

Nisshin Transportation Co., LTD.  
COMBINED TRANSPORT BILL OF LADING

**FACE**

Received in apparent good order and condition except as otherwise noted the total number of containers or other packages or units shown below for transportation from the place of receipt or the port of loading to the place of destination or the port of discharge subject to the terms hereof.

One of the original Combined Transport Bills of Lading must be surrendered duly endorsed in exchange for the Goods or Delivery Order.

In accepting this Bill of Lading, the Merchant (as defined by Article 1 on the back hereof) agrees to be bound by all the stipulations, exceptions, terms, and conditions on the face and back hereof, whether written, typed, stamped, dated, processed or printed, as fully as if signed by the Merchant, any local custom or privilege to the contrary notwithstanding, and agrees that all agreements or freight engagements for and in connection with the transport of the Goods are superseded by this Bill of Lading.

# Nisshin Transportation Co., LTD.

## MULTIMODAL TRANSPORT BILL OF LADING

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### 1. DEFINITIONS

For the purpose of this Combined Transport Bill of Lading "Carrier" means Nisshin Trans Consolidator Co., Ltd. who, as carrier and/or transport operator, has issued this Bill of Lading. The term "Combined Transport" means the carriage of goods by at least two different modes of transport, from a place at which the goods are received in one country to a place of destination in a different country. The term "Combined Transport" used in this Bill of Lading is identical to such other terms as may be used in other parts of the world, i. e. "multimodal", "intermodal" or "through" transport. "Combined Transport" arises when the Place of Receipt and/or the Place of Delivery are indicated on the face hereof. "Different modes of transport" means the transport of goods by two or more modes of transport, such as transport by sea, inland water-way, air, rail or road. The terms contained in this Bill of Lading shall apply even in case of carriage by a single mode of transport. "Merchant" means and includes the Shipper, Consignor, Consignee, Owner and Receiver of the Goods, the Holder of this Bill of Lading and anyone acting on behalf of any such person, who is under the contract with the Carrier in regard to the carriage covered by this Bill of Lading. "Goods" means the cargo received from the Shipper/Consignor and includes any container or other package or unit supplied or furnished by or on behalf of the Merchant, as well as the contents of any container. "Carriage" means the whole of the operations and services for Combined Transport undertaken by the Carrier in respect of the Goods. "Container" means any container, pallet, flat, transportable tanks similar article of transport referred to on the face hereof. "Vessel" includes the vessel, ship, craft, lighter or other means of transport which is or shall be substituted, in whole or in part, for the vessel named on the face hereof. "Laden onboard" or similar words endorsed on this Bill of Lading means that the Goods have been loaded onboard the vessel or are in the custody of the Carrier; and in the event of intermodal transportation if the originating carrier is an Inland Carrier, means that the Goods have been loaded onboard railcars or other means of inland carriage or are in the custody of a participating railroad or other Inland Carrier. "Inland Carrier" means a carrier (other than the Carrier itself) by land, water, or air, participating in intermodal transportation of the Goods, whether acting as carrier or bailee.

### 2. CLAUSES PARAMOUNT

Insofar as this Bill of Lading covers carriage of the Goods by water, this Bill of Lading shall have effect subject to the provisions of the International Carriage of Goods by Sea Act of Japan, enacted June 13, 1957, as amended June 3, 1992, (hereinafter called the Act), unless it is adjudged that any other legislation of the Hague Rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on August 25, 1924, or any legislation of the Hague-Visby Rules contained in the Protocol to amend the Hague Rules done at Brussels on February 23, 1968, or, where applicable, by the Protocol amending the Hague Rules as amended by the protocol of February 23, 1968 done at Brussels on December 21, 1979, mandatorily applies to this Bill of Lading, in which case it shall have effect subject to the provisions of such similar legislation (hereinafter called the Hague Rules Legislation), and the Act or the Hague Rules Legislation shall be deemed to be incorporated herein. If any provision of this Bill of Lading is held to be repugnant to extent to the Hague Rules Legislation or any other laws, statutes or regulations applicable to the

contract evidenced by this Bill of Lading, such provision shall be null and void to such extent but no further. Insofar as this Bill of Lading covers Goods moving to or from ports of United States in foreign trade, or if United States laws is otherwise compulsorily applicable, than carriage of such Goods shall be subject to the provisions of the United States Carriage of Goods by Sea Act, 1936. 46 U.S.C. section 1300-1315 as amended (hereinafter "U.S. COGSA"), the terms of which shall be incorporated herein, and the provisions of U.S. COGSA shall (except as otherwise provided in this Bill of Lading) govern throughout the time when the Goods are in the custody of the Carrier.

