

# Ocean Bill of Lading Terms and Conditions

## 1. Definitions

“Carrier” means Novalink Logistics Inc., any party on whose behalf a Bill of Lading has been signed, and all associated and related companies, their employees, agents, masters, crew, and sub-contractors, and the employees, servants, agents, officers, masters, and crew of any subcontractors, and every ship, airplane, truck or means used in the Carriage of Cargo, as well as the owner, operator, officers, and crew thereof.

“Shipper” or “the Shipper” when used in relation to Goods means and includes, jointly and severally, the shipper, owner, and consignee of the Cargo and any person, firm, or corporation having any right, title or interest to or in the Cargo or documents relating thereto.

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

“Container” includes any type of Container, trailer, transportable tank, flat or unit of load device.

“Merchant” includes the Shipper, the holder of this Bill of Lading, the Owner of the Goods and the Consignor, the Consignee and the Receiver identified on this Bill of Lading

“Holder” means any person for the time being in possession of this Bill of Lading to whom the property in the Goods has passed on or by reason of the consignment to the Goods or the endorsement of the Bill of Lading or otherwise.

## 2. Carrier’s Standard Trading Conditions

The provisions of the current Standard Trading Conditions of The Canadian International Freight Forwarders Association, Inc. (“Carrier’s Standard Trading Conditions”) are incorporated herein. Copies of such provisions are obtainable from the Carrier or its agents upon request. In the case of inconsistency between these Bill of Lading Terms and Conditions and the Carrier’s Standard Trading Conditions, these Bill of Lading Terms and Conditions shall prevail.

## 3. Contracting Parties and Warranty

The contract evidenced by this Bill of Lading is between the Carrier and the Merchant. 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 and Shipper warrant that in agreeing to the terms hereof they are the person owning or entitled to the possession of the Goods or are the agent of and have the authority of or any person who has a present or future interest in the Goods.

## 4. Sub-contracting

(1) The Carrier shall be entitled to sub-contract on any terms the whole all any part of the carriage, loading, unloading, storing, warehousing, handing, and any and all duties whatsoever undertaken by the Carrier in relation to the Goods.

(2) The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort or otherwise shall be made against any servant, agent or sub-contractor of Carrier which imposes or attempts to impose upon any of them or any vessel owned by any of them any liability whatsoever in connection with the Goods, and, if any such claim or allegation should nevertheless be made, to indemnify Carrier against all consequences thereof. Without prejudice to the forgoing, every such servant, agent and sub-contractor shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit; and, in entering into this contract, the Carrier, to the extent of those provisions, does so not only on its own behalf, but also as agent and trustee for such servant, agent and sub-contractors.

(3) The expression ‘sub-contractor’ in this clause shall include direct and indirect sub-contractors and their respective servants and agents.

## 5. Carrier’s Responsibility

(1) The Carrier shall be liable for loss of or damage to the Goods occurring between the time when it receives the Goods for transportation and the time of delivery.

(2) The Carrier shall, however, be relieved of liability for any loss or damage if such loss or damage arose or resulted from:

- (a) the wrongful act or neglect of the Merchant.
  - (b) compliance with the instructions of a person entitled to give them.
  - (c) the lack of, insufficiency of, or defective condition of packing in the case of Goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed.
  - (d) handling, loading, stowage or unloading of the Goods by or on behalf of the Merchant.
  - (e) inherent vice of the Goods.
  - (f) insufficiency or inadequacy of marks or numbers on the Goods, coverings of Containers.
  - (g) strikes or lock-outs or stoppage or restraints of labour from whatever cause whether partial or general.
  - (h) any cause or event beyond the direct control of the Carrier.
- (3) Where under sub-clause (2) the Carrier is not under any liability in respect of some of the factors causing the loss or damage, it shall only be liable to the extent that those factors for which it is liable under this clause have contributed to the loss or damage.
- (4) The burden of proving that the loss or damage was due to one or more of the causes or events, specified in (a), (b), and (h) of sub-clause (2) shall rest upon the Carrier. When the Carrier establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the causes, or events, specified in (c) to (g) of sub-clause (2), it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by one or more of the causes or events.

## **6. The Amount of Compensation**

- (1) When the Carrier is liable for compensation in respect to loss of or damage to the Goods, such compensation shall be calculated by reference to the lesser of the invoice value or the sound market value of the Goods plus freight charges if paid.
- (2) If there is no invoice value of the Goods, such compensation shall be calculated by reference to value of such Goods at the place and time they are delivered to the Merchant in accordance with the contract, or should have been so delivered. The value of the Goods shall be fixed according to the commodity exchange price or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (3) Compensation shall not, however, in any instance exceed 666.67 International Monetary Fund Special

Drawing Rights (SDR) per package or 2 SDR per kilogram of the gross weight of the Goods lost or damaged, whichever is higher.

