

Max-Line Combined Transport Bill of Lading

I. General Provisions

1. Applicability

Notwithstanding the heading “Combined Transport” the provisions set out and referred to in this Bill of Lading shall also apply if the transport as described in this Bill of Lading is performed by one mode of transport only.

2. Definitions

- “Carrier” means the party who issues this Bill of Lading and is named on the face of it.
- “Carriage” means the whole of the operations and the services undertaken by the carrier in respect of the goods.
- “Merchant” means and includes the Shipper, the Consignor, the Consignee, the holder of this Bill of Lading, the Receiver and the Owner of the Goods.
- “Goods” means the whole or any part of the cargo received from the Shipper and includes any containers, pallets or similar articles of transport or packaging not supplied by the Carrier.
- “Container” includes a container, trailer, transportable tank, flat rack, pallet or any other form of cargo carrying unit whatsoever.

II. Description of Goods

3. Shipper’s Responsibility

The Shipper shall be deemed to have guaranteed to the Carrier the accuracy, at the time the goods were taken in charge by the Carrier, of the description of the goods, their marks, number, weight, volume and quantity, as furnished by the Shipper or on his behalf for insertion in this Bill of Lading.

The Shipper shall indemnify and hold harmless the Carrier against all loss, damage and expenses resulting from any inaccuracy or inadequacy of such particulars.

The Shipper shall remain liable even if the Bill of Lading has been transferred.

The right of the Carrier to such indemnity shall not limit its responsibility and liability under this Bill of Lading.

4. Shipper-packed Containers

- (1) If a container has not been loaded, packed or stowed by the Carrier or on his behalf, the latter shall not be liable for loss of or damage to its contents if such loss, damage or expense has been caused by:
 - (a) Negligent loading, packing or stowing of the container;
 - (b) The Contents being unsuitable for carriage in a container; or
 - (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 by the Merchant at or prior to the time when the container was filled, packed or stowed.
- (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 Merchant shall indemnify the Carrier against all loss, damage, liability and expense caused by any of the circumstances described in the provisions of sub-clause (1).

5. Dangerous Goods

- (1) The Merchant shall comply with all rules which apply according to national law or by reason of an International Convention, relating to the carriage of goods of a dangerous nature, and shall in any event inform the Carrier in writing of the exact nature of the danger before goods of a dangerous nature are taken into charge by the Carrier and indicate to him, if need be, the precautions to be taken.
- (2) If the Merchant fails to provide such information and the Carrier is unaware of the dangerous nature of the goods and the necessary precautions to be taken, they may at any time or place be unloaded, stored, destroyed or rendered harmless, as circumstances may require, without compensation. The Merchant shall indemnify the Carrier against all loss, damage, liability, or expense arising out of their being taken in charge, or their carriage, or of any service incidental thereto.
- (3) If any goods shipped with the knowledge of the Carrier as to their dangerous nature shall become a danger to any person or property, they may in a like manner be unloaded or landed at any place or destroyed or rendered harmless. If such danger was not caused by the fault and neglect of the Carrier he shall have no liability and the Merchant shall indemnify him against all loss, damage liability and expense arising therefrom.

III. Performance of the Contract

6. Subcontracting

- (1) The Carrier shall be entitled to subcontract the whole or any part of the contract of carriage, loading, unloading, storing, warehousing, handling including, but not limited to all duties usually undertaken by a Carrier.
- (2) For the purpose of this contract and subject to the provisions of this Bill of Lading, the Carrier shall be responsible for the acts and omissions of persons whose services it engages to perform this contract of carriage.

7. Methods and Routes of Transportation

The Carrier may at any time and without notice to the Merchant

- (1) Use any means of transport (water, land and/or air) or storage whatsoever;
- (2) Transship or carry on another vessel or conveyance or by any other means of transport than that named on the reverse side hereof.
- (3) Unpack and remove Goods which have been packed into a Container and forward them in a Container or otherwise.
- (4) Proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or port whatsoever, once or more often and in any order.
- (5) Load or unload the Goods at any place or port and store the Goods temporarily at any place or port whatsoever, once or more often.
- (6) Comply with any orders or recommendations given by any government or authority.

8. Optional Stowage and Deck Cargo

- (1) Goods may be stowed by the Carrier by means of and in, for example, containers, trailers, transportable tanks, flats, pallets or similar articles of transport used to consolidate goods.
- (2) Containers, trailers, transportable tanks and covered and uncovered flats, whether stowed by the Carrier or received by it in a stowed condition from the Merchant, may be carried on or under deck without notice to the Merchant. All such Goods, whether carried on deck or under deck, shall participate in general average.