### 3. LIMITATION STATUTES

Nothing in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection or exemption from or limitation of liability authorized by any applicable laws, statutes or regulations of any countries.

### 4. RESPONSIBILITY

- (1) Subject to the other of this Bill of Lading, the Carrier shall be responsible for lose of or damage to the Goods occurring between the time when the Goods are received by the Carrier at the Place of Receipt or Port of Loading and the time of delivery of the Goods by the Carrier at the Port of Discharge or Place of Delivery.
- (2) The Carrier shall be relieved of liability for any loss of or damage to the Goods arising or resulting from : (a) an act or omission or the wrongful act or naglect of the Merchant or any person acting on behalf of the Merchant; (b) inherent vice, defect or quality of the Goods; (c) the lack, insufficiency, or defective conditions of packaging or packing of the Goods ; (d) insufficiency or inadequacy of marks or numbers on the Goods, coverings, cases or containers; (e) compliance with the instructions of the Merchant or any person acting on behalf of the Merchant; (f) handling, storing, loading, stowage or unloading of the Goods by the Merchant or any person acting on behalf of the Merchant; (g) strikes, lockouts or stoppage or restraints of labour from whatsoever cause, whether partial or general; (h) latent defects in any vessel, vehicle, conveyance, container, cargo carrying equipment or other pallet or equipment, or terminal, storage or other premises, not detectable by reasonable diligence; (i) any cause or event which the Carrier could not avoid and the consequence thereof the Carrier could not prevent by the exercise of reasonable diligence; (j) a nuclear incident if the operator of a nuclear installation or a person acting for him is liable for this damage under an applicable international convention or national law governing liability in respect of nuclear energy.
- (3) If it is established by the Merchant that loss or damage to the Goods occurred during the period described in clause (1) hereof, the Carrier, subject to the other provisions of this Bill of Lading, shall be responsible for such loss or damage to the extent following but no further : (a) for carriage by water, to the extent prescribed by the applicable Hague Rules Legislation as provided for in Article 2 hereof; (b) for carriage by rail in Europe and U. S. S. R., to the extent provided for in International Convention Concerning the Carriage of Goods by Rail (CIM) made at Berne on January 1, 1975; (c) for carriage by road in Europe and U. S. S. R., to the extent provided for in Convention on the Contract for International Carriage of Goods by Road (CMR) made at Geneva on May 19, 1956; (d) for inland transportation in the U. S. and other parts of the world, the Carrier's responsibility is to procure transportation and incidental services by Inland Carriers authorized by competent governmental agencies, and upon so doing, Carrier's liability to the Merchant shall be to the extent, but not further, to which the Inland Carrier would have been liable to the Merchant if it had made a direct and separate contract with the Merchant in respect to handling, storage, or carriage of the Goods; (e) for carriage by air, to the extent of the stipulations provided in the terms and conditions of Air Waybill

issued by the air carrier with whom the Carrier enters into a contract: (f) save as covered by (a), (b), (c), and (d) above with respect to loss of or damage to the Goods occurring during the handling, storing, loading, stowage, unloading, warehousing or carriage of the Goods by a sub-contractor or agent of the Carrier, to the extent to which such sub-contractor or agent would have been held liable to the Merchant if he had made a direct and separate contract with the Merchant in respect of such handling, storing, loading, stowage, unloading, warehousing or carriage.

- (4) In case it cannot be proved where the loss of or damage to the Goods occurred, as between the Merchant and the Carrier such loss or damage shall be deemed to have occurred in the course of carriage by sea, and the Carrier shall be responsible to the extent prescribed by the applicable Hague Rules Legislation.
- (5) Notwithstanding clause (3) hereof, the Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or in time to meet any particular market or use, and the Carrier shall not be responsible for any direct or indirect loss of or damage to the Goods which is caused through delay.

