

MARITIME FREIGHT CONDITIONS OF CARRIAGE

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in conditions:

Cargo: any goods agreed in the Contract to be transported by the Carrier (including any parts of them) in accordance with these conditions;

Carrier: Isles of Scilly Shipping Company Limited (5012204), whose registered office is at Steamship House, Quay Street, Penzance, TR18 4BZ;

Consignee: Any person designated and authorised to take delivery of the Cargo;

Contract: any contract between the Carrier and the Shipper for the Shipment, incorporating these conditions;

Dangerous Cargo: any materials and substances designated as dangerous by the rules of the International Maritime Organisation (including, but not limited to, the International Maritime Dangerous Goods Code) and by any applicable legislation and regulations applicable in the United Kingdom in force from time to time, but does not include petrol, diesel oil or other fuel present in reasonable quantities in the fuel tanks of vehicles;

Freight Charges: the charges due to the Carrier for the Shipment as stated on the Shipping Note (exclusive of any value added tax that may be due and payable), or as otherwise agreed;

Hague-Visby Rules: those rules set out in the schedule to the Carriage of Goods by Sea Act 1971 as amended by the Merchant Shipping Acts 1981 and 1995 and as may be further amended from time to time;

Invoice: an invoice for Freight Charges issued by or on behalf of the Carrier;

SDR: A Special Drawing Right as defined by the International Monetary Fund. Special Drawing Rights are a financing instrument created by the International Monetary Fund in 1969 in order to supplement its member countries' official reserves. The value is based on a basket of four key currencies and Special Drawing Rights can be exchanged for freely useable currencies. The equivalent value of Special Drawing Rights in Euros can be found at http://www.imf.org/external/np/fin/data/rms_five.aspx.

Shipment: the carriage of the Cargo by the Carrier on behalf of the Shipper;

Shipper: the person, firm or company who contracts with the Carrier for the Shipment;

Shipping Note: a note issued by the Carrier to the Shipper stating the quantity, nature and description of the Cargo, the name and address of the Consignee, the Freight Charges, an account number, date of acceptance for shipping, outbound shipping date and the name and address of the Shipper;

Unit: any vehicle (including, but not limited to, any trailer, container, transportable tank, flat pallet, package of other type of equipment) used for carrying the Cargo; and

Vessel: the vessel or vessels owned, operated or engaged by the Carrier for the purpose of the Shipment.

1.2 Unless otherwise expressly provided to the contrary, a reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 Clause headings do not affect the interpretation of these conditions.

2 Application of Terms

2.1 These conditions relate to the carriage by the Carrier of Cargo by sea.

Any persons accompanying the Freight on the Vessel shall be subject to the Carriers General Conditions of Carriage by Sea (a copy of which is available on request).

2.2 Subject to clause 2.3, the Contract shall;

(a) be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Shipper purports to apply under any purchase order, confirmation of order, specification, the Shipping Note or other document); and

(b) (subject to clause 9) incorporate the provisions of the Hague Visby Rule, in the event of any inconsistency between the provisions of these conditions and the provisions of the Hague Visby Rules, the provision of these conditions shall, to the fullest extent permitted by law, prevail.

2.3 The Shipping Note shall be subject to the provisions of Carriage of Goods by Sea Act 1992 and no bill of lading or other document of title will be issued by the Carrier under any circumstances whatsoever. The Carrier is not and does not hold itself out as a common carrier.

2.4 The Shipper shall ensure that the details in the Shipping Note are complete and accurate and shall ensure that the Cargo does not exceed the weight or dimensions of Units as confirmed on the Shipping Note. The Shipper may request an amendment to their Shipment, which may be accepted or declined by the Carrier in its sole discretion, provided that:

(a) such a request is made in writing;

(b) an amendment fee, as set out in the Carrier's published freight charges, is paid to the Carrier; and

(c) the request is given to the Carrier at least 72 hours prior to the outbound shipping date set out in the Shipping Notice.

