt.
7.1.8. Notice of Loss or Damage
The Carrier shall be deemed prima facie to have delivered the Goods as described in this Bill of Lading unless notice of loss of, or damage to, the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier or to his representative at the Place of Delivery before or at the time of removal of the Goods into the custody of the person entitled to delivery thereof under this Bill of Lading or, if the loss or damage is not apparent, within three (3) consecutive days thereafter.
7.1.9. Time bar
The Carrier shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the Carrier within nine months after delivery of the Goods or the date when the Goods should have been delivered. In the event that such time period shall be found contrary to any convention or law compulsorily applicable, the period prescribed by such convention or law shall than apply but in that circumstance only.
7.1.10. Scope of Application and exclusions
(a) The rights, defences', limitations and liberties of whatsoever nature provided for in this Bill of Lading shall govern in any action against the Carrier for loss or damage or delay, howsoever occurring and whether the action be founded in contract or in tort.
(b) Save as otherwise provided herein, the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct or indirect or consequential loss or damage or loss of profits, unless it is established that the Carrier himself acted with the intent to cause damage, or recklessly and with knowledge that damage would probably result. The Merchant shall indemnify the Carrier against any customs liabilities even if caused by loss of the Goods.

8. MERCHANT'S RESPONSIBILITY
8.1. All persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the fulfilment of all obligations and warranties undertaken by the Merchant either in this Bill of Lading, or required by law. The Merchant shall indemnify the Carrier against all loss, damage, expenses and fines, arising or resulting from any breach of these obligations and warranties.
8.2. The Merchant shall comply with all applicable laws, regulations and/or requirements of customs, ports and/or other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including Freight for any additional Carriage) incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect, or insufficient marking, number or addressing of the Goods or the discovery of any drugs, narcotics, stowaways or other illegal substances within Containers packed by the Merchant or inside Goods supplied by the Merchant, or stamp duty imposed by any country, and shall indemnify the Carrier in respect thereof.
8.3. The Merchant shall immediately 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 for incurred reinstating or replacing Containers and other equipment not immediately returned in the condition as specified above, and for any and all costs directly or indirectly caused by or as a result of delay, including the reasonable legal expenses and costs of recovering the costs incurred and interest thereon.
8.4. The description and particulars of the Goods set out on the face hereof are furnished by the Merchant and the Merchant warrants to the Carrier that the description and particulars including, but not limited to, of weight, content, measure, quantity, quality, condition, marks, numbers and value are correct.
8.5. The Merchant undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws, regulations and requirements which may be applicable.
8.6. No Goods which are or may become dangerous, inflammable or damaging or which are or may become liable to damage any property or person whatsoever shall be tendered to the Carrier for Carriage without the Carrier's expressed consent in writing and without the Container or other covering in which the Goods are to be transported and the Goods being distinctly marked on the outside so as to indicate the nature and character of any such articles and so as to comply with all applicable laws, regulations and requirements. If any such articles are delivered to the Carrier without such written consent and marking or if in the opinion of the Carrier the articles are or are liable to become of a dangerous, inflammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned, or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Charges. Whether or not the Merchant was aware of the nature of the Goods, the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of the Carriage of such Goods.
8.7. The Merchant shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Carrier or any person or vessel (other than the Merchant) caused by the Merchant or any person acting on his behalf or of which the Merchant is otherwise responsible.
8.8. Any information on the front of this Bill of Lading relating to any invoice, export or import license, documentary credit, insurance certificate, order, contract or like matters is included solely at the request of the Merchant and is not verified by the Carrier. Any such information shall not constitute any declaration of value of the Goods and shall in no way increase Carrier's liability hereunder.
8.9. The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, claim, liability or expense whatsoever arising from any breach of the provisions of this clause 8 or from any cause in connection with the Goods for which the Carrier is not responsible.

9. CONTAINERS
9.1. Goods may be stuffed by the Carrier in or on Containers and Goods may be stuffed with other Goods.
9.2. The Terms and Conditions of this Bill of Lading shall govern the responsibility of the Carrier in connection with arising out of the supply of a Container to the Merchant, whether supplied before or after the Goods are received by the Carrier or delivered to the Merchant.
9.3. If a Container has been stuffed by or on behalf of the Merchant :
9.3.1. The Carrier shall not be liable for loss of or damage to the Goods
(a) caused by the manner in which the Container has been stuffed;
(b) caused by the unsuitability of the Goods for Carriage in Containers;
(c) caused by the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Carrier, this paragraph shall only apply if the unsuitability or defective condition arose (a) without any want of due diligence on the part of the Carrier or (b) would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was stuffed;
(d) if the Container is not sealed at the commencement of the Carriage except where the Carrier has agreed to seal the container.
9.3.2. The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, claim, liability or expense whatsoever from one or more of the matters covered by 9.3.1(a)(b)(c)(d) above.
9.4. Where the Carrier is instructed to provide a Container, in the absence of a written request to the contrary, the Carrier is not under any obligation to provide a Container of any particular type or quality.