## 5. LIMITATION OF LIABILITY

- (1) When the Carrier is liable for compensation in respect of any loss of or damage to the Goods, it is agreed with the Merchant that such compensation shall be calculated by reference to the value of the Goods at the place and time they are delivered to the Merchant, or at the place and time they should have been delivered. For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the sound value of the Goods is presumed to be the Merchant's invoice value of the Goods plus freight, charges and insurance, if paid.
- (2) The Carrier shall in no event be or become liable for any loss of or damage, whatsoever and howsoever arising, to the Goods in an amount exceeding the equivalent of 666.67 Units of Account per package or unit or 2 Units of Account per kilogram of gross weight of the Goods lost or damaged, whichever is the higher.
- (3) Higher compensation may be claimed only when, with the consent of the Carrier, the value for the Goods declared by Merchant which exceeds the limits laid down in this Clause has been stated in this Bill of Lading. 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.
- (4) The Units of Account mentioned in Paragraph (2) above is the Special Drawing Right (SDR) as defined by the International Monetary Fund. The amounts mentioned in Paragraph (2) above all shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the court seized of the case. In case this Bill of Lading covers the Goods moving to or from the U.S.A. and if it shall be adjudged that U.S. COGSA governs this Bill of Lading, the liability of the Carrier shall not exceed Five Hundred Dollars lawful currency of the U.S.A. (\$500) per package or unit.
- (5) When the Goods have been packed into a Container by or on behalf of the Merchant, and when the number of packages or units packed into the Container is not enumerated on the face hereof, each Container including the entire contents thereof shall be considered as one package for the purpose of application of the Carrier's limitation of liability.

## 6. METHODS AND ROUTES OF TRANSPORTATION

- (1) The Carrier may at any time and without notice to the Merchant : (a) use any means of transport or storage whatsoever; (b) transfer the Goods from one conveyance to another, including transshipping or carrying them on a vessel other than that named on the face hereof; (c) unpack and remove the Goods which have been stowed into a container and forward

them in another container or otherwise; (d) proceed by any route of transport in the Carrier's discretion (whether or not such route is the nearest, most direct, customary, intended or advertised route) and proceed to or stay at any place or port whatsoever once or more often and in any order; (e) load and unload the Goods at any place/port (whether or not any such place/port is named on the face hereof as the Port of Loading or Port of Discharge) and store the Goods at any such place/port; (f) comply with any orders or recommendations given by any government or authority or any person or body acting or purporting to act on behalf of such government or authority or having under the terms of insurance on the conveyance employed by the Carrier the right to give orders or directions.

(2) The rights and liberties set out in clause (1) may be exercised by the Carrier for any purpose whatsoever including undergoing repairs, towing or being towed, adjusting instruments, dry docking and assisting vessels in all situations, and anything done in accordance with clause (1) or any delay arising therefrom shall be deemed to be within the contract of carriage and shall not be a deviation.

#### 7. MATTERS AFFECTING PERFORMANCE

If at any time the carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage (even through the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time this contact was entered into or the Goods were received for carriage) which cannot be avoided by the exercise of reasonable endeavours, the Carrier (whether or not the carriage is commenced) may either : (a) without notice to the Merchant abandon the carriage of the Goods and place the Goods or any part or 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 Merchant shall have no right to refuse to take delivery of the Goods in such circumstances. The Carrier shall nevertheless be entitled to full freight and charges for Goods received for carriage, and the Merchant shall pay any additional costs of carriage to and delivery and storage at such place/port; or (b) without prejudice to the Carrier's right subsequently to abandon the carriage under (a), upon notice to the Merchant to suspend carriage of the Goods or any part of them and store them ashore or afloat under the terms of this Bill of Lading, against payment of such reasonable additional charges as the Carrier may determine. The Carrier undertakes to use best endeavours to forward Goods, the carriage of which has been suspended, as soon as possible after the cause of hindrance, risk, delay, difficulty or disadvantage has been removed but makes no representations as to the maximum period between such removal and the forwarding of the Goods to the Place of Delivery named in this Bill of Lading.

