

## **XPO COMBINED TRANSPORT BILL OF LADING**

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

### **1. SCOPE OF BILL OF LADING**

This bill of lading evidences the contract to carry the Goods described on its face from the time XPO or Performing Party assumes complete custody or control of the Goods at the place described on its face until XPO or Performing Party relinquishes custody and control of the Goods at the place described on this bill of lading’s face or elsewhere according to the terms of this bill of lading. Terms with initial capital letters are defined in Section 3 or elsewhere herein. Merchant warrants that in agreeing to the terms and conditions hereof, it is, or has the authority to contract on behalf of, the Person owning or entitled to possession of the Goods and this bill of lading.

### **2. APPLICABLE LAW**

All carriage under this bill of lading to, from, or within the United States shall be performed subject to the provisions of the carriage of Goods by Sea Act of the United States, reprinted in the note following 46 U.S.C. §30701 (hereafter, “COGSA”). All carriage not to, from, or within the United States shall be governed by the Hague-Visby Rules, including the 1979 SDR Protocol if that law is compulsorily applicable. If the Hague-Visby Rules including the 1979 SDR Protocol is not compulsorily applicable, the Hague Rules shall apply. If the entire carriage is within the United States, the provisions of COGSA shall apply to carriage on coastwise and inland waterways with the force of law. Reference to carriage by sea in such rules or legislation shall be deemed to include reference to inland waterways. Except as may be otherwise specifically provided herein, such applicable law shall govern before the Goods are loaded on and after they are discharged from the Ship whether the Goods are carried on deck or under deck and throughout the entire multimodal carriage evidenced by this bill of lading. If the provisions of any international convention or national law or of a contract between Carrier and a Performing Party applicable to the stage of carriage during which the loss, damage, mis-delivery, or delay occurred would result in liability to such Performing Party, and such liability is less than Carrier’s liability as determined under Section 8, then Carrier’s liability shall not exceed such lesser amount. Nothing in this bill of lading shall operate to limit or deprive the Carrier of any statutory protection, defense, exception or limitation of liability authorized by any applicable laws, statutes or regulations of any country. The Carrier shall have the benefit of the said laws, statutes or regulations as if it were the owner of any carrying Ship.

### **3. DEFINITIONS**

- 3.1. “Carrier” means XPO Global Forwarding, Inc.
- 3.2. “Container” includes any container, trailer, transportable tank, lift van, flat, or any similar article of transport used to consolidate Goods.
- 3.3. “Goods” mean the cargo described on the face of this bill of lading whether it is carried on deck or under deck and, if the cargo is packed into Container(s) supplied or furnished by or on behalf of Merchant, the term “Goods” includes the Container(s) as well.
- 3.4. “Merchant” includes the Shipper, the receiver, the consignor, the consignee, the holder of this bill of lading and any Person having a present or future interest in the Goods or any Person acting on behalf of any of the above-mentioned Persons.
- 3.5. “Package” is the largest individual unit prepared for transportation by or for the Shipper that is delivered and entrusted to Carrier, including palletized units and each Container loaded by or for the Shipper, even though the Shipper may have furnished a description of the contents of such pallet or Container on this bill of lading.
- 3.6. “Performing Party” means a Person other than Carrier that performs or undertakes to perform any of Carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the Goods, to the extent that such Person acts, either directly or indirectly, at Carrier’s request or under Carrier’s supervision or control. “Performing Party” does not include any Person that is retained, directly or indirectly, by a Shipper, by a documentary shipper, or by the consignee instead of by Carrier.
- 3.7. “Person” means a natural person, a partnership, a corporation, a limited liability company, and any other legal entity, including a governmental entity or public authority of any kind.
- 3.8. “Ship” means the vessel named in this bill of lading, or any conveyance owned, chartered, towed or operated by a Carrier or used by a Carrier or any Performing Party.
- 3.9. “Shipper” means a Person that enters a contract of carriage with Carrier.