10. TEMPERATURE CONTROLLED CARGO
10.1. The Merchant undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice (and filling in the box on the front of the Bill of Lading if this Bill of Lading has been prepared by the Merchant or a person acting on his behalf) of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Merchant further undertakes that the Container has been properly pre-cooled, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Merchant before receipt of the Goods by the Carrier. If the above requirements are not complied with the Carrier shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
10.2. The Merchant should note that refrigerated Containers are not designed :
10.2.1. to freeze down cargo which has not been presented for stuffing at or below its designated carrying temperature and the Carrier shall not be responsible for the consequences of cargo being presented at a higher temperature than that required for the Carriage; nor
10.2.2. to monitor and control humidity levels, albeit a setting facility exists, in that humidity is influenced by many external factors and the Carrier does not guarantee the maintenance of any intended level of humidity inside any Container.
10.3. The term ' apparent good order and condition' when used in this Bill of Lading with reference to Goods which require refrigeration, ventilation or other specialized attention does not mean that the Goods when received were verified by the Carrier as being at the carrying temperature, humidity level or other condition designated by the Merchant.
10.4. With regard to refrigerated cargoes, the Carrier shall be deemed to have fulfilled his obligations under the Contract of Carriage and shall have no liability whatsoever if such refrigerated Goods are carried in a range of plus minus 2,5 degrees centigrade in regard to any temperature indicated on the front of this Bill of Lading.
10.5. The Carrier shall not be liable for any loss of or damage to the Goods arising from defects, derangement, breakdown, stoppage of the temperature controlling machinery, plant, insulation or any apparatus of the Container, provided that the Carrier shall before or at the beginning of the Carriage exercise due diligence to maintain the refrigerated Container in an efficient state.

11. INSPECTION AND DISPOSITION OF GOODS
11.1. The Carrier or any person authorised by the Carrier shall be entitled, but under no obligation, to open any Container or Package at any time and to inspect the Goods.
11.2. If it appears at any time, in the sole judgment of Carrier, that the contents of the Container or any part thereof cannot safely or properly be carried or carried further, either at all, or without incurring additional expense or taking any measures in relation to the Container or its contents or any part thereof, the Carrier may at the sole risk and expense of the Merchant abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue the Carriage or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against all additional expenses resulting therefrom.
11.3. The Carrier is not responsible for any damage or loss to Container or its contents resulting from inspection by customs or other authorities and Merchant shall be responsible for any expenses, costs, fines, or penalties incurred as a result of such inspection or otherwise.
11.4. The Carrier in exercising the liberties contained in this Clause shall not be under any obligation to take any particular measures and shall not be liable for any loss, delay or damage howsoever arising from any action or lack of action under this Clause.

12. MATTERS AFFECTING PERFORMANCES
If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including the condition of the Goods), whensoever and howsoever arising (whether or not the Carriage has commenced) the Carrier may in its sole discretion:
12.1. 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. If the Carrier elects to invoke the terms of this Clause, he shall be entitled to charge such additional Freight as the Carrier may determine; or
12.2. Suspend the Carriage of the Goods and store them ashore or afloat under these Terms and Conditions and endeavour to forward them as soon as possible,
but the Carrier makes no representations as to the maximum period of suspension. If the Carrier elects to invoke the terms of this clause , he shall be entitled to charge such additional Freight and costs as the Carrier may determine; or
12.3. 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, 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 or to suspend the Carriage under this Clause, this shall not prejudice its right to subsequently abandon the Carriage.
12.4. The liability of the Carrier in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with the orders or recommendations given by any government or authority or any person purporting to act as or on behalf of such government or authority.