2.5 No terms or conditions endorsed on, delivered with or contained in the Shipper's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.6 These conditions apply to all Shipments. The Shipper acknowledges that they have not relied on any statement, promise or representation made or given by or on behalf of the Carrier which is not set out in the Contract. Nothing in this condition shall exclude or limit the Carrier's liability for fraudulent misrepresentation.

2.7 Each order or acceptance of a quotation for a Shipment by the Shipper from the Carrier shall be deemed to be an offer by the Shipper to the Carrier for the Carrier to complete the Shipment subject to these conditions.

2.8 No order placed by the Shipper shall be deemed to be accepted by the Carrier until a Shipping Note is issued by the Carrier or (if earlier) the Carrier commences the Shipment.

2.9 Any quotation is given on the basis that no Contract shall come into existence until the Carrier provides a Shipping Note to the Shipper. Any quotation is valid for a period of 30 days only from its date, provided that the Carrier has not previously withdrawn it. The Carrier may extend the validity of a quote beyond 30 days if confirmed in writing by the Carrier (which shall be determined in its sole discretion).

3 Price and Payment

3.1 Subject to clause 3.4, payment of the Freight Charges is due in pounds sterling on the date specified in the Invoice.

3.2 Time for payment shall be of the essence.

3.3 No payment shall be deemed to have been received until the Carrier has received cleared funds.

3.4 All payments payable to the Carrier under the Contract shall become due immediately on its termination despite any other provision.

3.5 The Shipper shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Shipper has a valid court order requiring an amount equal to such deduction to be paid by the Carrier by the Shipper.

3.6 If the Shipper fails to pay to the Carrier any sum due pursuant to the Contract, and without prejudice to any other right or remedy the Carrier may have, the Carrier may elect that the Shipper shall pay:

(a) where the Shipper is acting as consumer, interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment; or

(b) where the Shipper is acting in the course of a business, interest on the overdue amount which the Carrier may charge in accordance with the rate applied by the Late Payment of Commercial Debts (Interest) Act 1998.

4 Shipper's Warranties and Obligations

4.1 By presenting the Cargo for Shipment, the Shipper agrees and warrants that:

(a) any person who presents the Cargo for Shipment is authorised to:

(i) contract and accept these conditions on behalf of the Shipper, the Consignee and every person with an interest of any nature in the Cargo; and

(ii) agree on behalf of any person holding a proprietary interest in the Cargo to the Carrier's rights as set out in these conditions;

(b) the Cargo:

(i) has been properly packed and secured within a Unit in such a way that the Carrier deems the Cargo fit for shipping and sufficient to endure sea voyage;

(ii) is suitable and has been properly and adequately described and marked for the purposes of carriage by sea;

(iii) is lawful merchandise under English law; and

(iv) is properly labelled with name, account number and final destination address; and

(c) the Consignee is properly authorised to take delivery of the Cargo at the port of discharge.

4.2 Subject to clause 11, the Shipper agrees to indemnify the Carrier against;

(a) any and all financial consequences of a breach of the Shipper's warranties as set out in clause 4.1;

(b) any and all financial consequences resulting from:

(i) the inaccuracy or inadequacy of the description, weight, number, measure, quantity, marks, value, condition, quality or content of the Cargo;

(ii) from defective loading and overloading of a Unit; and/or

(iii) from inadequate securing, packing, sealing or stuffing of the Cargo;

(c) (unless caused by the Carrier's negligence) any and all liabilities which the Carrier may incur or to any third party; and

(d) any liabilities of the Carrier in excess of the limits under these conditions.

5 Insurance

The Shipper acknowledges and agrees that marine insurance is not included as part of the Freight Charges. The Carrier recommends that the Shipper takes out its own policy of insurance in relation to the Cargo.

6 Carrier's Rights and Obligations

6.1 The Carrier shall have the right (without being under any obligation) to record the condition of the Cargo by contemporaneous video recording, photograph or written report, which shall be conclusive evidence of the Cargo's condition. Upon written request by or on behalf of the Shipper, the Carrier will use reasonable endeavours to provide and maintain a supply of power to any Unit, subject to the Shipper's payment of any relevant charges applied by the Carrier in respect of this service, but in no circumstances whatsoever shall the carrier be liable for any failure to do so or for any breakdown, interruption, inadequacy or unsuitability of the power so supplied.