### **4. SUBCONTRACTING**

4.1. Merchant acknowledges and agrees that Carrier is a non-vessel owning common carrier, that it does not own, lease, charter, or operate the Ship or other modes of transportation, or engage in cargo handling or storage. Carrier shall be entitled to subcontract directly or indirectly on any terms the whole or any part of the handling, storage, or carriage of the Goods and all

duties undertaken by Carrier in relation to the Goods. The parties agree, however, that only Carrier is responsible to perform the contract of carriage evidenced by this bill of lading, and claims for loss, damage, or delay may be brought only against Carrier. It is understood and agreed that no Person whatsoever, including the Ship, master, officers and crew of the Ship, agents, underlying carriers, direct and indirect sub-contractors, and any other Performing Party, is or shall be liable with respect to the Goods as carrier, bailee, or otherwise. Merchant undertakes that no claim or allegation, whether arising in contract, bailment, tort or otherwise, shall be made against any such Performing Party that imposes or attempts to impose upon any of them or any Ship owned or chartered by any of them any liability whatsoever in connection with the Goods or the carriage of the Goods, whether or not arising out of negligence on the part of such Performing Party. The Performing Party shall also be entitled to enforce the foregoing covenant against Merchant. If despite this provision, any such Claim or allegation is made, each Performing Party will have the benefit of all the defenses and limitations of this bill of lading and the law governing this bill of lading. Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against Carrier by any Person other than in accordance with this bill of lading which imposes or attempts to impose upon Carrier any liability whatsoever in connection with the Goods or the carriage of the Goods, whether or not arising out of negligence on the part of Carrier, and if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof. In no event will Carrier's liability exceed the limits provided for in Section 8 nor shall the aggregate of the amounts recoverable from Carrier and any other Persons exceed the limits established in this bill of lading.

4.2. Any other provision hereof to the contrary notwithstanding, Merchant agrees and acknowledges that (a) Carrier shall not be liable in any capacity whatsoever for any delay, non-delivery, mis-delivery, loss, or damage to the Goods occurring while the Goods are not in the actual possession of Carrier or a Performing Party and (b) if Merchant directs that any Goods be moved to a facility or the premises of any other third-party, and Goods are thereafter lost, stolen, or damaged, in whole or in part, while under the care, custody, or control of such third party or by a carrier that transports the Goods to such third party, Carrier shall have no liability for any such loss or damage whatsoever, and if Carrier is required to defend against a claim or pay any claim related thereto, Merchant shall defend, indemnify and hold harmless Carrier with respect thereto.

## **5. ROUTE OF TRANSPORT**

Carrier is entitled to perform the transport in any reasonable manner and by any mode, means, method or route. The carriage will be performed by more than one mode of transport and by more than one Ship. The Goods may be transshipped from Ship to Ship or from one mode of transport to another and the resulting carriage might not use the most direct route. The Ships shall have the right, either with or without the Goods on board, to adjust navigational instruments, make trial trips, dry dock, go to repair yards, shift berths, go to fuel ports and take in fuel or stores, embark or disembark any Person, carry contraband and hazardous Goods, sail with or without pilots and save or attempt to save life or property. Delays or other effects of such activities shall not be deemed a deviation or a breach of the contract of carriage. Carrier does not undertake or agree to deliver the Goods or any related documents at the Port of Discharge or Place of Delivery at any particular time or to meet any particular requirement of any license, permission, sale contract, or credit of Merchant or to meet any particular market or use, and Carrier does not accept and shall have no responsibility for any direct, indirect or consequential loss or damage sustained by Merchant through delay, or for indirect or consequential loss or damage through any other cause unless Carrier is responsible for consequences of delay or other cause under any statute, law, agreement or conventions of a mandatory nature. If notwithstanding the foregoing Carrier is found liable for delay, its liability is limited to the freight charges of the shipment(s) involved.

## **6. HINDRANCES AFFECTING PERFORMANCE**

6.1. If Carrier or any Performing Party determines that the carriage of the Goods has been or is reasonably expected to be affected by any of the following:

- (a) danger, injury, loss, hindrance, risk, difficulty, delay, or disadvantage of whatsoever nature to the Ship, any vehicle or other means of transport, Carrier, any other Person, the Goods, or any other property;
- (b) suspension of service by a Performing Party intended to be used for the carriage;
- (c) any circumstance described in Section 6.2 hereof;
- (d) the assertion of a legal right to recover or claim the Goods by any Vendor of the Goods;
- (e) any proceedings in bankruptcy, receivership, or insolvency, assignment for the benefit of creditors, or any other similar proceeding or transaction against any Person constituting Merchant;
- (f) the seizure, detention, requisition or other acquisition of the Goods by any judicial or nonjudicial or governmental means; or
- (g) any circumstance that has rendered or is likely to render it in any way unsafe, impracticable, unlawful, or against the interest of Carrier or Merchant to commence or continue the carriage or to discharge the Goods at the intended port or place of discharge, or to transport the Goods by the route or in the manner originally intended by Carrier,