13. METHODS AND ROUTE OF TRANSPORTATION
13.1. The Carrier may at any time and without notice to the Merchant::use any means of transport or storage whatsoever; load or carry the Goods on any Vessel whether named on the front hereof or not; transfer the Goods from one conveyance to another including transhipping or carrying the same on another Vessel than that named on the front hereof or by any other means of transport whatsoever: at any place unpack and remove Goods which have been stuffed in or on a Container and forward the same in any manner whatsoever; proceed at any speed and by any route in his discretion (whether or not the nearest or most or customary or advertised route) and proceed to or stay at any place whatsoever once or more often and in any order; load or unload the Goods from any conveyance at any place (whether or not the place is a port named on the front hereof as the intended Port of Loading or intended Port of Discharge); comply with any order or recommendations given by any government or authority or any person or body acting or purporting to acts 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; permit the vessel to proceed with or without pilots, to tow or be towed or to be dry-docked; permit the vessel to carry livestock, Goods of all kinds, dangerous or otherwise, contraband, explosives, munitions or warlike stores and sail armed or unarmed.
13.2. The liberties set out in 13.1 above be invoked by the Carrier for any purposes whatsoever whether or not connected with the Carriage of the Goods. Anything done in accordance with 13.1 above 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.

14. OPTIONAL STOWAGE, DECK CARGO AND LIVESTOCK
14.1. Goods may be consolidated by the Carrier with other Goods in Containers.
14.2. Goods of any description whether packed in Containers or not may be stowed on or under deck without notice to the Merchant and such stowage shall not be a deviation of whatsoever nature or degree unless on the reverse side hereof it is specifically stipulated 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 Carriage being on deck. Subject to clause 18 and clause 19, such Goods whether carried on or under deck shall participate in General Average and such Goods (other than livestock) shall be deemed to be within the definition of Goods for the purposes of the Hague Rules or any legislation making such Rules or the Hague-Visby Rules compulsorily applicable (such as COGSA) to this Bill of Lading.
14.3. Goods (not being Goods stowed in Containers other than flats or pallets) which are stated on the front of this Bill of Lading to be carried on deck and livestock, whether or not carried on deck, are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during Carriage by sea or inland waterway whether caused by unseaworthiness or negligence or any other cause whatsoever. The Merchant shall defend, indemnify and hold harmless the Carrier against all and any extra cost incurred for any reason whatsoever in connection with Carriage of livestock.

15. ISPS Code
15.1. The Merchant must comply with the requirements of the ISPS Code. If the Carrier is held liable by any State Authority or any other third party the Merchant will indemnify and hold the Carrier harmless from any damages resulting from the violations of the ISPS Code by the Merchant.
15.2. The Merchant undertakes to pay the Carrier any costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code in relation to the Merchant's Goods.
15.3. The Carrier is entitled to deviate the vessel to a different port and to unload the Goods there if the authorities in the Port of Discharge have increased its level of security according to the ISPS Code after the Goods have been loaded.
15.4. The Merchant undertakes to compensate any costs and expenses suffered by the Carrier because of a delay of the vessel resulting from a violation of the ISPS Code by the Merchant.

16. DELIVERY OF GOODS
If delivery of Goods or any part thereof is not taken by the Merchant at the time and place when and where the Carrier is entitled to call upon the Merchant to take delivery thereof, the Carrier shall be entitled without notice the remove from a Container the Goods or that part thereof is stuffed in or on a Container and to store the Goods or that part thereof ashore, afloat, in the open or under cover at the sole risk and expense of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods or that part thereof shall cease.

17. DANGEROUS GOODS
17.1. No goods which are or may become hazardous, dangerous, inflammable or damaging (including radioactive materials), shall be tendered to the Carrier for Carriage without his express consent in writing, and without the Container as well as the Goods themselves being distinctly marked on the outside so as to indicate the nature and character of any such Goods and so as to comply with any applicable laws, regulations or requirements. If any such Goods are delivered to the Carrier without such written consent and/or marking, or if in the opinion of the Carrier the Goods are or are likely to become of a dangerous, inflammable or damaging nature, they may at any time be destroyed, disposed of, abandoned, or rendered harmless without compensation to the Merchant.
17.2. The Merchant warrants that the Goods are sufficiently packed in compliance with all laws or regulations and requirements with regard to the nature of the Goods.
17.3. Whether or not the Merchant was aware of the nature of the Goods, the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of the Carriage of such Goods.
17.4. Nothing contained in this Clause shall deprive the Carrier of any of his rights provided for elsewhere.