9. Hindrances Affecting Performance

- (1) The Carrier shall use reasonable endeavours to complete the transport and to deliver the goods at the place designated for delivery or as near thereto as under the prevailing circumstances possible.
- (2) If at any time the performance of the contract as evidenced by this Bill of Lading is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind, the Carrier may at its sole discretion and without prior notice to the Merchant

- (a) carry the Goods to the contracted port of discharge or place of delivery by an alternative route to that indicated on page 2 of this Bill of Lading and shall be entitled to charge such additional freight; or
- (b) Suspend the carriage of the Goods and store them ashore or afloat and endeavor to forward them as soon as reasonably possible and shall be entitled to charge such storage costs and additional freight; or
- (c) Abandon the carriage of the goods and place them at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon delivery of the Goods shall be deemed to have been made, and the responsibility of the Carrier in respect of such Goods shall cease. The Merchant shall pay any additional costs of the Carriage to, and delivery and storage at, such place or port.

10. Delivery

- (1) Goods shall be deemed to be delivered when they have been handed over or placed at the disposal of the Consignee or his agent in accordance with this Bill of Lading, or when the goods have been handed over to any authority or other party to whom, pursuant to the law or regulation applicable at the place of delivery, the goods must be handed over.
- (2) If the Merchant fails to take due delivery of the Goods within the agreed period after notice of arrival has been given by the Carrier the latter shall be entitled 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. The Merchant shall be responsible for the costs of such storage, as well as detention and demurrage.

11. 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 at the port of loading or any other inland destination, normal wear and tear accepted, with interiors clean and within the time prescribed in the Carrier's tariff or elsewhere.
- (3) The Consignor shall be liable for any loss of, damage to, or delay, including demurrage, of such articles, incurred during the period between handing over to the Consignor and return to the Carrier for carriage.
The Consignor and the Consignee shall be jointly and severally liable for any loss of, damage to, or delay, including demurrage, of such articles, incurred during the period between handing over to the Consignee and return to the Carrier.

IV. Freight and Lien

12. Freight

- (1) Freight shall be deemed fully earned at the place and time where and when the goods have been taken in charge by the Carrier and shall be paid in any event ship or cargo lost or not lost.
- (2) All freight shall be paid without any set-off or counterclaim unless the claim is not in dispute or confirmed by final court decision.
- (3) All dues, taxes and charges or other expenses in connection with the goods shall be paid by the Merchant.
- (4) Despite the acceptance by the Freight Forwarder of instructions to collect freight, charges or other expenses from any other person in respect of the transport under this Bill of Lading, the Merchant shall remain responsible for such monies on receipt of evidence of demand and the absence of payment for whatever reason.
- (5) The Merchant warrants the correctness of the particulars regarding the goods which form the basis for the calculation of freight. If the particulars furnished by the Merchant or on his behalf prove to be incorrect liquidated damages of double the correct freight shall be payable to the Carrier.

13. Lien

The Carrier shall have a lien on the goods and any documents relating thereto for any amount due to the Carrier from the Merchant under this contract or any other contract. Such lien shall extend to general average contributions, to

salvage costs and to the costs of recovering any sums due. The Carrier shall be entitled to enforce the lien by public or private sale at the expense of and without notice to the Merchant.

V. Carrier's Liability

14. Port-to-Port-Shipment

If the contract of carriage evidenced under this Bill of Lading refers to a Port-to-Port-Shipment Carrier's liability is governed by the following provisions:

- (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 German law making the Hague Rules compulsorily applicable.
- (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 of the vessel ("Fire"), or caused by the navigation or management of the vessel except for damage or loss caused when executing measures which were predominantly taken in the interest of the Goods ("Error in Navigation").
- (3) The Carrier shall not be responsible for any fault of other persons involved in the navigation or management of the vessel in particular a pilot 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, except for damage or loss caused when executing measures which were predominantly taken in the interest of the Goods ("Error in navigation").
- (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 to which the Goods were submitted either by the Carrier or the Merchant.
- (5) In the event that the Bill of Lading covers a shipment from or to the USA US COGSA (US Carriage of Goods by Sea Act 1936) shall apply. If US COGSA is applicable it shall also be applicable before the Goods are loaded on or after they are discharged from the vessel.