6.2 Loading and discharging shall be at the expense of the Carrier, but the Shipper shall indemnify the Carrier against all financial consequences for the Carrier, howsoever caused, of the breakdown of any Unit during the course of the loading or discharge, whether on board the Vessel or ashore.

6.3 The Carrier shall be entitled to stow any Cargo either on deck or below deck at its sole option and these conditions shall apply regardless of whether the Cargo is stated to be carried on or below deck and/or is in fact carried on or below deck.

6.4 The Carrier shall at all times be entitled to refuse to carry or to delay the carriage of any Shipment. Such rights shall include, but is not limited to, Cargo which consists wholly or partly of:

(a) Dangerous Cargo (the carriage of which is governed by clause 7 below);

- (b) plant life;
- (c) live animals;
- (d) new and second hand trade vehicles; and
- (e) any vehicle of unusual dimensions which is unsuitable for carriage and would present a potential safety hazard and vehicles whose loads exceed the dimensions of the vehicle.

Any such Cargo is in any event carried solely at the risk of the Shipper and/or the Consignee. The Carrier shall have no liability whatsoever in connection with such Cargo for loss or damage howsoever caused, and the Shipper and/or the Consignee shall be jointly and severally liable to indemnify the Carrier against all financial consequences which the Carrier may incur as a result of the Shipment of such Cargo.

6.5 In any circumstances (which may include adverse sailing conditions) where the Carrier, in its sole discretion, deems it necessary or otherwise appropriate, the Carrier shall be at liberty to:

- (a) transport the Cargo on any Vessel;
- (b) transport the Cargo on any other mode of transport;
- (c) transport the Cargo on date which is different to the date set out in the Shipping Note;
- (d) subcontract the whole or any part of a Shipment to another carrier;
- (e) order a Vessel to deviate en route in circumstances where the Carrier reasonably deems the same necessary for any purpose whatsoever;
- (f) abandon the voyage or to proceed to any other port (including a return to the port of loading) and to take such steps in respect of the Cargo as are deemed appropriate where the Carrier reasonably believes that the Vessel will, through no fault on the part of the Carrier but otherwise for any reason whatsoever, be unable to perform the voyage in accordance with the Contract in any material aspect; and
- (g) open any Unit or otherwise handle Cargo if directed or requested to do so by any customs or other competent authority or if the Carrier, in its sole discretion, reasonably considers it necessary to do so, and any expense thereby incurred shall be for the Shipper's account.

6.6 If the Carrier subcontracts the whole or part of any Shipment to another carrier, it shall enter into an agreement with the carrier containing terms similar to, and no less onerous than this agreement. The Carrier shall at all times be responsible for the acts and omissions of any subcontractor.

6.7 The Carrier may offer and make arrangements for the Shipper to carry the Cargo by rail, road, inland waterway or air and the Carrier may take payment for the services. The Carrier will be the Passenger's agent in respect of such services and the terms and conditions of the third party service provider will apply. The Carrier is not liable for the acts or omissions of the operator of the services.

6.8 The Carrier shall have a lien over the Cargo for payment of the Freight Charges, or any other sums owned by the Shipper or the Carrier.

6.9 The Shipper shall comply with any restrictions imposed by the Carrier from time to time relating to the weight or dimensions of Units.

7 Dangerous Cargo

7.1 The Carrier shall be under no obligation to receive or to carry Dangerous Cargo without having expressly agreed to do so in writing.

7.2 The Shipper shall provide the Carrier with all information required as to the necessary precautions to take in respect of Dangerous Cargo and shall affix to the relevant Unit all necessary notices to comply with applicable regulations and legislation in order to indicate that the Cargo is dangerous, in the absence of which the Carrier shall have an absolute right to refuse the Shipment of such Cargo

7.3 Shipment of Dangerous Cargo shall at all times be at the sole risk and responsibility of the Shipper and/or the Consignee (who shall always be jointly and severally liable for any injury, loss or damage resulting from such Shipment). The Carrier shall be entitled at its sole discretion, to refuse shipment, disembark, destroy or otherwise render innocuous any Dangerous Cargo without liability to compensate the Shipper, the Consignee or any other person for any resulting loss. In such event, the Shipper shall remain responsible for all Freight Charges due to the Carrier as well as the costs and expenses incurred by the Carrier in taking such action.