18. BOTH-TO-BLAME COLLISION
If the vessel on which the Goods are carried (the carrying vessel) comes into collision with any other vessel or object (the non-carrying vessel or object) as a result of the negligence of the non-carrying vessel or object or the owner of, charterer of or person responsible for the non-carrying vessel of object, the Merchant undertakes to defend, indemnify and hold harmless the Carrier against all claims by or liability to (and any expense arising therefrom) any vessel or person in respect of any loss of, or damage to, or any claim whatsoever of the Merchant paid or payable to the Merchant by the non-carrying vessel or object or the owner of, charterer of or person responsible for the non-carrying vessel or object and set-off, recouped or recovered by such vessel object or person(s) against the Carrier, the carrying vessel or herowners or charterers.

19. GENERAL AVERAGE
19.1. The Carrier may declare General Average which shall be adjustable according to the York/Antwerp Rules of 1974 as amended at any place at the option of the Carrier and amended Jason Clause as approved by BIMCO is to be considered as incorporated herein and the Merchant shall provide such security as may be required by the Carrier in this connection.
19.2. Notwithstanding 19.1. above, the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claim (and any expense arising therefrom) of a General Average nature which may be made on the Carrier and shall provide such security as may be required by the Carrier in this connection.
19.3. The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

20. FREIGHT, EXPENSES AND FEES
20.1. Full Freight shall be payable based on particulars furnished by or on behalf of the Merchant. The Carrier may at any time open the Goods or Container(s) and, if the Merchant's particulars are incorrect the Merchant shall be liable for the correct Freight and any expenses incurred in examining, weighing, measuring, or valuing the Goods.
20.2. Full Freight shall be considered completely earned on receipt of the Goods by the Carrier and shall be paid and non-refundable in any event.
20.3. All sums payable to the Carrier are due on demand and shall be paid in full in United States currency or, at the Carrier's option, in its equivalent in the currency of the Port of Loading or of Discharge or the Place of Receipt or of Delivery or as specified in the Carrier's Tariff.
20.4. The Merchant's attention is drawn to the stipulations concerning currency in which the Freight is to be paid, rate of exchange, devaluation, additional insurance premium and other contingencies relative to Freight in the applicable Tariff. In the event of any discrepancy between Freight items in the Bill of Lading and any Carrier invoices, the latter shall prevail.
20.5. All Freight shall be paid without any set-off, counter-claim or deduction whatsoever.
20.6. If the Merchant fails to pay the Freight when due, he shall be liable for payment of simple interest at the rate of 12% per annum on any overdue amount from the date when the payment is due until payment in full, as well as reasonable attorney fees and expenses incurred in collecting any sums due to the Carrier. Payment of Freight and charges to a freight forwarder, broker or anyone other than the Carrier or its authorised agent, shall not be deemed payment to the Carrier and shall be made at the Merchant's sole risk.
20.7. Despite the acceptance by the Carrier of instructions to collect Freight, duties, fees, demurrage/detention and costs and expenses from the shipper or consignee or any other Person, then, in the absence of evidence of payment (for whatever reason) by such shipper, consignee or other Person when due, the Merchant shall remain responsible for the payment of such Freight, duties, fees, demurrage/detention, costs and expenses..
20.8. If the Carrier, at its sole discretion, grants credit on any sums payable to the Carrier, and the terms and conditions applicable to any credit (Credit terms) are available from the Carrier or his authorised agents. The applicable Credit terms will automatically apply to any granting of credit by the Carrier, unless otherwise agreed by the Carrier.
20.9. If the Merchant fails to collect the cargo at destination within 30 (thirty) days of arrival, the Carrier is authorized to sell, abandon or otherwise dispose of the Goods however it sees fit. Said sale, abandonment or other disposal will not relieve the Merchant from the obligation to pay all charges accrued against the Goods.

21. LIEN
The Carrier shall have a lien on the Goods and any documents relating thereto to all sums payable to the Carrier under this contract and for general average contributions, to whomsoever due. The Carrier shall also have a lien against the current Holder on the Goods and any documents relating thereto for all sums due from him to the Carrier under any other contract. In any event, any lien shall extend to cover the cost of recovery the sums due, and for that purpose the Carrier shall have the right to sell the Goods by public auction or private treaty, without notice to the Merchant.

22. VARIATION OF THE CONTRACT
No servant or agent of the Carrier shall have power to waive or vary any of the Terms hereof unless such waiver or variation is in writing and is specifically authorized or ratified in writing by a director or officer of the Carrier who has actual authority of the Carrier so to waive or vary.

23. VALIDITY
If any provision in this Bill of Lading is held to be invalid or unenforceable by any court or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall attach only to such provision. The validity of the remaining provisions shall not be affected thereby and this Bill of Lading contract shall be carried out as if such invalid or unenforceable provision were not contained herein.

