

TERMS AND CONDITIONS

- 1. Definitions**
- „Carrier“ means **M.G. International Transports GmbH of Koblenzer Str. 40, 57072 Siegen, Germany**, trading as **„MGI Ocean Line“**
- „Carriage“ means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods covered by this Bill of Lading.
- „Hague Rules“ means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading done at Brussels on 25th August 1924.
- „Merchant“ includes the Shipper, Consignee, Receiver of the Goods or any holder of this Bill of Lading, any Person owing or being entitled to the possession of the Goods or of this Bill of Lading and anyone acting on behalf of any such Person.
- „Multimodal Transport“ arises if the Place of Receipt and/or the Place of Delivery as indicated in the combined transport boxes on the face hereof are filled out in the relevant spaces provided that such place is outside the Port of Loading and/or the Port of Discharge as indicated on the face hereof as well.
- „Port to Port Shipment“ arises if the Carriage is not a Multimodal Transport.
- „Person“ includes an individual, group, company or other entity.
- „Sub-Contractor“ includes owners, charterers and operators of vessels, stevedores, terminal and group operators, road and rail transport operators and any independent contractors employed by the Carrier for any part of the performance of the Carriage.
- „Container“ includes any Container, flat, trailer, transportable tank or any similar equipment used to consolidate Goods and not supplied by the Carrier.
- „Goods“ includes the cargo supplied by or on behalf of the shipper and any Container not supplied by the Carrier.

2. Warranty
The Merchant warrants that in agreeing to the terms and conditions hereof he is, or he has the authority of, the Person owning or entitled to the possession of the Goods and this Bill of Lading.

- 3. Sub-Contracting and Indemnity**
- a) The Carrier shall be entitled to sub-contract the Carriage on any terms whatsoever.
- b) In contracting for the following exemptions and limitations of and exoneration from liability the Carrier is acting as agent and trustee for all other Persons named in this clause. It is understood and agreed that, other than the Carrier, no Person (including but not limited to the master, officers and crew of the vessel, all agents and Sub-Contractors whatsoever) is, or shall be deemed to be liable with respect to the Goods as Carrier, bailee or otherwise. If, however, it should be adjudged that any other than the Carrier is Carrier or bailee of the Goods or under any responsibility with respect thereto, all exemptions and limitations of and exoneration from liability provided by law or by the terms of this Bill of Lading shall be available to such Person. It is also agreed that each of these Persons referred to are intended beneficiaries but nothing herein contained shall be construed to limit or relieve such Persons from liability towards the Carrier. No claim or allegation shall be made against any of the aforesaid Persons for any liability whatsoever in connection with the Carriage of the Goods whether or not arising out of negligence on the part of such Persons and, if any such claim or allegation is made, the Merchant shall indemnify the Carrier against all consequences thereof.
- c) The provisions of this clause 3. b) including but not limited to the undertakings of the Merchant contained therein shall extend to claims or allegations of whatsoever nature against other Persons chartering space on the carrying vessel or other means of transport.
- d) The Merchant further undertakes that no claim or allegation in respect of the Goods and/or the Carriage shall be made against the Carrier or by any Person other than in accordance with the terms and conditions of this Bill of Lading; if contrary to such undertaking any such claim or allegation should nevertheless be made, the Merchant will indemnify the Carrier against all consequences resulting therefrom.