#### 8. SUB - CONTRACTING

The Carrier shall be entitled to sub-contract on any terms the wholes or any part of the handling, storage or carriage of the Goods and any and all duties whatsoever undertaken by the Carrier in relation to the Goods. The Merchant shall indemnify the Carrier against any claims which may be made upon the Carrier by any servant, agent or sub-contractor of the Carrier in relation to a claim against any such person made by the Merchant. Without prejudice to the foregoing, every such servant, agent and sub-contractor shall have the benefit of all provisions herein for the benefit of 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 his own behalf but also as agent for such servants, agents and sub-contractors. "Subcontractor" includes stevedores, longshoremen, lighterers, terminal operators, warehousemen, truckers, agents, and any person, corporation, or other legal entity that performs any of the Carrier's obligations under this Bill of Lading, and

includes the subcontractor's own subcontractors.

#### 9. MERCHANT'S RESPONSIBILITY

- (1) The Merchant warrants to the Carrier that the description and particulars of the Goods as set out on the face hereof have been checked by the Merchant on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on behalf of the Merchant are correct.
- (2) The Merchant shall indemnify the Carrier against all losses, damages and expenses arising or resulting from inaccuracies in or inadequacy of such particulars.

#### 10. DELIVERY

- (1) The Carrier shall have the right to deliver the Goods at any time from or at the Vessel's side, custom-house, warehouse, wharf, quay or any other place designated by the Carrier within the geographic limits of the port of discharge or place of delivery shown on the face hereof.
- (2) The Carrier's responsibility shall cease when the Goods have been delivered to the Merchant or any other person entitled to receive the Goods on his behalf at the place designated by the Carrier. Delivery of the Goods to the custody of Customs or any other authorities shall constitute final discharge of the Carrier's responsibility hereunder.
- (3) In case the cargo received by the Carrier or the Inland Carrier is container (s) into which contents have been packed by or on behalf of the Merchant, the Carrier shall only be responsible for delivery of the total number of container (s) shown on the face hereof, and shall not be required to unpack the container (s) and deliver the contents thereof in accordance with brands, marks, numbers, sizes or types of packages or pieces, provided, however, that at the Carrier's discretion and upon the Merchant's demand in writing reaching the Carrier at least 3 days prior to the scheduled date of arrival of the Vessel at the port of discharge concerned. Container (s) may be unpacked and the contents thereof may be delivered by the Carrier to one or more receivers in accordance with the written instructions, in which case if the seal of the container (s) is intact at the time of unpacking, all the Carrier's obligations hereunder shall be deemed to have been discharged and the Carrier shall not be responsible for any loss of or damage to the contents arising or resulting from such delivery, and the Merchant shall be liable for an appropriate adjustment of the freight and any additional charges incurred.
- (4) In case the Goods have been packed into container (s) by the Carrier or the Inland Carrier, the Carrier or the Inland Carrier shall unpack the container (s) and deliver the contents thereof and shall not be required to deliver the Goods in container (s), provided, however, that at the Carrier's discretion and subject to prior arrangement between the Merchant and the Carrier. Goods may be delivered to the Merchant in container (s). In which case if the container (s) are delivered by the Carrier or the Inland Carrier with seals intact, such delivery shall be deemed to be full and complete performance of the Carrier's obligations hereunder and the Carrier shall not be responsible for any loss of or damage to the contents of the container (s).
- (5) Optional delivery shall be granted only when arranged prior to the time of receipt of the Goods and so expressly provided herein. A Merchant desiring to avail himself of the option so expressed must give notice in writing to the Carrier at the first port of call of the Vessel named in the option at least 48 hours prior to the Vessel's arrival there; otherwise the Goods shall be landed at any of the optional ports at Carrier's option and the Carrier's responsibility shall then cease.