Carrier at any time shall be entitled to do any or all of the following, without prior notice to Merchant: terminate the carriage; store the Goods; transship or forward the Goods; divert the Goods; unpack Goods from their Containers; and, in the exercise of its reasonable discretion, dispose of the Goods in such way as Carrier may deem advisable, and, without limiting the foregoing:

(I) Carrier shall be entitled, before the Goods are loaded on the Ship or other mode of transport, to cancel this bill of lading without incurring liability to Merchant or any other Person for compensation or damages, and to require Merchant to take delivery of the Goods, and upon Merchant's failure to do so, to store the Goods anywhere;

(II) If the Goods are at a place awaiting transshipment, Carrier shall be entitled to terminate the carriage there and to store the Goods at any place selected by Carrier, transship or forward the Goods to an alternative destination, and, in the case of the circumstances set forth in Section 6.1(d) hereof, transship or forward the relevant Goods to an alternative recipient designated by the relevant vendor;

(III) If the Goods are loaded on the Ship or other mode of transport, Carrier shall be entitled to discharge the Goods or any part thereof at any port or place selected by Carrier or to carry them back to the port of loading or place of receipt and there discharge them; and

(IV) In the case of the circumstances set forth in Section 6.2 impose surcharges to cover all extra expenses (including extra insurance premiums and cost of diversion).

All actions under Section 6.1 (I), (II), (III), or (IV) above shall constitute complete and final delivery and full performance of this bill of lading, and Carrier thereafter shall be freed from any responsibility hereunder.

(V) If Carrier makes arrangements to store, transship, or forward the Goods, it shall do so solely as agent of and for and at the sole risk and expense of Merchant without any liability whatsoever in respect of Carrier's acts or omissions as agent, and Merchant shall reimburse Carrier forthwith all extra freight charges and other extra expenses thereby incurred.

6.2. The circumstances referred to in this Section shall include those caused by: the existence or apprehension of war (declared or undeclared), hostilities, warlike or belligerent acts or operations, riots, civil commotions, or other disturbances; closure of, obstacles in, or danger to any canal; blockade of port or place or prohibition of or restriction to commerce or trading; embargo; piracy; quarantine, sanitary, or other similar regulations or restrictions; strikes, lockouts, or other labor troubles whether partial or general and whether or not involving employees of Carrier or its subcontractors; congestion of port, dock, wharf, or any other place; shortage, absence, or obstacles of labor or facilities for loading, discharge, delivery, or other handling of the Goods; epidemics or diseases; Carrier making a determination that the Goods cannot be safely or properly carried further; or bad weather, shallow water, ice, landslip, or other obstacles in navigation or haulage.

In any such event, Carrier shall be entitled to, and Merchant shall pay, full freight for any Goods received for transportation and additional compensation for extra costs and expenses resulting from the circumstances referred to above.

6.3. Carrier, in addition to all other rights provided for in this bill of lading, shall have right to comply with orders, directions, regulations or suggestions as to navigation or the carriage or handling of the Goods or the Ship howsoever given, by any actual or purported government or public authority, any pilot, or by any Person having under the terms of any insurance on the Ship, the right to give such order, direction, regulation, or suggestion.

6.4. The rights set out in this Section may be invoked for any purpose whatsoever even if not connected with the carriage covered by this bill of lading, and any action taken or omitted to be taken, and any delay arising therefrom, shall be deemed to be within the contractual and contemplated carriage and not be an unreasonable deviation.

6.5. Promptly after exercising, or becoming aware of any Performing Party exercising, any rights set out in this Section, Carrier shall give notice thereof to Merchant. Merchant will be responsible for paying for all additional freight and other charges (including a reasonable recovery for Carrier's personnel and internal expenses) that are incurred as a result of any exercise of this Section. Where the charges are incurred with respect to Goods and other property, Carrier shall have the right to reasonably allocate such charges between the Goods and such other property.

6.6. Without limiting Merchant's other obligations under this bill of lading, Merchant shall defend, indemnify, and hold harmless Carrier against all losses and liabilities suffered or incurred by Carrier as a result of the circumstances referred to in this Section 6.

## **7. BASIC LIABILITY**

Carrier's liability will be determined by the law that applies to this contract of carriage according to the provisions set forth in Section 2, the applicable law Section. If Merchant claims damage by fire, Merchant must bear the burden to prove that the fire or an improper effort to extinguish the fire was caused by the actual fault or privity of Carrier.