- 4. Carrier's Responsibility**
- a) Port to Port Shipment
- (i) When loss or damage has occurred between the time of loading of the Goods on a vessel at the Port of Loading until the time of discharge from a vessel at the Port of Discharge, the responsibility of the Carrier shall be determined in accordance with German law making the Hague Rules compulsory.
- (ii) The Carrier shall be liable for any loss or any damage to the Goods. If such loss or damage arises prior to loading onto or subsequent to the discharge from the vessel. Notwithstanding the above, in the event that any applicable compulsory law provides to the contrary, the Carrier shall have the benefit of every right, defense, limitation and liberty of the Hague Rules, or any amendments thereto, during such additional period of responsibility notwithstanding that the loss or damage did not occur at sea applicable.
- (iii) The Carrier is 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 ("Fire") or caused by the navigation or management of the vessel, but in the latter case save for damage or loss caused by executing measures taken predominantly in the interest of the Goods ("Error in Navigation").
- (iv) The Error in Navigation shall also apply in cases where other Persons, e.g. pilots or the crew of tug boats, were involved in the navigation or management of the vessel.
- b) Multimodal Transport
- (i) Except as provided in Clauses 4. b) (ii) and (iii) the Hague Rules and Clauses 4. a) (iii) and (iv) shall apply to the maritime leg of the Multimodal Transport.
- (ii) With respect to road Carriage between different countries in Europe liability for loss of or damage to the Goods or delay shall be determined in accordance with the Convention on the Contract for the International Carriage of Goods by Road (CMR) and during rail Carriage between different countries according to the International Agreement on Railway Transports (CIM) provided the CMR or CIM are compulsorily applicable and provided losses of or damages to the Goods or delay were caused during such Carriage.
- (iii) With respect to a Carriage not being covered by Clause 4. b) (ii) within a state other than Germany the liability shall be determined in accordance with the internal law of such state and any international convention provided that such internal law or convention is compulsorily applicable on the Carriage and provided that the incident giving rise to a (potential) liability of the Carrier did in fact take place within such state.
- (iv) EXCEPT AS PROVIDED IN CLAUSE 4. b) (ii) HEREOF THE CARRIER'S MAXIMUM LIABILITY FOR ANY LOSS OF OR DAMAGE TO THE GOODS SHALL BE LIMITED TO 2 SPECIAL DRAWING RIGHTS (SDR) AS DEFINED BY THE INTERNATIONAL AGREEMENT PER KILO OF THE GROSS WEIGHT OF THE GOODS LOST OR DAMAGED UNLESS A LOWER LIMITATION IS APPLICABLE.
- (v) WHEN IT IS NOT ESTABLISHED IN WHOSE CUSTODY AND WHERE THE GOODS HAVE BEEN WHEN A LOSS OR DAMAGE OCCURRED THE CARRIER'S MAXIMUM LIABILITY SHALL NOT EXCEED 2 SDRS PER KILO OF THE GROSS WEIGHT OF THE GOODS LOST OR DAMAGED.

5. Notice of Claim and Time for Suit
Unless notice of loss or damage and the general nature of such loss or damage is given in writing to the Carrier at the Port of Discharge or at the Place of Delivery at the time of delivery of the Goods into the custody of a Person entitled to delivery or in cases where the loss or damage is not apparent, such notice is not given within three days after such delivery, this shall be prima facie evidence of the delivery having been effected 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. In any event, the Carrier shall be discharged from all liability in respect of loss or damage to/ of the Goods, non-delivery, mis-delivery, delay, or any other loss or damage connected or related to the Carriage unless suit is brought within one year after delivery of the Goods or the date when the Goods should have been delivered.