8 Delivery and Custody

8.1 On or before the date of delivery, the Shipper shall agree the delivery location and date of shipment for the Cargo, and time of delivery, with the Carrier's freight office.

8.2 The Carrier shall take delivery and custody of the Cargo pursuant to the Contract from the time that the Cargo received by the Carrier as stated on the Shipping Note, until the Cargo passes across the Vessel's ramp or rail at the port of discharge specified on the Shipping Note.

8.3 If the Shipper does not deliver the Cargo to the Carrier at the port of discharge specified on the Shipping Note at least two hours before the relevant Vessel's departure time (or such earlier as the Carrier may specify in advance), the Carrier shall be entitled to refuse delivery of the Cargo or arrange for the Cargo to be shipped at a different time.

8.4 The Cargo shall be at the sole risk of the Shipper when outside of the period of the Carrier's responsibility, and any responsibility of the Carrier shall be subject to clause 9.

8.5 The Carrier shall not be responsible for:

- (a) notifying the Consignee or Shipper of delivery of the Cargo; or
- (b) otherwise ensuring that the Consignee is present to accept delivery of the Cargo, at the port of discharge.

8.6 The Shipper and/or the Consignee shall ensure that all Cargo is collected promptly after its discharge from the Vessel and shall, in any event, be jointly and severally liable to indemnify the Carrier against any expenses which the Carrier may incur both prior to taking delivery of the Cargo at the port of loading and after the Cargo have been discharged from the Vessel, including any charges levied directly by the Carrier.

8.7 If a Shipper and/or Consignee fail to collect the Cargo after the Cargo has been discharged from the Vessel, then the Carrier may charge the Shipper and/or Consignee a reasonable storage fee or charge for the Shipper and/or Consignee for the costs incurred in the delivery of the Cargo to the delivery address provided by the Shipper as per 4.1(b)(iv).

8.8 In the event the Shipper and/or Consignee is granted permission to use of a shipping container, vehicle or trailer belonging to the Carrier, the Carrier reserves the right to apply a fee of £50 per day in the event said container is not returned to the Carrier within 14 days of the Cargo date the Cargo has been discharged from the Vessel.

9 Limitation of Liability

9.1 Subject to clauses 6, 7 and 8, the following provisions set out the entire financial liability of the Carrier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Shipper in respect of a breach of these conditions and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

9.2 The Carrier will receive, load, stow, carry, discharge and otherwise generally handle and keep the Cargo in accordance with the Hague Visby Rules, save that;

(a) the Cargo and the Unit together shall be deemed to be a single package or unit for the purposes of Article IV rule 5(a);

(b) the Carrier shall limit its liability to 666.67 SDR per package or unit, and Article IV paragraph 5(c) of the Hague Visby Rules shall read as though the words "or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is higher" were deleted;

(d) the following provisions of the Hague Visby Rules shall not apply;

(i) Article I;

(ii) Article III rules 3, 4, 7 and 8;

(iii); the first and second paragraphs of Article III rule 6 from "Unless notice of loss or damage" to "been the subject of joint survey or inspection"

(iii) Article IV 5(c);

(iv) the end of the first paragraph of Article VI from the words "provided that in this case no bill of lading has been or shall be issued" to "and shall be marked as such";

(v) the words "Provided that", "not" and "to ordinary commercial shipments made in the ordinary course of trade, but only" of the third paragraph of Article VI; and

(vi) Article X.