## **8. COMPENSATION FOR LOSS AND DAMAGE**

8.1. Unless otherwise mandated by compulsorily applicable law, Carrier's liability for compensation for loss of or damage to Goods shall in no case exceed the amount of 2 Special Drawing Rights per Kilogram, but in any event, no less than US \$500 per Package or for Goods not shipped in Packages, per customary freight unit, unless Merchant has declared a higher value for the

Goods in the space provided on the front of this bill of lading and pays additional charges on such declared value as stated in Carrier's tariff. In that case, such higher value shall be the limit of Carrier's liability. The customary freight unit is the actual unit on which the freight is charged. Any partial loss or damage shall be adjusted pro rata on the basis of such Package or customary freight unit limitation. If the number of Packages, if any, within the Container is not enumerated on the face of this bill of lading, Carrier's liability will be limited to US\$500 with respect to the contents of each such Container unless the Shipper declares the value in the space provided on the front of this bill of lading and pays additional charges on such declared value as stated in Carrier's tariff. The freight charged on Containers when no higher valuation is declared by the Shipper is based on a value of US\$500 per Container. However, Carrier shall, in any case, be liable for no more than the lowest of the following amounts: (a) the actual loss to the Person entitled to make the claim, or (b) the Goods' value at destination. Carrier shall have the option of replacing lost Goods or repairing damaged Goods.

8.2. The following Goods are prohibited and Merchant warrants and represents that it will not tender for transportation any of the following unless Merchant has given written notice to Carrier of such Goods, Carrier has acknowledged receipt of such notice in writing, and Merchant has paid additional fees: precious metals, stones, chemicals, jewelry, currency, negotiable instruments, securities, writings, documents, works of art, curios, heirlooms, or any other valuable Goods, including Goods having particular value only for Merchant, or Goods of a value greater than \$1,000,000 in a single Container. If such Goods are tendered and Merchant has not complied with the obligations set forth in this provision, the entire Container, if such Goods are loaded in a Container, shall constitute the "package" for purposes of determining Carrier's liability.

8.3. In no event will Carrier's liability for loss, damage, or destruction of or to Goods exceed the amounts set forth in this Section 8 regardless of whether a court or tribunal imposes a different standard of liability than that set forth in Section 2 hereof. Merchant shall defend Carrier, at Merchant's sole cost and expense, from any direct or third-party claims, allegations, actions, or proceedings in which recovery in excess of the amounts set forth in this Section 8 is sought, and shall indemnify and hold harmless Carrier from any direct or indirect payment, loss, damage or amount in excess of the amounts for which Carrier is liable pursuant to this Section 8. Merchant, on behalf of its insurers, waives any and all rights of subrogation against Carrier.

8.4. When any claims are paid to Merchant by Carrier, Carrier shall automatically be subrogated to all rights of Merchant against all others, including inland carriers and other Performing Parties, on account of the losses or damages for which such claims are paid.

## **9. DESCRIPTION OF GOODS AND INFORMATION FOR GOVERNMENT AUTHORITIES**

Carrier may be responsible for transmitting information to U.S. Customs and Border Protection and other government authorities prior to loading the Goods, including, without limitation, precise commodity descriptions, numbers and quantities of the lowest external packaging unit, the Shipper's complete name and address, the consignee's or the owner's or owner's representative's complete name and address, hazardous materials codes, and Container seal numbers. For this and other purposes, Carrier relies on information provided by Merchant in a timely fashion. Merchant warrants to Carrier that all particulars of the Goods, including without limitation, the precise descriptions, marks, number, quantity, weight, seal numbers, identities of Shippers, consignors, and consignees and hazardous materials/dangerous goods codes furnished by Merchant are correct and complete and Merchant shall indemnify, defend and hold harmless Carrier against all claims, penalties, losses or damages arising from any inaccuracy or incompleteness. The Shipper shall provide to Carrier in a timely manner such information, instructions, and documents relating to the Goods that are reasonably necessary: (a) For the proper handling and carriage of the Goods, including precautions to be taken by Carrier or a Performing Party; and (b) for Carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage. If any particulars of any letter of credit and/or import license and/or sales contract and/or invoice or order number and/or details of any contract to which Carrier is not a party are shown on the face of this bill of lading, such particulars are included at the sole risk of Merchant and for its convenience. Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way increases Carrier's liability under this bill of lading.