(4) Higher compensation may be claimed only with the consent of the Carrier where the value for the Goods declared by the Shipper which exceeds the limits laid down in this clause has been stated on the face of the Bill of Lading and additional consideration or compensation has been paid. In that case the amount of the declared value shall be substituted for that limit. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

## **7. Special Provisions**

(1) Notwithstanding anything provided for in clauses 5, 6 and 10 of this Bill of Lading, if it can be proved where the loss or damage occurred, the Carrier and the Merchant shall, as to the liability of the Carrier, be entitled to require such liability to be determined by the provisions contained in any international convention or national law, which provisions:

(a) cannot be departed from by private contract, to the detriment of the claimant, and

(b) would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

(2) Insofar as there is no mandatory law applying to carriage by sea by virtue of the provisions of sub-clause 7(1) the liability of the Carrier in respect of any carriage by sea shall be determined by the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23rd 1968 - The Hague/Visby Rules. The Hague/Visby Rules shall also determine the liability of the Carrier in respect of carriage by inland waterways as if such carriage were carriage by sea. Furthermore, they shall apply to all goods, whether carried on deck or under deck.

## **8. U.S. Trade**

(1) In case the contract evidenced by this Bill of Lading is subject to the Carriage of Goods by Sea Act of the United States of America, 1936 (U.S. COGSA), then the provisions stated in the said Act shall govern before loading and after discharge and throughout the entire time the Goods are in the Carrier's custody.

(2) If U.S. COGSA applies, and unless the nature and value of the Goods have been declared by the shipper before the Goods have been handed over to the Carrier and inserted in this Bill of Lading, the Carrier shall in no event be or become liable for any loss of or damage to the Goods in an amount exceeding USD 500 per package or customary freight unit.

## **9. General – Delay and Consequential Loss**

(1) The Carrier does not undertake that the Goods shall arrive at the port of discharge or the place of delivery at any particular time or to meet any particular market of use. The Carrier shall in no circumstances be liable for in any capacity, whatsoever, for any delay, non-delivery or misdelivery or for any direct, indirect or consequential loss or damage caused by any delay, non-delivery or misdelivery. If the Carrier is held liable for delay, non-delivery, misdelivery or other loss or damage to or in connection with the Goods as described, such liability shall in no case exceed the freight for the transport covered by this Bill of Lading.

(2) Save as is otherwise provided herein, the Carrier shall in no circumstance be liable for direct or indirect or consequential loss or damage arising from any cause.

## **10. Notice of Loss, Time Bar**

(1) Unless notice of loss or damage to the Goods and the general nature of it be given in writing to the Carrier at the place of delivery before or at the time of the 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 be not apparent, within seven consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Carrier of the Goods as described in this Bill of Lading.

(2) The Carrier shall be discharged of all liability under this Bill of Lading, unless suit is brought and written notice thereof given to the Carrier within twelve (12) months after delivery of the Goods. In the case of total loss of the Goods the period shall begin to run two months after the Goods have been received for transportation.

## **11. Defences and Limits for the Carrier**

(1) The defences and limits of liability provided for in this Bill of Lading shall apply in any action against

the Carrier for loss or damage to the Goods whether the action can be founded in contract or in tort.

(2) However, the provisions of this Bill of Lading apply whenever claims relating to the performance of this Bill of Lading are made against any servant, agent or other person whose services the Carrier has used in order to perform this Contract, whether such claims are founded in contract or in tort. The aggregate liability of the Carrier and such persons shall not exceed the applicable limits as provided in this Bill of Lading.

## **12. Shipper Packed Containers**

(1) If a container has not been filled, packed or stowed by the Carrier, the Carrier shall not be liable for any loss of or damage to its contents and the Merchant shall cover any loss or expense incurred by the Carrier, if such loss, damage or expense has been caused by:

(a) negligent filling, packing or stowing of the container;

(b) the contents being unsuitable for carriage in container;

(c) the unsuitability or defective condition of the container unless the container has been supplied by the Carrier and the unsuitability or defective condition would not have been apparent upon reasonable inspection at or prior to the time when the container was filled, packed or stowed; or

(d) where Goods are stowed in a refrigerated or temperature controlled container, the Merchant is responsible for checking the setting of the container's temperature, ventilation and humidity prior to stuffing. Carrier shall not be held liable for temperature damage generated by hot stuffing or incorrect settings. Refrigerated containers are not designed to cool or freeze cargo which has been loaded in a container at a temperature higher than the designated carrying temperature. Carrier shall not be responsible for the consequences of the cargo being loaded at a higher temperature than the one required for carriage. The marked maximum load line of a container shall not be exceeded under any circumstance, as this would impair the correct circulation of the cooling air and the Carrier shall not bear any liability with respect to overloaded containers.