- 6. Sundry Liability Provisions**
- a) Delay
- (i) Unless expressly agreed upon in writing, 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 held liable for direct, indirect or consequential loss or damage caused by delay.
- (ii) If notwithstanding the foregoing the Carrier should be held responsible for the consequences of any delay, it is hereby expressly agreed that the Carrier's liability shall not exceed three times of the amount of freight, unless it is proved that the delay was caused by the Carrier, his personnel, servants or agents with the intent to cause damage, or recklessly and with the knowledge that damage would probably be caused.
- b) Consequential Losses or Loss of Profits
- (i) The Carrier shall not be liable for any direct or indirect or consequential losses or damages or any loss of profits.
- (ii) Should the Carrier contrary to the foregoing be held responsible for any such consequential losses or damages or loss of profits it is hereby expressly agreed that the quantum of such liability shall never exceed three times of the maximum liability amount as calculated by applying Clause 4. b) (v) above.
- c) Scope of Application and Exclusions
The rights, defenses, limitations and liberties of whatsoever nature provided in this Bill of Lading shall apply in any action against the Carrier for loss or damage or delay of whatever nature, howsoever occurring and whether the action is founded in contract or in tort or on whatever basis and even in cases the loss, damage or delay of whatever nature arose as a result of unseaworthiness, negligence or fundamental breach of contract.
- d) Compensation
Compensation shall be calculated by reference to the value of the Goods at the time they were delivered to the Carrier for Carriage. Any compensation payable shall never exceed such value of the Goods notwithstanding any other limitation of liability.
- e) Inland Waterway Navigation
If liability for a particular event is governed by the provisions of the CMNI, the Carrier is not liable for losses arising from an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, arising from fire or an explosion on board the vessel, or arising from defects existing prior to the voyage of the vessel or of a rented or chartered vessel which could not have been detected prior to the start of the voyage despite due diligence.
- f) Exclusion
The Carrier is not entitled to benefit from the limitations of liabilities provided for in its Bill of Lading, if it is proved that losses, damages and delay were caused by a personal act of the Carrier done with the intent or recklessly and with knowledge that such losses, damages and delay would be caused.

7. Shipper-Packed Containers
If a Container has not been packed by or on behalf of the Carrier:

a) The Carrier shall not be liable for loss of or damage to the Goods caused by:

(i) the manner in which the Container has been packed or

(ii) the unsuitability of the Goods for Carriage in the Container supplied or

(iii) unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereof (provided that, if the Container has been supplied by or on behalf of the Carrier, this unsuitability or defective condition would have been apparent upon inspection by the Merchant at or prior to the time when the Container was packed).

b) The Merchant shall indemnify the Carrier against any loss, damage, liability or expense whatsoever and howsoever arising caused by one or more of the matters referred to above in Clause 7. a).

8. Inspection of Goods
The Carrier or any Person to whom the Carrier has sub-contracted the Carriage or any Person authorized by the Carrier shall be entitled, but under no obligation whatsoever, to open any Container or package at any time and to inspect the Goods. If, by order of the authorities of whatever nationality a Container has to be opened for the Goods to be inspected, the Carrier will be liable for any loss or any damage resulting or being connected with such opening, unpacking, inspection or repacking. The Carrier shall be entitled to recover the costs of such opening, packing, inspection and repacking from the Merchant.

9. Carriage Affected by Conditions of Goods
If it appears that the Goods due to their condition at any time cannot safely or properly be carried further or without incurring additional expenses, without taking any measures in relation to the Container or the Goods, the Carrier may without notice to the Merchant, but as his agent only take any measures and/or incur any additional expenses to commence or to continue the Carriage and/or sell or dispose of the Goods and/or abandon the Carriage and/or the Goods ashore or afloat, under cover or in the open, at any place, whichever the Carrier in his absolute discretion considers most appropriate and such abandonment, storage, sale or disposal shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any additional expenses incurred.

10. Description of the Goods

a) Unless the Goods have been stuffed into the Containers by or on behalf of the Carrier, this Bill of Lading shall be prima facie evidence only of the receipt of the total numbers of Containers indicated on the face hereof. Only where a Container has been stuffed by or on behalf of the Carrier shall the Bill of Lading be prima facie evidence of receipt of the total number of packages or units provided such number of packages or units are clearly indicated identified on the face hereof under the heading „Number of Packages“ as packages or units.

b) Since the Carrier has no means of examining the contents of Containers received at the Port of Loading or the Place of Receipt, the Carrier does not make any representation or warranty in Clause 10. a) above in respect of weight, measurements, quantity, description, condition, marks, numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars which are supplied solely by the Shipper without any means of verification by the Carrier.