#### 11. DELIVERY BY MARKS

- (1) The Carrier shall not be liable for failure of or delay in delivery in accordance with marks unless such marks have been clearly and durably stamped or marked upon the Goods, package (s) and container (s) by the Merchant before they are received by the Carrier or the Inland Carrier in letters and numbers not less than two inches high, together with names of the port of discharge and place of delivery.
- (2) In no circumstances shall the Carrier be responsible for delivery in accordance with other than leading marks.
- (3) The Merchant warrants to the Carrier that the marks on the Goods, package (s) and container (s) correspond to the marks shown on this Bill of Lading and also in all respects comply with all laws and regulations in force at the port of discharge or place of delivery, and shall indemnify the Carrier against all loss, damage, expenses, penalties and fines arising or resulting from incorrectness or incompleteness thereof.
- (4) Goods which cannot be identified as to marks and numbers, cargo sweepings, liquid residue and any unclaimed Goods not otherwise accounted for may be allocated for the purpose of completing delivery in proportion to any apparent shortage, loss of weight or damage, and such Goods or parts thereof shall be accepted as full and complete delivery.

#### 12. TRANSHIPMENT AND FORWARDING\*

- (1) Whether arranged beforehand or not, the Carrier shall be at liberty without notice to carry the Goods wholly or partly by the named or any other vessel (s), craft or other means of transport by water, land or air, whether owned or operated by the Carrier or others. The Carrier may under any circumstances whatsoever discharge the Goods or any part thereof at any port or place for transshipment and store\*the same afloat or ashore and then forward the same by any means of transport.
- (2) In case the Goods herein specified cannot be found at the port of discharge or place of delivery or if they be miscarried, they, when found, may be forwarded to their intended port of discharge or place of delivery at the Carrier's expense, but the Carrier shall not be liable for any loss, damage, delay or depreciation arising from such forwarding.

#### 13. REGULATIONS RELATING TO GOODS

The Merchant shall comply with all laws, regulations, and 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 thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof.

#### 14. FREIGHT AND CHARGES

- (1) Freight and Charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.
- (2) The Merchant's attention is drawn to the stipulations concerning currency in which the Freight and Charges are to be paid, exchange rate, devaluation and other contingencies relative to Freight and Charges in the applicable tariffs.
- (3) The Freight and Charges are calculated on the basis of the description and particulars of the Goods furnished by or on behalf of the Merchant. The Carrier may at any time open and check any container or other package or unit in order to reweigh, remeasure, revalue or inspect the contents; and if such description and particulars furnished by or on

behalf of the Merchant are incorrect, the Merchant shall be liable to the Carrier for : (a) the balance of Freight between the Freight charged and that which would have been due had the correct information been given, plus (b) expenses incurred in determining the correct information, plus (c) as liquidated damages, an additional sum equal to the correct Freight.

- (4) Except as may be provided to the contrary in the applicable Tariffs, all Freight and Charges shall be paid without any set-off, counter-claim, deduction or stay of execution.
- (5) The Freight and Charges, and liquidated damages under clause (3) above, may be recovered by the Carrier from any person falling within the definition of Merchant in Article 1, whether or not such person is the Shipper.
- (6) If the Goods are not available when the vessel or Inland Carrier is ready to load, dead freight shall be paid by the Merchant.

#### 15. LIEN

- (1) Carrier shall have a lien on the Goods, which lien shall survive delivery, for all freight, dead freight, demurrage, damages, loss, charges, expenses and any other sums whatsoever payable by or chargeable to or for the account of the Merchant under this Bill of Lading and any contract preliminary hereto, and the cost and expenses of recovering the same, and Carrier may sell the Goods privately or by public auction without notice to the Merchant. If on sale of the Goods the proceeds fail to cover the amount due and the cost and expenses incurred, the Carrier shall be entitled to recover the deficit from the Merchant.
- (2) If the Goods are unclaimed during a reasonable time, or whenever in the Carrier's opinion the Goods will become deteriorated, decayed or worthless, the Carrier may, at his discretion and subject to his lien and without any responsibility attaching to him, sell, abandon or otherwise dispose of such Goods solely at the risk and expense of the Merchant.

#### 16. DESCRIPTION OF GOODS

- (1) This Bill of Lading shall be prima facie evidence of the receipt by the Carrier in apparent good order and condition, except as otherwise noted, of the total number of containers, packages or other units of weight of the Goods shown on the face hereof.
- (2) The description and particulars of the Goods shown on the face hereof are furnished by the Merchant and are unknown to the Carrier, who has no knowledge of the weight, contents, measure, quantity, quality, condition, marks, numbers or value of the Goods, and the Carrier shall be under no responsibility in respect of such description and particulars.