## **10. CARRIER'S CONTAINERS**

If Goods are not received by Carrier already in Containers, Carrier may pack them in any type of Container. Carrier shall not be liable for loss or damage to the Goods: (a) caused by the manner in which the Goods have been packed, loaded or secured in the Container unless Carrier was engaged and paid to perform such packing, loading and securing; (b) caused by the unsuitability of the Goods for carriage in Containers; (c) caused by the unsuitability or defective condition of the Container; or (d) if the Container is not sealed at the commencement of the carriage, except where Carrier has agreed to seal the Container. Merchant shall be liable to Carrier for damage to any Container if such damage occurs while such Container is in control of Merchant or its agents and shall return all Containers in the same order and condition as handed over to Merchant (normal wear and tear excepted), with interiors clean, to the point or place designated by Carrier and within the time prescribed. Merchant agrees to indemnify and hold harmless Carrier for any damage or injury (i) to Persons or property arising from Merchant's failure to properly describe, label, stow or secure the Goods in Containers, (ii) caused by the Goods to the Container or by the Goods to other property or Persons, or (iii) to Carrier's Containers during handling by or when in the possession or control of Merchant.

## **11. CONTAINER PACKED BY MERCHANT**

If Carrier receives Goods already packed into Containers and does not inspect the contents of the Containers on receipt:

(a) This bill of lading is prima facie evidence only of the receipt of the particular number of Containers set forth, and that number only. Carrier accepts no responsibility with respect to the quantity, order, or condition of the contents of the Containers. Carrier also accepts no responsibility for the Container's weight if Carrier or a Performing Party does not weigh the Container on receipt of the Container for carriage;

(b) Merchant warrants that the packing, packaging and seals of the Containers are safe and proper and suitable for handling and carriage and agrees to indemnify Carrier for any injury, loss or damage caused by breach of this warranty;

(c) Delivery shall be deemed as full and complete performance when the Containers are delivered by Carrier with the Container and seals (if any) intact;

(d) Carrier has the right but not the obligation to open and inspect the Containers at any time without notice to Merchant, and expenses resulting from such inspections shall be borne by Merchant; and

(e) Merchant shall inspect Containers before packing them and the use of the Containers shall be prima facie evidence that the Containers are sound and suitable for use.

## **12. DANGEROUS GOODS**

12.1. Merchant may not tender Goods of a dangerous nature (including but not limited to an explosive, inflammable, radioactive, corrosive, damaging, noxious, hazardous, poisonous, or injurious) unless Merchant has applied in writing to Carrier before the Goods are delivered to Carrier or any Performing Party and Carrier has accepted the shipment in writing. Merchant's application must accurately state the nature, name, label, and classification of the Goods, the method of rendering them innocuous, the full names and addresses of the shipper and consignee, and all certificates and other documents required

12.2. Merchant shall distinctly and permanently mark the nature of the Goods on the outside of the Package and Container in a reasonable manner and in a form and manner as required by all laws that apply during any stage of the intended carriage of the Goods and shall submit in a timely manner to Carrier or to the appropriate authorities all necessary documents required by law or by Carrier for the transportation of such Goods. If the Shipper fails to do so, it is liable to Carrier for loss or damage resulting from such failure.

12.3. Whenever Goods are discovered to have been received by Carrier and Merchant has not complied with Sections 12.1 or 12.2, or the Goods are found to be contraband or prohibited by any applicable laws, or if the Goods become a danger to life or property, Carrier shall be entitled to have such Goods rendered innocuous, thrown overboard, discharged, or otherwise disposed of at Carrier's discretion without liability, and Merchant shall be liable for and shall indemnify Carrier against all loss, damage, and liability, including general average and loss of freight and other charges, and any other expenses directly or indirectly arising out of or resulting from such Goods or any action by Carrier authorized herein with respect to any Goods.

12.4. Merchant shall be responsible for all damages, including consequential damages, and expenses arising out of its failure to comply with the foregoing provisions of this Section, and shall indemnify and hold Carrier harmless from any resulting loss, damage or expense, including attorney's fees.

## **13. DECK CARGO**

Carrier has the right to carry the Goods in any Container under deck or on deck. Carrier is not required to note "on deck stowage" on the face of this bill of lading and Goods so carried shall constitute under deck stowage for all purposes including General Average and application of the law described in Section 2 of this bill of lading. Such deck stowage shall not be deemed a deviation. If this bill of lading states that the cargo is stowed on deck, the law described in Section 2 will nevertheless apply, but Carrier shall not be liable for any non-delivery, mis-delivery, delay or loss to Goods caused by the on deck carriage.