15. Multimodal Transport

If the contract of carriage evidenced by this Bill of Lading refers to a Multimodal Transport the following provisions shall apply:

- (1) If the place of damage to or loss of the Goods is established the responsibility of the Carrier is governed by the law which is applicable to this leg of transport.
- (2) If it is established that the damage to or loss of the Goods occurred during the port-to-port-leg the provisions set out in clause 14. of this Bill of Lading shall apply, in particular the Carrier shall be entitled to avail himself of the provision set out in clause 14.(2) and 14.(3). (Exception regarding Fire and Error in Navigation).
- (3) If it is established that the damage to or loss of the Goods occurred during transport on inland waterways the carrier shall not be liable for loss or damage arising from an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel during navigation or in the formation or dissolution of a pushed or towed convoy unless the act or omission was done with intent to cause damage, or recklessly and with knowledge that damage would probably result. The Carrier shall neither be liable for loss of or damage to the Goods arising from fire or explosion on board unless such fire or explosion resulted from a fault of the Carrier or his servants or a defect of the vessel.
- (4) **If the law which is applicable under 15.(1) is not compulsory and provides for a liability of the carrier which exceeds 2 SDR per kilogram the maximum liability shall be 2 SDR per kilogram of the gross weight of the goods lost or damaged, SDR meaning Special Drawing Rights as defined by the International Monetary Fund.**
- (5) **If the place of damage to or loss of the Goods cannot be established the carrier's liability shall be determined according to German law. The carrier's liability shall not exceed the limit of 2 SDR per kilogram of gross weight of goods lost or damaged unless it is proven by the Merchant that the damage resulted from an act or omission of the carrier or his servants done with intent to cause damage or recklessly and with knowledge that damage would probably result.**

16. Delay and Consequential Loss

- (1) Unless otherwise 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 and the Carrier shall not be liable for any loss or damage caused by delay.
- (2) If notwithstanding the foregoing the Carrier is held responsible for the consequences of any delay, the Carrier's liability is limited to an amount equal to three times of the freight unless any lower limits apply and unless the delay resulted from an act or omission of the Carrier or of his servants done with the intent to cause damage or recklessly and with knowledge that damage would probably result.
- (3) The Carrier shall not be responsible for any indirect or consequential loss or damage of whatever kind, in particular for any loss of profit, unless caused by the Carrier or his servants with the intent to cause damage or recklessly and with knowledge that damage would probably result.

17. Defences and Limits for the Carrier, Servants, etc.

- (1) The defences and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier for loss of or damage to the goods whether the action is in contract or in tort.
- (2) The Merchant undertakes that no claim shall be made against any servant, agent or other person whose services the Carrier has used in order to perform this Contract and if a claim is nevertheless made, to indemnify the Carrier against all consequences thereof.
- (3) If, however, a Servant or Agent is held responsible in connection with the transport evidenced by this Bill of Lading, all exemptions and limitations of liability provided by the applicable law or by these Terms and Conditions shall be available to such Servant or Agent.

18. Notice of Loss or Damage to the Goods

- (1) Unless notice of loss of or damage to the goods, specifying the general nature of such loss or damage, is given in writing by the Merchant to the Carrier when the goods are handed over to the Merchant, such handing over is "prima facie" evidence of the delivery by the Carrier of the goods as described in this Bill of Lading.
- (2) Where the loss or damage is not apparent, the same "prima facie" effect shall apply if notice in writing is not given within seven (7) consecutive days after the day when the goods were handed over to the Merchant.

VI. MISCELLANEOUS PROVISIONS

19. General Average

General Average shall be adjusted at any port or place at the Carrier's option, and to be settled according to the York-Antwerp Rules 1994 or any later amendments or modification thereof. The Merchant shall indemnify the Carrier in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Carrier in this connection.

20. Time Bar

The Carrier shall be discharged of all liability in respect of loss of or damage to the Goods, non-delivery, mis-delivery, delay or any other damage in connection with the Carriage unless suit is brought within one (1) year after delivery of the Goods or the date when the Goods should have been delivered.

21. Partial Invalidity

In the event that any clause or part thereof contained in this Bill of Lading is inconsistent with an applicable International Convention or national law that is mandatory applicable, such clause shall, to the extent of such inconsistency only and no further, be null and void.

22. Law and Jurisdiction

Any dispute arising under this Bill of Lading shall be governed by the law of the Federal Republic of Germany and be exclusively decided by the Courts of Hamburg. However, suit against the Merchant may also be brought by the Carrier, at his option, at the Merchant's place of business.

23. U.S. Trade

- (1) If suit is brought in a court in the USA and such court, despite Clause 22, accepts jurisdiction, the provisions of the US COGSA (Carriage of Goods by Sea Act of the United States of America, 1936) shall govern, also including the period before loading of the Goods and after discharge from the vessel.
- (2) If the US 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.