#### 17. DANGEROUS GOODS. CONTRABAND

- (1) The Carrier undertakes to carry Goods of an explosive, inflammable, radioactive, corrosive, damaging, noxious, hazardous, poisonous, injurious or dangerous nature only upon the Carrier's acceptance of a prior written application by the Merchant for the carriage of such Goods. Such application must accurately state the nature, name, label and classification of the Goods as well as the method of rendering them innocuous, with the full names and address of the shipper and the consignee.
- (2) The Merchant shall undertake that the nature of the Goods referred to in the preceding paragraph is distinctly and permanently marked and manifested on the outside of the package (s) and container (s) and shall also undertake to



submit the documents or certificates required by any applicable statutes or regulations or by the Carrier.

- (3) Whenever the Goods are discovered to have been received by the Carrier or the Inland Carrier without complying with paragraph (1) or (2) above, or the Goods are found to be contraband or prohibited by any laws or regulations of the port of loading, discharge or any place or waters during the transport, the Carrier shall be entitled to have such Goods rendered Innocuous, thrown overboard or discharged or otherwise disposed of at the Carrier's discretion without compensation, and the Merchant shall be liable to indemnify the Carrier against any kind of loss, damage or liability, including loss of freight, and any expenses directly or indirectly arising out of or resulting from such Goods.
- (4) The Carrier may exercise or enjoy the right or benefit conferred upon the Carrier under the preceding paragraph whenever it is apprehended that Goods received in compliance with paragraphs (1) and (2) have become dangerous to the Carrier, Vessel, cargo, persons and /or other property.
- (5) The Carrier has the right to inspect the contents of the package (s) or container (s) at any time and anywhere without the Merchant's agreement and at the risk and expense of the Merchant.

#### 18. DECK CARGO

- (1) The Carrier has the right to carry Goods In container (s) under deck or on deck.
- (2) When the Goods are carried on deck, the Carrier shall not be required to specially note, mark, or stamp any statement of "on deck stowage" on the face hereof, any custom to the contrary notwithstanding. The Goods so carried shall be subject to the applicable Hague Rules Legislation as provided for in Article 2 hereof, and the stowage of such Goods shall constitute under deck stowage for all purposes including general average.
- (3) The Carrier shall not be liable in any capacity whatsoever for any non-delivery, misdelivery, delay, or loss of or damage to Goods which are carried on deck and stated on the face hereof to be so carried, whether or not caused by the Carrier's negligence or the Vessel's unseaworthiness.

#### 19. LIVE ANIMALS AND PLANTS

The Carrier shall not be responsible for any accident, disaster, mortality, loss of or damage to live animals, birds, reptiles and fish and plants arising or resulting from any cause whatsoever, including the Carrier's negligence or the Vessel's unseaworthiness, and shall have the benefit of all the provisions of this Bill of Lading except those inconsistent with the provisions of this Article.

#### 20. VALUABLE GOODS

The Carrier shall not be liable for any loss of or damage to or in connection with platinum, gold, silver, jewellery, precious stones, precious metals, radioisotopes, precious chemicals, bullion, specie, currency, negotiable instruments, securities, writings, documents, pictures, embroideries, works of art, curios, heirloom, collections of every nature or any other valuable Goods, including Goods having particular value only for the Merchant, unless the true nature and the value of the Goods have been declared in writing by the Merchant before receipt of the Goods by the Carrier or the Inland Carrier, and the same is inserted in this Bill of Lading, and ad valorem freight has been prepaid thereon.

#### 21. HEAVY LIFT

- (1) The weight of a single piece or package exceeding 2.240 lbs, gross must be declared by the Merchant in writing before

receipt by the Carrier or the Inland Carrier and must be marked clearly and durably on the outside of the piece or package in letters and figures not less than two inches high.