## **14. HEAVY LIFT**

14.1. Single Packages with a weight exceeding 2,240 pounds (1 metric ton) gross not presented to Carrier in enclosed Containers must be declared in writing by Merchant before receipt of the Packages by Carrier. The weight of such Packages must be clearly and durably marked on the outside of the Package in letters and figures not less than two inches high with indications of the locations to place slings or fork-lift tines. With respect to any container loaded by any party other than Carrier or a Performing Party, Merchant shall declare the gross weight of such container.

14.2. If Merchant fails to comply with the above provisions, Carrier shall not be liable for any loss of or damage to the Goods, Persons or property, and Merchant shall be liable for any loss of or damage to Persons or property resulting from such failure, and Merchant shall indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of such failure.

14.3. Merchant agrees to comply with all laws or regulations concerning overweight Containers, and Merchant shall indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of Merchant's failure to comply with such laws or regulations.

## **15. DELIVERY**

15.1. Chapters 9 and 10, articles 43 through 56 of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (“ Rotterdam Rules”) are incorporated by reference into this bill of lading as if they were set forth at length herein. Subject to that incorporation, the parties agree that when the Goods have arrived at their destination, Merchant shall accept delivery of the Goods at the time or within the time period and at the designated location or, if the location is not designated, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

15.2. On request of Carrier or the Performing Party that delivers the Goods, Merchant or the consignee shall acknowledge receipt of the Goods from Carrier or the Performing Party in the manner that is customary at the place of delivery. Carrier may refuse to deliver the Goods if the consignee refuses to acknowledge such receipt.

15.3. Carrier's responsibility shall cease when delivery has been made to Merchant, any Person authorized by Merchant to receive the Goods, or in any manner or to any other Person in accordance with the custom and usage of the port of discharge or place of delivery. If the laws or regulations or customs of the place of delivery require Carrier to hand over the Goods to an authority or other third party from which Merchant may collect them, Carrier delivers the Goods and is no longer responsible for them when Carrier hands the Goods over to the authority or other third party. If the Goods remain in Carrier's custody and possession and are not taken by Merchant, after notice, within the time allowed in Carrier's applicable tariff, the Goods may be considered, at Carrier's option, to have been delivered to Merchant or abandoned, and may be unloaded from the Container, sold, disposed of, or stored at Merchant's expense. Such sale, disposal or storage shall constitute final delivery under this bill of lading, and all liability of Carrier with respect to the Goods shall cease.

15.4. Carrier does not accept responsibility for failure to notify the Merchant or others concerned with the arrival of the Goods.

## **16. NOTICE OF CLAIM**

Written notice of claims for loss of or damage to Goods occurring or presumed to have occurred while in the custody of Carrier must be given to Carrier at the place of delivery before or at the time of removal of the Goods by one entitled to delivery. If such notice is not provided, removal shall be prima facie evidence of delivery by Carrier in good order and condition. If such loss or damage is not apparent, Carrier must be given written notice within 3 days of the delivery.

## **17. FREIGHT AND CHARGES**

17.1. Freight charges may be calculated on the basis of the particulars of the Goods furnished by Merchant. Merchant warrants to Carrier the accuracy of the contents, weight, measure, or value as furnished by Merchant at the time of receipt of the Goods by Carrier or Performing Party. Carrier for the purpose of ascertaining the actual particulars may, at any time and at the risk and expense of Merchant, open the Container or Package and examine contents, weight, measure, and value of the Goods and shall also be entitled to a commercial invoice for the Goods. In case of incorrect declaration of the contents, weight, measure and or value of the Goods, Merchant shall be liable for and shall be bound to pay to Carrier: (a) the balance of freight between the freight charged and that which would have been due had the correct details been given, plus (b) expenses incurred in determining the correct details, plus (c) as liquidated and ascertained damages, an additional sum equal to the correct freight charges. Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by Carrier to Merchant are for informational purposes only and are subject to change without notice and shall not under any circumstances be binding upon Carrier unless Carrier in writing specifically undertakes the handling of transportation of the shipment at a specific rate and that rate is filed in Carrier's tariff.

17.2. Freight charges shall be deemed fully earned on receipt of the Goods by Carrier and shall be paid, whether or not the Goods were lost or not lost, and whether or not the shipment was prepaid or freight collect. Payment shall be made in full and in cash without any offset, counterclaim, or deduction, in the currency named in this bill of lading, or another currency at Carrier's option. Interest at 2% per month shall run from the date when freight and other charges are due. Payment of freight charges to a freight forwarder, broker or anyone other than directly to Carrier shall not be deemed payment to Carrier. Merchant shall remain liable for all charges hereunder notwithstanding any extension of credit to the freight forwarder or broker by Carrier. Full freight shall be paid on damaged or unsound Goods.