24. AFRICA CLAUSE
In case of a Multimodal Transport Carriage to or from the continent Africa, the responsibility of the Carrier prior to lading and subsequent to discharge of the vessel at a port in the connection of Africa, notwithstanding any other provisions to the contrary in the Bill of Lading, shall be :
(1) Where the stage of carriage where the loss or damage occurred is known and the Carrier has sub-contracted that stage, the Carrier shall have the full benefit of all rights, limitations, and exclusions of liability available to such subcontractor and in the contract between the Carrier and such sub-contractor and in any law, statute or regulation and the liability of the Carrier shall not exceed the amount recovered, if any, by the Carrier from such sub-contractor.
(2) In all other cases the Carrier shall be under no liability whatsoever and howsoever arising.

25. NOTIFICATION AND DELIVERY
25.1. Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.
25.2. If no Place of Delivery is named on the face hereof, the Carrier shall be at liberty to discharge the Goods at the Port of Discharge, without notice, directly they come to hand, at or onto any wharf, craft or place, on any day and at any time, whereupon the liability of the Carrier (if any) in respect of the Goods discharged as aforesaid shall wholly cease, notwithstanding any charges, dues or other expenses that may be or become payable, unless and to the extent that any applicable compulsory law provides to the contrary (in which case the Terms and Conditions of this Bill of Lading shall continue to operate during such additional compulsory period of responsibility). The Merchant shall take delivery of the Goods upon discharge.
25.3. If a Place of Delivery is named on the face hereof, the Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff (see clause 2).
25.4. If the delivery of the Goods is not taken by the Merchant at the time and place where the Carrier is entitled to call upon the Merchant to take delivery thereof, the Carrier shall be at liberty, without notice, to unpack the Goods if packed in Containers and/or to 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 the liability of the Carrier in respect of the Goods stored as aforesaid shall wholly cease, and the costs of such storage (if paid or payable by the Carrier or any agent or Sub-Contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier. The Merchant irrevocably and unconditionally undertakes to refund at the Carriers first demand all costs for storage, quay- or harbour duties and any other costs in relation to unclaimed or overdue delivered cargo. The Merchant irrevocably and unconditionally undertakes to return Carriers owned equipment and accepts a full liability for any damage or demurrage. The Merchant irrevocably and unconditionally accepts that any freight may be increased with sur-charges at the Place of Delivery.
25.5. If the Merchant fails to take delivery of the Goods within 30(thirty)days of delivery becoming due or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, without prejudice to any other rights which he may have against the Merchant, without notice and without any responsibility whatsoever attaching to him, sell, destroy or dispose of the Goods and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.
25.6. If, at the place where the Carrier is entitled to call upon the Merchant to take delivery of the Goods under Clause 25.2 or 25.3, the Carrier is obliged to hand over the Goods into the custody of any customs, port or other authority, such hand-over shall constitute due delivery to the Merchant under this Bill of Lading.
25.7. Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this Clause, notwithstanding his having been notified on the availability of the Goods for delivery, shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.
25.8. Subject to the Carrier agreeing in writing to a request of the Merchant to amend the Place of Delivery stated herein, the Terms and Conditions of this Bill of Lading shall continue to apply, to the extent provided by the applicable tariff, until the Goods are delivered by the Carrier to the Merchant at the amended Place of Delivery. If the applicable tariff does not explicitly provide for the continued application of the Terms and Conditions of the Bill of Lading then the Carrier shall act as agent only of the Merchant in arranging for delivery of the Goods to the amended Place of Delivery but shall then be under no personal liability whatsoever for loss, damage or delay to the Goods, howsoever arising.
25.9. The Carrier may in his absolute discretion receive the Goods as Full Container Load and deliver them as less than Full Container Load and/or as break bulk cargo and/or deliver the Goods to more than one receiver. In such event the Carrier shall not be liable for any shortage, loss, damage or discrepancies of the Goods, which are found upon the unpacking of the Container.

26. LAW AND JURISDICTION
Except as otherwise provided herein any claim or dispute arising under this Bill of Lading shall be governed by the laws of Hong Kong and determined in the Hong Kong Courts to the exclusion of the jurisdiction of the Courts of any other place. In case however the Carrier intends to sue the Merchant the Carrier has also the option to file a suit at the Merchant's place of business, at the Port of Loading or at the Port of Discharge at Carrier's option.