

## Section 5 - Carriage of Goods - Bill of Lading Conditions

### 5.1 a Carriage of Goods by Water Act:

This contract of carriage is subject to the Carriage of Goods by Water Act (the "Act") and Rules contained in the Schedule there to (the "Rules"). For the purpose of the limitation of liability contained in paragraph 5 of Article IV of the Rules, it is expressly agreed between the Shipper and the Carrier that any container and contents thereof shall constitute one single "package" or "unit" within the meaning of such limitation of liability.

### b Exemptions

Carrier shall not be liable for loss, damage or delay to any goods and/or container, or contents thereof, caused by or attributable to Act of God, Queen's or public enemies, authority of law, quarantine, riot, strikes whether partial or general, perils of the sea or navigation of the ship, act or default of Shipper or Consignee, inherent defect in the goods or any conditions beyond the control of Carrier.

Notwithstanding conditions (a) and (b) herein, Carrier shall not be liable for loss or damage to goods caused by Shipper or Consignee, or their respective agents, while such persons are delivering or receiving containers or goods on ship or on Carrier's premises.

### c Before loading and after discharge

The rights and immunities set forth in Article IV of the Rules shall govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the Carrier, but in the event of loss

or damage the burden of proof shall be on the person claiming such loss or damage was due to the actual fault or privity of the Carrier or the fault or neglect of the agents or servants of the Carrier. The Carrier shall not be liable in any capacity whatsoever for any delay, non-delivery or mis-delivery, or loss of or damage to the goods, howsoever any of the foregoing may be caused, occurring while the goods are not in the actual custody of the Carrier.

d Storage following carriage

If the goods or container(s) are stored on Carrier's premises following unloading from ship, liability of Carrier for loss or damage to the goods, container or contents thereof, shall be that of warehouseman only and liability of Carrier shall not exceed \$500 except where an additional charge has been paid on declared value.

Carrier may charge Shipper or Consignee for storage of said goods or container(s) in accordance with its tariff, but such charge for storage shall not increase liability of Carrier.

e Carrier's tariff

This contract of carriage shall be subject to all terms, conditions and charges specified in the applicable tariff of the Carrier.

5.2 In this Bill of Lading, the words "carrier", "contract of carriage", "goods", "ship" and "carriage of goods" shall have the meanings set forth in the Rules; the word "shipper" shall include the person named as such in this bill of lading and the

person for whose account the goods are shipped; the word "Consignee" shall include the holder of the bill of lading, properly endorsed, and the receiver and the owner of the goods; the word "charges" shall include freight and all expenses and money obligations incurred and payable by the goods, Shipper, Consignee, or any of them.

5.3 The scope of the voyage herein contracted for shall include usual advertised ports of call whether named in this contract or not, also ports in or out of the advertised, geographical, usual or ordinary route or order, even though in proceeding thereto the ship may sail beyond the port of discharge or in a direction contrary thereto, or depart from the direct or customary route. The ship may call at any port for the purposes of the current voyage or of a prior or subsequent voyage. The ship may omit calling at any port or ports whether scheduled or not, and may call at the same port more than once; may, either with or without the goods onboard, and before or after proceeding toward the port of discharge, adjust compasses, dry dock, go on ways or to repair yard, shift berths, make trial trips or tests, take fuel or stores, remain in port, sail without pilots, tow and be towed, and save or attempt to save life or property and all of the foregoing are included in the contract voyage. The Carrier reserves the right in its sole discretion and without notice to substitute one ship for another in performance of this contract of carriage.

5.4 In any situation occurring and before commencement of or during the voyage, which in the judgment of the Carrier or Master is likely to give rise to capture, seizure, detention, damage, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to

proceed on or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port the Master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the goods there, may, without giving any prior notice, discharge the goods into depot, lazaretto, craft, or other place and the goods shall be liable for any extra expense thereby incurred; or the Master may proceed or return, directly or indirectly, to or stop at such other port or place whatsoever as he or the Carrier may consider safe or advisable under the circumstances, and discharge the goods or any part thereof there without giving any prior notice, and when landed as herein above provided, the goods shall be at their own risk and expense, the delivery thereof by the Carrier shall be considered complete and the Carrier shall be freed from any further responsibility in respect thereof except to mail notice of the disposition of the goods directed to the Shipper or Consignee named in this Bill of Lading at such address as may be stated herein, or the Master

5.4 may retain the cargo onboard until the return trip or until such time as he or the Carrier thinks advisable; or the Master may forward the goods by any means by water or by land, or by both such means, at the risk and expense of the goods. For any services rendered to the goods as herein above provided, the Carrier shall be entitled to a reasonable extra compensation.