c) Any references to letters of credit, import licenses, sales contracts, invoices or order number and/or details of any contract to which the Carrier is not a party when shown on the face of this Bill of Lading are included solely at the request of the Merchant for his convenience and the Merchant agrees that the inclusions of such particulars shall not be regarded as a declaration of value and shall not increase the Carrier's liability under this Bill of Lading. The Merchant further agrees to indemnify the Carrier against all consequences of including such particulars in this Bill of Lading.

d) The Shipper warrants to the Carrier that the particulars relating to the Goods as set out on the face hereof 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 adequate and correct. The Shipper also warrants that the Goods are lawful Goods and contain no contraband.

11. Merchant's Responsibility

a) All of the Persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the due fulfillment of all obligations undertaken by the Merchant in this Bill of Lading.

b) The Merchant shall indemnify the Carrier against all losses, damages, fines and expenses, of whatsoever nature, arising or resulting from any breach of any of the warranties in Clause 10. d) or from any other warranty or obligation of the Merchant.

c) The Merchant shall comply with all regulations or requirements of customs, ports and/or other authorities and the Merchant shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including any freight or any additional costs for any additional charges undertaken or incurred or suffered by reason of such failure to comply with, 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.

d) Containers supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty Containers with interiors clean, to the point or place designated by the Carrier within the time prescribed. Should a Container not be returned within the time prescribed, the Merchant shall be liable for any detention, loss or expenses which may arise from such non-return.

12. Freight

a) Freight shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.

b) All freight shall be paid without any set off, counter claim, deduction or stay of execution before delivery of the Goods.

13. Lien
The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract and for general average contribution to whomsoever due. The Carrier shall also have a lien against the holder of this Bill of Lading and against whoever has custody of the Goods for all sums due to the Carrier under any other contract. The lien shall in any event extend to cover the costs for recovering 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.

14. Optional Stowage and Deck Cargo

a) The Carrier is at liberty to pack the Goods in Containers and to consolidate them with other Goods in Containers.

b) Goods whether or not packed in Containers may be carried on deck or under deck without notice to the Merchant. All such Goods whether carried on deck or under deck shall participate in general average and shall be deemed to be within the definition of Goods for the purpose of the Hague Rules and shall be carried subject to these rules.

c) Notwithstanding Clause 14. b) above in case Goods are stated on the face hereof as being carried on deck and which are so carried the Carrier shall be under no liability whatsoever for any loss, damage or delay whatsoever arising.

15. Method and Routes of Carriage
The Carrier may at any time and without notice to the Merchant:

- use any means of Carriage whatsoever;
- transfer the Goods from one conveyance to another, including but not limited to transshipping or carrying them on another vessel than that named on the face hereof;
- unpack and remove Goods which have been packed into a Container and forward them in a Container or otherwise;
- proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route) at any speed, and to proceed to or stay at any place or port whatsoever, once or more often and in any order;
- load or unload or transship the Goods at any place or port (whether or not such port or place is named overleaf) and store the Goods at any place or port whatsoever, once or more often and in any order;

comply with any orders or recommendations given by any government or authority or any Person acting or purporting to act as or on behalf of such government or authority or having under the terms of any insurance of any conveyance employed by the Carrier the right to give orders or directions.

16. Matters Affecting Performance
If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind and howsoever arising, the Carrier may, without prior notice to the Merchant and at the sole discretion of the Carrier, either:

- a) carry to the Goods to the contracted Port of Discharge or Place of Delivery whatever is applicable by an route alternative 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;
- b) suspend the Carriage of the Goods and store them ashore or afloat upon the terms of this Bill of Lading and endeavor to forward them as soon as possible, however, with no representation as to the maximum period of such suspension;
- c) abandon the Carriage of the Goods and place them at the Merchant's disposal at any place of port which the Carrier may deem safe and convenient whereupon the responsibility of the Carrier in respect of such Goods shall cease.
- d) Notwithstanding but in addition to Clause 15 if the Carrier does elect to invoke the provisions of Clause 16 a)-b) the Carrier shall nevertheless be entitled to full freight on the Goods received for Carriage and the Merchant shall pay any additional costs of the Carriage to and delivery and storage at any such place or port.
- e) Notwithstanding but in addition to Clause 16 a) - d) should navigation on the Suez-Canal (or any other waterways or routes) become interrupted or become dangerous the Carrier in his sole option may proceed by some other route and the freight shall be increased in proportion to the longer sailing distance and the Merchant shall bear any additional costs incurred due to such alteration.
- f) Notwithstanding but in addition to Clauses 16 a) - e), in case a change of situation due to incidents beyond the Carrier's control (e.g. war, threat or risk of war, political turmoil or boycott or the risk of such or similar incidents like e.g. piracy) does lead to an increase of the costs for performance or continuation of the Carriage (e.g. need for particular insurance, increase of insurance premiums, increase of costs for bunker or fuel or increase for any other costs, dues, fees etc.) the Carrier shall be entitled to claim from the Merchant such additional costs in addition to the freight.

17. Dangerous Goods
Whereas nothing contained in this clause shall be deprive the Carrier of any of his rights provided for elsewhere it is herewith stipulated and agreed:

- a) No Goods which are or may become dangerous, inflammable or damaging (including radioactive materials) or which are or may become liable to damage any property whatsoever shall be tendered into the custody of the Carrier and/or 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 or his Sub-Contractors without such written consent and/or marking or if in the opinion of the Carrier the Goods are or are likely to become dangerous, inflammable or damaging in whatever way, they may at any time be destroyed, disposed of, abandoned, or rendered harmless without any compensation to the Merchant and without any prejudice to the Carrier's right to freight.
- b) The Merchant undertakes that such Goods are packed in a manner adequate to withstand the risks of Carriage considering their nature and in compliance with all laws or regulations which may be applicable during the Carriage.
- c) 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 or connected with the Carriage of such Goods.

18. Notification and Delivery

a) The mentioning of any parties in this Bill of Lading 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 from any obligation to take delivery of the Goods.

b) Upon arrival of the Goods at the Port of Discharge or Place of Delivery, whichever is applicable, the Merchant shall take delivery of the Goods without undue delay. If the Merchant fails to do so, the Carrier shall be entitled without notice to unpack the Goods, and 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 shall forthwith be paid by the Merchant.

c) If the Merchant fails to take delivery of the Goods or if the Goods are likely or apt 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 of whatsoever nature sell, destroy or dispose of the Goods and set off any proceeds of such sale in reduction of any sums being due to the Carrier from the Merchant.

d) Without any prejudice to a potential earlier termination by virtue of law or any other clause of this Bill of Lading the responsibility of the Carrier in any capacity shall altogether cease and the Goods shall be considered to be delivered at their own risk and expense in every respect when taken into the custody of customs or any other authorities.

19. General Average
In any case of general average the Merchant shall give such cash deposit or other security as the Carrier may deem sufficient to cover the estimated general average contribution of the Merchant before delivery of the Goods. The Carrier shall be under no obligation to exercise any lien for general average contributions due to the Merchant.

20. Both-to-Blame Collision
The Both-to-Blame Collision clause published by the Baltic and International Maritime Council and obtainable from the Carrier or his agents upon request is hereby incorporated into this Bill of Lading.

21. Law and Jurisdiction
Any claim and/or any dispute arising under this Bill of Lading or connected with this Bill of Lading or the Carriage shall be governed by the law of the country in which the Carriage is to be performed or by the law of the country of the domicile of the holder of the bill of any other place. In case the Carrier does intend to sue the Merchant, solely the Carrier in his exclusive discretion has the option to institute proceedings also before such other courts which as per the local law applicable before such courts have jurisdiction for a law suit against the Merchant.