- (2) In case of the Merchant's failure in his obligations under the preceding paragraph, the Carrier shall not be responsible for any loss of or damage to or in connection with the Goods, and at the same time the Merchant shall be liable for loss of or damage to any property or for personal injury arising as a result of the Merchant's said failure and shall indemnify the Carrier against any kind of loss or liability suffered or incurred by the Carrier as a result of such failure.

## 22. USE OF CONTAINER

Where the Goods are not already packed into container (s) at the time of receipt, the Carrier shall be at liberty to pack and carry them in any type of container (s).

## 23. CONTAINER PACKED BY MERCHANT

If the cargo received by the Carrier or the Inland Carrier is container (s) into which contents have been packed by or on behalf of the Merchant, (1) this Bill of Lading is prima facie evidence of the receipt only of the number of container (s) as shown on the face hereof : and the order and condition of the contents and any particulars thereof (including marks and numbers, number and kind of packages or pieces, description, quality, quantity, gauge, weight, measure, nature, kind and value) are unknown to the Carrier or the Inland Carrier, and the Carrier accepts no responsibility in respect thereof, and (2) the Merchant warrants that the stowage of the contents of container (s) and their closing and sealing are safe and proper and also warrants that the container (s) and contents thereof are suitable for handling and carriage in accordance with the terms hereof including Article 18. In the event of the Merchant's breach of said warranties, the Carrier shall not be responsible for any loss of or damage to or in connection with the Goods resulting from said breach and the Merchant shall be liable for loss of or damage to any other property, or for personal injury or the consequences of any other accidents or events whatsoever and shall indemnify the Carrier against any kind of loss or liability suffered or incurred by the Carrier on account of the said accident or events, and (3) the Merchant shall inspect the container (s) when the same are furnished by or on behalf of the Carrier, and they shall be deemed to have been accepted by the Merchant as being in sound and suitable condition for the purpose of the transport contracted herein, unless he gives notice to the contrary in writing to the Carrier, and (4) if the container (s) are delivered by the Carrier or the Inland Carrier with seals intact, such delivery shall be deemed as full and complete performance of the Carrier's obligation hereunder and the Carrier shall not be liable for any loss of or damage to the contents of the container (s), and (5) the Carrier shall be at liberty to open the container (s) and to inspect the contents of the container (s) without notice to the Merchant at such time and place as the Carrier may deem necessary and all expenses incurred therefrom shall be borne by the Merchant. In case the seals of container (s) are broken by Customs or other authorities for inspection of the contents of the said container (s), the Carrier shall not be liable for any loss, damage, expenses or any other consequences arising or resulting therefrom.

## 24. SPECIAL CARRIAGE OR CONTAINER

- (1) The Carrier does not undertake to carry or store the Goods in refrigerated, heated, insulated, ventilated or any other special hold or container (s), or to carry or store any special container (s) packed by or on behalf of the Merchant, and the Carrier will treat such Goods or container (s) only as ordinary Goods or dry container (s), unless special arrange-

ments for the carriage or storage of such Goods or container (s) have been agreed to in writing between the Carrier and the Merchant and unless such special arrangements are noted on the face of this Bill of lading and unless special freight as required has been paid. The Carrier shall not accept responsibility for the function of special container (s) supplied by or on behalf of the Merchant.

- (2) As regards Goods which have been agreed to be carried in a special hold or container (s), the Carrier shall exercise due diligence to maintain the facilities of the special hold or container (s) while they are in his actual custody and control, but shall not be liable for any loss of or damage to the Goods caused by latent defects, derangement or breakage of facilities of the hold or container (s).
- (3) If the Goods have been packed into refrigerated container (s) by the Carrier and the particular temperature range requested by the Merchant is inserted in this Bill of Lading, the Carrier will set the thermostatic controls within the requested temperature range, but does not guarantee the maintenance of such temperature inside the container (s).
- (4) If the cargo received by the Carrier is refrigerated container (s) into which the contents have been packed by or on behalf of the Merchant, it is the obligation of the Merchant to stow the contents properly and set the thermostatic controls exactly. The Carrier shall not be liable for any loss of or damage to the Goods arising out of or resulting from the Merchant's failure in such obligation and further does not guarantee the maintenance of the intended temperature inside the container (s).