9.3 The Carrier's right to limit liability in accordance with the Hague Visby Rules as provided by clause 9.2 shall apply in respect of any liability of the Carrier in connection with the Cargo, howsoever arising and whether arising within or outside the period of the Carrier's contractual responsibility for the Cargo as provided in clause 8.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.5 Nothing in these conditions excludes or limits the liability of the Carrier:

(a) for death or personal injury caused by the Carrier's negligence; or

(b) for any matter which it would be illegal for the Carrier to exclude or attempt to exclude its liability; or

(c) for fraud or fraudulent misrepresentation.

9.6 Subject to clauses 9.4 and 9.5, the Carrier shall not be liable to the Shipper for loss or profit, loss of business or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract including, but not limited to:

(a) delay, howsoever and whensoever caused;

(b) loss of use of the Cargo or any part of it;

(c) mis-delivery of the Cargo;

(d) deterioration of damage to the Unit which can be attributed to fair wear and tear unless such damage is proved by the Shipper to have been caused by the Carrier;

(e) any damage caused by third parties, unless arising from the negligence of the Carrier; or

(f) any consequence for any person of a Force Majeure Event (as defined at clause 13 below).

9.7 The Shipper and/or Consignee shall make any claims in respect of the Cargo within 7 days after the Cargo has been, or would have been, discharged from the Vessel, otherwise the removal of the Cargo shall be prima facie evidence that the Cargo was delivered in good condition. The Carrier may issue a damage/shortage report in respect of Cargo reported as lost or damaged. The Shipper and/or Consignees agrees to complete and return the Carrier's standard claim form together with the damage/shortage report, an invoice for the goods contained in the Cargo and such other documentation as may be reasonably required by the Carrier (including details of the Cargo's age and condition). The Carrier's standard claim form and accompanying evidence must be submitted to the Carrier within the time limit set out in this clause 9.7.

10 General Average

General average shall be adjusted at any port or place at the Carrier's option and settled in accordance with the York Antwerp Rules 2016, but in no circumstances shall there be any recovery in respect of loss of or injury to livestock whether by jettison or otherwise.

11 Consumer Rights

No provision of these terms and conditions will adversely affect the rights of any consumers (including those rights set out in the Consumer Rights Acts 2015 and the Consumer Protection from Unfair Trading Regulations 2008).

12 Assignment

12.1 The Carrier may assign the Contract or any part of it to any person, firm or company.

12.2 The Shipper shall not be entitled to assign the Contract or any part of it without the Carrier's prior written consent.

13 Force Majeure

The Carrier reserves the right to defer the date of delivery or to cancel the Contract (without liability to the Shipper) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the carrier's reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) (**Force Majeure Event**) provided that, if the event in question continues for a continuous period in excess of 90 days, either party shall be entitled to give notice in writing to the other to terminate the Contract.

14 General

14.1 Each right or remedy of the Carrier under the Contract is without prejudice to any other right or remedy of the Carrier whether under the Contract or not.

14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Carrier in enforcing or partially enforcing and provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Carrier of any breach of, or any default under, any provision of the Contract by the Shipper shall not be deemed a waiver of any subsequent breach or default

and shall in no way affect the other terms in the Contract.

14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14.7 No agent, employee or unauthorised representative of the Carrier has authority to alter, modify or waive any provision of these conditions.

14.8 No variation of the Contract shall be effective unless agreed via email or in a written form and signed by an authorised representative of both parties.

15 Communications

15.1 All communications between the parties about the Contract shall be in writing and shall be sent by email, delivered by hand or sent by pre-paid first class post:

(a) (in case of written communications to the Carrier) to its registered office or by email to queries@islesofscillyfreight.co.uk or such changed address as shall be notified to the Shipper by the Carrier; or

(b) (in the case of the communications to the Shipper) to the registered office of the addressee (if it is a company) or (in any other case) to any postal address or email address of the Shipper set out in the Shipping Note or such other address as shall be notified to the Carrier by the Shipper.

15.2 Communications shall be deemed to have been received:

(a) if sent by email, at 9.00 am on the next day (excluding Saturdays, Sundays and bank and public holidays) after transmission;

(b) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery.

15.3 The Carrier will not accept communications by fax.

Last updated: November 2023.