5.5 The Carrier, Master and ship shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages,

transshipment, discharge, destination, delivery or otherwise howsoever given by the government of any nation, or by any committee or person having, under the terms of the war risk insurance on the ship, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The ship may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

5.6 Unless otherwise stated herein, the description of the goods and the particulars of the packages, mentioned herein are those furnished in writing by the Shipper and the Carrier shall not be concluded as to the correctness of leading marks, number, quantity, weight, gauge, measurement, contents, nature, quality or value. The Shipper and the goods shall also be liable for, and shall indemnify the Carrier in respect of any injury, loss or damage arising from Shipper's failure to declare and mark the weight of any such piece or package or from the incorrect weight of any such piece or package having been declared or marked thereon, or arising from incorrect representation, whether expressed or implied, by the Shipper or his agent of the nature or condition of the goods.

5.7 The Carrier may stow the goods on or under deck and may stow them in containers. When goods are stowed by the Carrier or his agents or servants in containers and when goods are received fully stowed from the Shipper in containers, they may be carried on or under deck without notice to the Shipper and if they are so carried, the Rules shall be applicable, notwithstanding carriage on or under deck, and the goods and/or containers shall contribute to general average,

whether carried on or under deck.

Specially cooled stowage is not to be furnished unless contracted for at an increased freight rate.

5.8 Live animals, birds and fish are received and carried at Shipper's risk of accident or mortality, and the Carrier shall not be liable for any loss or damage thereto arising or resulting from any matters mentioned in Article 4, Section 2 (a) to (p) inclusive of the Rules or from any other cause whatsoever not due to the fault of the Carrier. Except as provided above such shipments shall be deemed goods, and shall be subject to all terms and provisions in this bill of lading relating to goods.

5.9 If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

5.10 General average shall be adjusted according to York Antwerp Rules 1974 and, as to matters not therein provided for, according to the laws and usages of Canada

and the general average shall be prepared by average adjusters selected by the Carrier, the said adjusters to attend in the settlement and collection of the coverage subject to the customary charges.

In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, Shippers, Consignee or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, Shippers, Consignees or owners of the goods to the Carrier before delivery. Passengers' effects, if any, shall not contribute in general average but claims for passengers' effects sacrificed shall be allowed in general average less their proper contribution in such cases. The merchant or owners of containers not owned or leased by the Carrier shall contribute with the Carrier in general average to the amount of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges in respect of the goods.

5.11 Whenever the goods are consigned to a point where the ship does not expect to discharge, the Carrier or Master may, without notice, forward the whole or any part of the goods before or after loading at the original port of shipment, or any other place or places even though outside the scope of the voyage or the route to or beyond the port of discharge or the destination of the goods, by any vessel, vessels or other means of transportation by water or by land or by both such means, whether operated by the Carrier or by others and whether departing or arriving or scheduled to depart or arrive before or after the ship expected to be used for the transportation of the goods. The Carrier, in making arrangements for any transshipping or forwarding vessel or means of transportation not operated by the Carrier shall be considered solely the forwarding agent of the Shipper and without any other responsibility whatsoever.

The carriage by any transshipping or forwarding Carrier and all transshipments or forwarding shall be subject to all the terms whatsoever in the regular form of bill of lading, freight note, contract or other shipping document used at the time by such Carrier, whether issued for the goods or not, and even though such terms may be less favorable to the Shipper or Consignee than the terms of this Bill of Lading and



may contain more stringent requirements as to notice of claim or commencement of suit and may exempt the on-carrier from liability for negligence. The Shipper expressly authorizes the Carrier to arrange with any such transshipping or forwarding Carrier that the lowest valuation of the goods of limitation of liability contained in the bill of lading or shipping document of such Carrier shall apply even though lower than the valuation of limitation herein. Pending or during transshipment the goods may be stored ashore or afloat at their risk and expense and the Carrier shall not be liable for any loss or detention of or damage to the goods howsoever and wheresoever arising.

5.12 The ship may commence discharging immediately on arrival without notice to the Consignee, and discharge continuously regardless of weather. upon discharge, the responsibility of the Carrier shall cease, and the goods shall be at the risk of the Consignee, and may be stored by the Carrier at the expense and risk of the owner. When the goods are carried to a port or place where there is no wharfinger, warehouseman or other responsible person to receive the goods on behalf of the Consignee, the Consignee shall be on hand to receive the goods, and if not on hand, the Master may deliver the goods by depositing the same on any float, landing scope, wharf, boat, or on the seashore, or on the bank of the river, or other usual place for delivering goods in the place of destination, whereupon the responsibility to the Carrier for the delivery of the goods shall cease and determine.