17.3. The parties defined in this bill of lading as the “Merchant” and their principals shall be jointly and severally liable to Carrier for, and shall defend, indemnify and hold Carrier harmless from (a) all dues, fees, duties, fines, taxes and charges, including consular fees, levied on the Goods; (b) return freight and other charges on the Goods if they are refused export or import by any government; (c) all demurrage or detention charges imposed on the Goods or their Containers by any Person; (d) payment of all freight and other charges, including the foregoing, general average, and advances; and (e) for the due fulfilment of all obligations undertaken by Merchant in this bill of lading and shall, in any referral for collection or action for monies due to Carrier, upon recovery by Carrier, pay the expenses of collection and litigation, including reasonable attorneys' fees. This provision shall apply regardless of whether the front of this bill of lading has been marked “prepaid” or “freight prepaid” so long as freight and charges remain unpaid.

17.4. The parties defined in this bill of lading as the “Merchant” and their principals shall jointly and severally indemnify

Carrier for all claims, fines, penalties, damages, costs and other amounts which may be incurred or imposed upon Carrier by reason of any breach of any of the provisions of this bill of lading or of any statutory or regulatory requirements. Merchant authorizes Carrier to pay and/or incur all such charges and expenses and to do any matters mentioned above at the expense of and as agent for Merchant, to engage other persons to regain possession of the Goods, and to do all things deemed advisable to Carrier for payment of all freight and other charges and for the performance of the obligation of each of them hereunder.

## **18. LIEN**

18.1. Carrier shall have a general lien on any and all Goods and other property (and documents including but not limited to bills of lading and other documents of title, and freight forwarder receipts relating thereto) of Merchant in its possession, custody or control or en route, for all claims for charges, expenses or advances incurred by or sums otherwise due to Carrier in connection with this shipment, or any previous shipment, of Merchant or both. Carrier may withhold delivery and store the Goods at Merchant's expense if Merchant has not paid or satisfied any claim by Carrier whether or not it is related to the carriage, the Goods, or this bill of lading. Carrier's lien as provided for in this Section 18 supplements Carrier's other rights under all other agreements, under U.S. maritime law, or other applicable law and can be extinguished only by full and indefeasible payment of all secured amounts. If such claim remains unsatisfied for 30 days after demand for its payment is made, then Carrier may enforce this lien by public or private sale of the Goods or other property belonging to Merchant which may be in Carrier's possession, without notice, and at Merchant's expense. Any surplus from such sale shall be transmitted to Merchant, and Merchant shall be liable for any deficiency in the sale. Carrier's lien shall survive delivery of the Goods.

18.2. Without limiting the foregoing, if the Goods are unclaimed for 14 days, or whenever in Carrier's opinion, the Goods are perishable or subject to deterioration, or are worthless, Carrier may, at its discretion and subject to its lien and without any responsibility attaching to it, sell, abandon, or otherwise dispose of such Goods solely at the risk and expense of Merchant.

## **19. TIME BAR**

Carrier shall be discharged from all liability for loss of or damage to Goods unless suit is brought within one (1) year after delivery of the Goods or the date when the Goods should have been delivered. Suit shall not be deemed brought against Carrier until jurisdiction shall have been obtained over Carrier by service of summons. The time bar for overcharge claims shall be three (3) months.

## **20. JURISDICTION**

The U.S. District Court for the Southern District of New York shall have exclusive jurisdiction over any dispute arising from the carriage evidenced by this bill of lading. Merchant and Carrier each hereby agree to the exclusive venue in and personal jurisdiction of that forum and each waives any challenge to such jurisdiction or venue. Except as otherwise provided in this bill of lading, the U.S. federal maritime law shall apply. If the U.S. federal maritime law does not govern a dispute, the dispute will be governed by the law of the State of New York.

## **21. GENERAL AVERAGE**

21.1. General Average shall be adjusted at New York, or any other place at Carrier's option, according to the York-Antwerp Rules of 1994. The General Average statement shall be prepared by adjusters appointed by Carrier.