(2) The provisions of sub-clause (1) of this clause also apply with respect to trailers, transportable tanks, flats and pallets which have not been filled, packed or stowed by the Carrier.

(3) The Carrier does not accept liability for damage due to the unsuitability or defective condition of

reefer equipment or trailers supplied by the Merchant.

### **13. Inspection of Goods**

The Carrier shall be entitled, but under no obligation, to open any package or Container at any time and to inspect the contents. If it thereupon appears that contents or any part thereof cannot safely or properly be carried further, either at all or without incurring any additional expense or taking any measure in relation to such Container or its contents or any part thereof, the Carrier may 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 constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any reasonable additional expense so incurred. 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.

### **14. Description of Goods**

(1) The information in this Bill of Lading shall be *prima facie* evidence of the taking in charge by the Carrier of the Goods as described by such information unless a contrary indication, such as “shipper’s weight, load and count”, “shipper-packed container” or similar expressions, have been made in the printed text or superimposed on the Bill of Lading. Proof to the contrary shall not be admissible when the Bill of Lading has been transferred, or the equivalent electronic data interchange message has been transmitted to and acknowledged by the Consignee who in good faith has relied and acted thereon.

(2) No representation is made by the Carrier as to the weight, contents, measure, quantity, description, condition, marks, numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description particulars.

### **15. Shipper’s Responsibility**

(1) The Shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars and any other

particulars furnished by or on behalf of the Shipper are correct.

(2) The Shipper shall indemnify the Carrier against all loss, damage or expenses arising or resulting from inaccuracies or inadequacy of such particulars.

### **16. Return of Containers**

(1) For the purpose of this clause the Consignor shall mean the person who concludes this Contract with the Carrier and the Consignee shall mean the person entitled to receive the Goods from the Carrier.

(2) 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 as handed over to the Merchant, normal wear and tear excepted, with interiors clean and within the time prescribed in the Carrier’s tariff or elsewhere.

(3) The Consignor and the Consignee shall be jointly and severally liable for any loss of, damage to, or delay, including demurrage and detention, of such articles of transport, incurred during the period between handing over to the Consignee and return to the Carrier.

### **17. Freight and Charges**

(1) All freight is earned and due upon receipt of the Goods by the Carrier, whether the freight is prepaid or collect and the Carrier shall be entitled to all freight due under all circumstances, ship and/or cargo lost or not lost, or the voyage abandoned. All freight shall be paid when due without any set-off, counter claim, or deduction.

(2) The Merchant’s attention is drawn to the stipulations concerning currency in which the freight and Charges are to be paid, rate of exchange, devaluation and other contingencies relative to freight and Charges in the applicable tariff or elsewhere.

(3) The freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. The Carrier may at any time open any Container or other package or unit in order to re-weight, re-measure, re-classify or revalue the contents, and if the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged or to double the correct freight less the freight charged, whichever the sum is the smaller, shall be payable as liquidated damages to the Carrier.

## **18. Lien**

The Carrier, its servants or agents shall have a lien on the Goods and any document relating thereto for freight and for general average contributions to whomsoever due. The Carrier, its servants or agents shall also have a general lien on the Goods and any document relating thereto for all sums due from the Merchant to the Carrier under any other contract. The Carrier may exercise its lien at any time and any place in its sole discretion, through the action of any servant, agent or subcontractor, whether the contractual carriage is completed or not. The Carrier's lien shall also extend to cover the cost and actual legal expense of recovering any sums due. The Carrier shall have the right to sell any Goods liened by public auction or private treaty, without notice to the Merchant. Nothing herein shall prevent the Carrier from recovering from the Merchant the difference between the amount due to the Carrier and the net amount realized by such sale.

## **19. Optional Stowage**

(1) Goods may be stowed by the Carrier by means of containers, trailers, transportable tanks, flats, pallets, or similar articles of transport used to consolidate goods.

(2) Containers, trailers, transportable tanks and covered flats, whether stowed by the Carrier or received by the Carrier in a stowed condition from the Merchant, may be carried on or under deck without notice to the Merchant.

## **20. Methods and Routes of Transportation**

(1) The Carrier may at any time, with or 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; stow the Goods, whether containerized or not, on or under deck; transfer the Goods from one conveyance to another including transshipping or carrying the same on a vessel other than that named on front hereof or by any other means of transport whatsoever; at any place unpack or 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 its discretion (whether or not the nearest or most direct 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; comply with any orders or

recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority or having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions; permit the vessel to proceed with or without pilots, to tow or be towed or be dry-docked; permit the vessel to carry livestock, Goods of all kinds, dangerous or otherwise, contraband, explosive, munitions or warlike stores and sail armed or unarmed.