#### 25. INSPECTION OP GOODS

The Carrier shall be entitled, but shall be under no obligation, to open any container or package at any time and to inspect the contents. If it thereupon appears to the Carrier that the container, its contents or any part thereof cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or without taking any measures in relation to the container or its contents or any part thereof, the carrier may without notice to the Merchant abandon the transport thereof and /or take any measures and /or incur any reasonable additional expense to transport or to continue the transport or to store the same ashore or afloat, under cover or in the open, at any place, which abandonment or storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any reasonable expense so incurred.

#### 26. OPTIONAL STOWAGE

The Goods may be stowed in poop, forecastle, deck house, shelter deck, passenger space, bunker space or any covered in space commonly used in the trade for the carriage of Goods.

#### 27. NOTICE OF CLAIM AND TIME FOR SUIT

As to loss of or damage to the Goods caused or presumed to have been caused during sea carriage, including as stated in Article 4 (4) of this Bill of Lading :

- (1) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier at the port of discharge or place of delivery before or at the time of delivery of the Goods or, if the loss or damage be not apparent, within 3 days after delivery, the Goods shall be deemed to have been delivered as described in this Bill of Lading.
- (2) The Carrier shall be discharged from all liability in respect of non-delivery, misdelivery, delay, loss or damage,

unless suit is brought within one year after delivery of the Goods or the date when the Goods should have been delivered.

- (3) Suit shall not be considered to have been "brought" within the time specified unless process shall have been served on and jurisdiction obtained over the Carrier within such time.

#### 28. FIRE

The Carrier shall not be responsible for any loss of or damage to the Goods arising or resulting from fire occurring at any time, even though before loading on or after discharge from the Vessel, unless caused by the actual fault or privity of the Carrier.

#### 29. 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 owner of the Vessel in the navigation or in the management of the Vessel, the Merchant shall indemnify the Carrier against all loss or liability which might be incurred directly or indirectly to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to his Goods or any claim whatsoever of the Merchant paid or payable by the other or non-carrying ship or her owners to the Merchant 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 the owner thereof. 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.

#### 30. GENERAL AVERAGE, NEW JASON CLAUSE

- (1) General average shall be adjusted, stated and settled at Tokyo or any other port or place at the Carrier's option according to the York-Antwerp Rules, 1974, as amended 1990 and as to matters not provided for by these Rules, according to the laws and usages of the port or place of adjustment, and in the currency selected by the Carrier. The general average statement shall be prepared by the adjusters appointed by the Carrier. Average agreement or bond and such cash deposit as the Carrier may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon and any other additional securities as the Carrier may require shall be furnished by the Merchant to the Carrier before delivery of the Goods.
- (2) In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible by statute, contract or otherwise, the Goods and the Merchant shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, loss or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the Goods. If a salving ship is owned or operated by the Carrier salvage shall be paid as fully and in the same manner as if such salving ship belonged to strangers.

#### 31. THE DEFENCES AND LIMITS OF LIABILITY

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 which is judged to be the responsibility of the Carrier, whether the action be founded in contract or in tort.

### 32. GOVERNING LAW AND JURISDICTION

The Contract evidenced by or contained in this Bill of Lading shall be governed by Japanese Law except as may be otherwise provided herein, and any action hereunder shall be brought before the Tokyo District Court in Japan.

### 33. INTERMODAL TRANSPORTATION; TARIFFS

- (A) This Bill of Lading may be issued for intermodal transportation in any country. When so issued, as between the Merchant and an Inland Carrier custody and carriage of the Goods by the Inland Carrier are subject to the relevant laws, regulations, tariffs, and Bill of Lading applicable to or issued by the Inland Carrier. Copies of the form of the Inland Carrier's applicable Bill of Lading are available from the Carrier or the Inland Carrier upon request.
- (B) Claim by the Merchant against the Carrier or an Inland Carrier for loss or damage caused by an Inland Carrier shall be made, and suit commenced, as provided the Inland Carrier's applicable Bill of Lading.
- (C) This Bill of Lading is issued subject to Carrier's applicable tariff. Copies of the applicable tariffs are obtainable from the Carrier upon request.