21.2. In the event the General Average peril is caused by an accident, damage, danger or disaster after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for the consequence of which Carrier is not responsible by statute, contract or otherwise, Merchant shall contribute with Merchants of other Goods and Carrier in General Average to the payment of any sacrifice, loss or expense of a General Average nature that may be made or incurred, and shall pay salvage or special charges incurred in respect of the Goods. If a salvaging vessel is owned or operated by Carrier, salvage shall be paid for as fully as if the salvaging vessel or vessels belonged to strangers. Carrier reserves the right to require Merchant to provide security, including a cash deposit to cover the estimated contribution of the Goods and any salvage and special charges thereon.

## **22. BOTH-TO-BLAME COLLISION SECTION**

If the Ship collides with another vessel as a result of the fault of both the Ship and the other vessel and (a) the other vessel pays for cargo lost or damaged on the Ship; and (b) the other vessel recovers all or part of that payment from Carrier, Merchant must defend, indemnify and hold harmless Carrier for that payment.

## **23. CARRIER'S TARIFFS**

The Goods carried under this bill of lading are also subject to all the terms and conditions of tariff(s) published pursuant to the regulations of the United States Federal Maritime Commission or any other regulatory agency which governs a particular portion of the carriage, which terms are incorporated herein as part of the terms and conditions of this bill of lading. Copies of Carrier's tariffs may be obtained from Carrier or its agents or from Carrier's web-site, the address of which is set forth on the U.S. Federal Maritime Commission's web-site at [www.fmc.gov](http://www.fmc.gov). Carrier may enter into NVOCC Service Arrangements or Negotiated Rate Arrangements with Merchant in lieu of the published applicable rates and charges for services provided in its rate tariff. The bill of lading shall prevail in the case of an inconsistency between this bill of lading and an applicable tariff.

**24. PERISHABLE CARGO**

24.1. Goods shall be carried in ordinary Containers without special protection, services or other measures unless Carrier is given notice of the perishable nature of the Goods and Merchant (a) has noted on this bill of lading that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specially equipped Container or are to receive special attention; (b) has made special arrangements with Carrier in writing, including for the payment of additional freight; (c) has completed the appropriate box on the front of this bill of lading with respect to their nature and particular temperature or other range to be maintained; and (d) has given Carrier specific instructions, including required temperature, for the care to be provided. Carrier shall not be liable for any loss of or damage to Goods in a special hold or Container arising from latent defects, breakdown, defrosting, or stoppage of the refrigeration, ventilation or heating machinery, insulation, Ship's plant, or other such apparatus of the Ship or Container, provided that Carrier shall, before or at the beginning of the transport, exercise due diligence to maintain the special hold or Container in an efficient state.

24.2. In the case of temperature-, or humidity-, or ventilation-controlled Containers packed by or on behalf of Merchant, Merchant further warrants that the Containers are and shall remain throughout the carriage in proper functioning order and have been delivered to Carrier at the proper internal temperature, humidity, ventilation, or other control conditions, that the Goods have been properly packed in the Container, and that its controls have been properly set by Merchant before receipt of the Goods by Carrier.

24.3. Merchant's attention is drawn to the fact that refrigerated Containers are not designed to lower the temperature of cargo that has not been presented for stuffing at or below its designated carrying temperature. Carrier shall not be responsible for the consequences of cargo tendered at a higher temperature than that required for the transportation.

24.4. The term "apparent good order and condition" when used in this bill of lading with reference to goods which require refrigeration, ventilation or other specialized attention does not mean that the Goods, when received, were verified by the Carrier as being at the carrying temperature, humidity level or other condition designated by the Merchant.

24.5. If the above requirements imposed on Merchant are not complied with, Carrier shall not be liable for any loss of or damage to the Goods whatsoever.

**25. SEVERABILITY**

The terms of this bill of lading shall be severable, and, if any part or term hereof shall be held invalid, such holding shall not affect the validity or enforceability of any other part or term hereof.

**26. VARIATION OF THE CONTRACT AFFILIATES AND AGENTS**

No servant or agent of 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 Carrier. Carrier's affiliated companies, including but not limited to XPO Global Forwarding, Inc., as well as third party agents authorized by and working on behalf of Carrier, may issue this bill of lading to effect the transport contemplated by such affiliates and/or authorized agents and will possess the same rights and protections under these terms and conditions afforded the Carrier.

**27. DESCRIPTION OF THE CONDITION OF STEEL AND LUMBER**

Carrier will not note rust on steel or moisture on lumber that is present when the bill of lading is issued unless Merchant requests that the condition be noted. If such request is made, Carrier will charge for the expense of surveying the cargo before loading.