- 5.13 The Carrier shall not be liable for failure to deliver in accordance with leading marks unless such marks have been clearly and durable stamped or marked by the Shipper before shipment upon the goods or packages, in letters and numbers not less than two inches high together with the name of the port of discharge. Goods that cannot be identified as to marks or numbers, cargo sweepings, liquid, residue and any unclaimed goods not otherwise accounted for shall be allocated for completing delivery to the various Consignees or goods of like character in proportion to any apparent shortage, loss or weight or damage.
- 5.14 The goods shall be liable for all expense of mending, cooperage, baling or reconditioning of the goods or packages and gathering of loose contents of packages; also, for any payment, expense, fine, dues, duty, tax, impost, loss, damage or detention sustained or incurred by or levied upon the Carrier or the ship in connection with the goods, howsoever caused, including any action or requirements of any government or governmental authority or person purporting to act under the authority thereof, seizure under legal process or attempted seizure, incorrect or insufficient markings, numbering or addressing of packages or description of the contents, failure of the Shipper to procure Consulatory, Board of health or other certificates to accompany the goods or to comply with laws or regulations of any kind imposed with respect to the goods by the authorities at any port or place or any act or omission of the Shipper or Consignee.
- 5.15 Freight shall be payable on actual gross intake weight or measurement, or,

Carrier's option, on actual gross discharge weight or measurement. Freight may be calculated on the basis of the particulars of the goods furnished by the Shippers herein but the Carrier may at any time open the packages and examine, weigh, measure and value the goods. In case Shipper's particulars are found to be erroneous and additional freight is payable, the goods shall be liable for any expense incurred for examining, weighing, measuring and valuing the goods but excluding any increase in weight or measurement thereof caused by absorption of water during voyage. Full freight hereunder to port of discharge named herein shall be considered completely earned on receipt of the goods by the Carrier, whether the freight be stated or intended to be prepaid or to be collected at destination and the Carrier shall be entitled to all freight and charges due hereunder, whether actually, paid or not, and to receive and retain them under all circumstances whatsoever ship and/or cargo lost or not lost. If there shall be a forced interruption or abandonment of the voyage at the port of shipment or elsewhere and forwarding of the goods or any part thereof shall be at the risk and expense of the goods. All unpaid charges shall be paid in full and without any offset counterclaim or deduction in the currency of the country of the port of shipment, or at Carrier's option, in the currency of the port of discharge at the demand rate of Montreal exchange on traffic origination in Canada and at the demand rate of New York exchange on traffic origination in the United States, as quoted on the day of the ship's entry at the Custom House or her port of discharge.

5.15 The Carrier shall have a lien on the goods, which shall survive delivery, for all charges due hereunder and may enforce this lien by public or private sale and without notice. The Shipper and Consignee shall be jointly and severally liable to

the Carrier for the payment of all charges and for the performance of the obligation of each of them hereunder.

**5.16 Unless notice of loss or damage and the general nature of such 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, such removal shall be prima facie evidence of the delivery by the Carrier of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days of the delivery.**

**In any event the Carrier and the ship shall be discharged from all liability in respect of loss or damage unless claim is submitted within ninety (90) days after the delivery of the goods or the date when the goods should have been delivered.**

5.17 If the ship is not owned by or chartered by demise to the water carrier by which the goods are intended to be carried hereunder, this Bill of Lading shall take effect only as a contract with the owner or demise charterer, as the case may be, as principal, made through the agency of the said Water Carrier which in either case acts as agent only and which shall be under no personal liability whatsoever in respect thereof.

5.18 All agreement or freight engagements for the shipment of the goods any local customs or privileges to the contrary to limit or deprive the Carrier of any statutory protection or exemption from, or limitation of, liability is superseded by this Bill of

Lading, and all its terms, whether written, typed stamped, or printed, are accepted and agreed by the Shipper to be binding as fully as if signed by the Shipper, any local customs or privileges to contrary to limit of deprive the Carrier of any statutory protection or exemption from, or limitation of, liability. If required by the Carrier, one signed bill of lading duly endorsed must be surrendered to the agent of the ship at the port of discharge in exchange for delivery order.

5.19 It is agreed that this Bill of Lading incorporates and includes by reference all the provisions of the Port Clauses usually included in Liner bills of lading to be applicable at the port or ports at which the goods may be discharged, irrespective of the same being or not being the discharge port or ports designated herein, as fully as if such clauses were completely set forth herein.