(2) The liberties set out in paragraph (1) of this clause may be invoked by the Carrier for any purpose whatsoever whether or not connected with the Carriage of the Goods. Anything done in accordance with paragraph (1) of this clause or any delay arising there from shall not be a deviation of whatsoever nature or degree.

## **21. Matters Affecting Performance**

If at any time the performance of the contract evidenced by this Bill of Lading is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind which cannot be avoided by the exercise of reasonable endeavours, the Carrier (whether or not the transport has commenced) may without notice to the Merchant treat the performance of this Bill of Lading as terminated and place the Goods or any part of them at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full freight and Charges on Goods received for transportation, and the Merchant shall pay any additional costs of carriage to and delivery and storage at such place and port.

## **22. Dangerous Goods**

(1) The Merchant undertakes not to tender for transportation any Goods which are of a dangerous, inflammable, radio-active, or damaging nature without previously giving written notice of their nature to the Carrier and marking the Goods and the Container or other covering on the outside as required by any laws or regulations which may be applicable during the carriage. The Carrier may, however, in their absolute discretion reject such cargo.

(2) If the requirements of sub-clause (1) are not complied with, the Goods may at any time or place be unloaded, destroyed or rendered harmless without

compensation and the Merchant shall indemnify the Carrier against any loss, damage or expense arising out of the Goods being tendered for transportation or handled or carried by the Carrier. Further the Carrier shall be under no liability to make any general average contribution in respect of such Goods.

(3) If the Goods of a dangerous, inflammable, radioactive or damaging nature which were tendered in compliance with sub-clause (1) shall become a danger to the vessel, cargo or any other property or person such Goods may in like manner be unloaded, destroyed or rendered harmless without compensation and the merchant shall indemnify the Carrier against any loss, damage or expenses which the Carrier incurred as a result of the such Goods.

### **23. Regulation relating to Goods**

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 incurred or suffered by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods, the nature or character of the Goods including any dunnage or packing material and the Merchant shall indemnify and hold the Carrier harmless in respect thereof.

### **24. Notification and Delivery**

(1) Any mention in this Bill of Lading of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.

(2) If delivery of the 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 to remove from a Container the Goods or that part thereof if 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.

(3) The Merchant's attention is drawn to the stipulations concerning free storage time, detention and demurrage contained in the Carrier's applicable Tariff or elsewhere which is incorporated in this Bill of lading.

(4) 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.

(5) The Carrier may in its 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 as split delivery of the Goods to more than one receiver. In such event the Carrier shall not be liable for any shortage, loss, damage or discrepancy of the Goods, which are found upon unpacking of the Container.

### **25. Both-to-Blame Collision**

If the vessel 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 vessel, the Merchant will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far 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 her owners to the owners of said Goods and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying vessel 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 of a collision or contact.

### **26. New Jason Clause**

(1) In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the Merchant 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.

(2) If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Carrier or its 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 Merchant to the Carrier before delivery.

## **27. General Average**

(1) General Average shall be adjusted at any port or place at the option of the Carrier in accordance with the York Antwerp Rules 1994 or any modification thereof, this covering all goods, whether carried on or under deck.

(2) Such security including a cash deposit as the Carrier may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon, shall, if required, be submitted to the Carrier prior to delivery of the goods. If the Carrier delivers the Goods without obtaining security for General Average contributions, the Merchant, by taking delivery of the Goods, undertakes personal responsibility to pay such contributions and to provide such cash deposit or other security for the estimated amount of such contribution as the Carrier shall reasonably require.

(3) The Carrier shall be under no obligation to exercise any lien for General Average contribution due to the Merchant.

## **28. 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 the Carrier.

The terms of this Bill of Lading shall be severable and, if any term or provision hereof or any part of any term or provision shall be invalid to any extent, it shall be invalid to that extent, but no further and such circumstance shall not affect the validity or enforceability of any other term or provision hereof. This Bill of Lading is the final contract between the parties which supersedes any prior agreement or understanding, whether in writing or verbal, save where this Bill of Lading has been issued pursuant to another contract between the Merchant and the Carrier, when such other contract and this Bill of Lading shall be construed together. This Bill of Lading and its terms and conditions may not be changed orally.

## **29. Law and Jurisdiction**

All and any claims and/or disputes arising under this Bill of Lading or in connection therewith shall be governed by, construed and interpreted in accordance with the laws of Canada including Canadian Maritime law and heard exclusively in the courts of the Province of British Columbia or the Federal Court of Canada as situated in the Province of British Columbia and all courts of appeal therefrom.