5.20 Neither the Carrier nor any corporation owned by, subsidiary to or associated or affiliated with the Carrier shall be liable to answer for or make good any loss or damage to the goods occurring at any time and even though before loading on or after discharge from the ship, by reason or by means of any fire whatsoever, unless such fire shall be caused by its actual fault or privity.

5.21 Carrier is not and shall not be required to deliver said merchandise at port of delivery at any particular time or to meet any particular market or in time for any

particular use.

5.22 If fresh fruits, vegetables, meats or any goods or articles of a perishable nature howsoever carried, shall at any stage become decayed, injurious or offensive, or be condemned or ordered discharged by the health or other authorities, the same may be disposed of or discharged without notice either before or after arrival. The Carrier may discharge fresh fruits, vegetables, meats and any goods or articles of a perishable nature without notice immediately the vessel is ready, notwithstanding danger to such goods or articles from freezing, heating or other weather conditions, and all such goods or articles are received subject to the risk of such discharge; if delivery thereof is not taken from the vessel's tackle, or at vessel's option, at the wharf, as soon as available after landing, the same may be left on the wharf or other convenient place or placed in warehouse at the risk and expense of Shipper, Consignee and Owner of the goods, and they shall be liable to pay for any detention of the ship and storage and other charges resulting from or occasioned by failure to take immediate delivery and charges therefore shall constitute a lien on the goods. The Carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharge or any part of the time that the goods are up on the wharf, craft or other loading or discharging place.

5.23 All claims arising hereunder shall be settled according to the law of Canada.

5.24 If the goods are made deliverable hereunder to a named Consignee, or to a named Consignee and not to order or assigns and the law in force at the port of

discharge so requires, delivery may be made to such named consignee without production or delivery of the Bill of Lading.

### **Conditions of Acceptance - Containers**

5.25 Only containers complying with ISO regulations and with the following base measurements will be accepted for transportation:

-20' long 8' wide 9'6" high

-40' long 8' wide 9'6" high

-6'7" long 8' wide 8'6" high

5.26 Van type containers shall be waterproof with tightly fitting side and/or end doors equipped with secure fastening and sealing devices, and when tendered to the Carrier all doors shall be securely fastened, having seals affixed and properly applied through the seal bracket slot on the door locking mechanism. Appropriate

labels denoting hazardous or dangerous cargo are required for all containers.

Heated or refrigerated containers are available and require prior booking. 20' and 40' available from/to Lewisporte/Goose Bay.

Identifying marks and numbers including gross weight, tare weight and net weight must be stenciled on containers in accordance with ISO specifications.

- 5.27 The Shipper will arrange for collection and delivery of the containers to the Shipper's specified dock area.
- 5.28 The Carrier will not permit its transfer of lift units or any other mechanical equipment to be used in any way to lift, transfer, move or transport a container which is loaded in excess of its ISO marked or rated capacity.
- 5.29 An overloaded or improperly loaded container will not be permitted to go forward and the Shipper will be notified at once to adjust the lading at his expense.
- 5.30 When containers owned or leased by the Carrier are unpacked by or on behalf of the Shipper at the Shipper's premises, the Shipper shall also be responsible at his expense for cleaning the interior of the container before returning same to the Carrier at the port of loading or the port of discharge or other place nominated by the Carrier or his agents.



- 5.31 Should the container arrive at its destination in damaged condition or with seals broken on doors, hatches, other such appurtenances or canvas or tarpaulin cover loosened or removed, the Shipper and/or Consignee shall forthwith notify the Carrier of such condition and shall provide an opportunity for an inspection thereof by a representative of the Carrier, (a) if the Shipper and/or Consignee takes delivery upon the Carrier's premises, before the container is removed from such premises, and (b), if the Shipper and/or Consignee takes delivery elsewhere, before the goods are removed from the container.
- 5.32 The Carrier shall not be liable for, and the Shipper and/or Consignee releases and agrees to indemnify and hold harmless the Carrier from any and all claims for loss, damage, or delay, to the container and/or its contents in the event of the failure of the Shipper and/or Consignee to give such notice and to provide such opportunity for inspection as are contemplated in subsection 5.31 above.
- 5.33 Notwithstanding anything herewith or herein contained the Carrier shall not under any circumstances be liable for loss, damage, or delay to the container and/or the contents of the container resulting from the condition of the container: and

specifically, the Carrier shall not be liable for damage to the container and/or its contents resulting from defective container, container parts or accessories including but not limited to canvas or tarpaulin covers, doors, or other openings.

5.34 The Carrier reserves the right to transport containers above or below deck.

5.35 Containers will be carried in accordance with the conditions of the Carrier's Bill of Lading, which are set out in items 5.1 through 5.24 of this section and are also included on the back of the Bill of Lading.