# North Sea Conditions of Carriage

Valid from May 2021

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APPLICABILITY

The provisions set out and referred to in these Freight Conditions shall apply to every contract concluded with the Carrier for the performance of the Carriage as undertaken by the Carrier, whether evidenced by the issue of a document or not.

**1 Definitions**

**"Article of Transport"** includes, unless otherwise indicated, any vehicle, container, flat, pallet, trailer, transportable tank and similar items used for the Consolidation of goods as well as mobile plant and timber packages.

**"Carriage"** means the whole or any part of the operations and services of whatsoever nature undertaken by the Carrier in relation to the Goods, including but not limited to the loading, unloading, storage, warehousing and handling of the goods.

**"Carrier"** means the party who has undertaken to perform or to procure the performance of the Carriage from the place of receipt or port of loading to the port of discharge or the place of delivery, whichever respectively applies.

**"Charges"** includes freight and all expenses and monetary obligations, including but not limited to duties, taxes and dues, incurred by the Carrier and payable by the Merchant.

**"Consolidation"** includes stuffing, packing, loading or securing of goods on or within Articles of Transport.

**"Dangerous and Marine Polluting Goods"** means all Goods that have been identified as being dangerous or a marine pollutant whether or not identified in the edition of the IMDG Code current at the time of the Carriage.

**"Freight Conditions"** means the provisions of this contract.

**"Gate-to-Gate"** means a Carriage where the Carrier has agreed to undertake sea carriage of the Goods together with any incidental terminal handling in the port of loading and/or the port of discharge.

**"Goods"** means the whole or any part of the cargo and includes any Article of Transport not supplied by or on behalf of the Carrier.

**"Hague-Visby Rules"** means the International Convention for the Unification of Certain Rules and Law relating to Bills of Lading, signed at Brussels on 22 February 1968 and the protocolin relation to SDRs signed at Brussels on 21 December 1979 or if the Danish, Finnish, Norwegian or Swedish Maritime Code (together "the Codes") compulsorily applies to the Carriage then Hague-Visby Rules shall be construed as meaning whichever of the aforementioned Codes has compulsory application to the Carriage.

**"Merchant"** includes the shipper, receiver, consignor, consignee, and holder of any document evidencing the Contract of Carriage and the owner of the goods and any person having a legitimate interest in the goods and anyone acting on behalf of any or all of the above mentioned persons.

**"Multimodal Transport"** arises if the Carriage is not Port-to-Port or Gate-to-Gate.

**"Port-to-Port"** means a Carriage where the Carrier has agreed to undertake sea carriage of the Goods tackle to tackle only.

**2 Tariff**

The terms of the Tariff applicable at the date of shipment are incorporated herein. Copies of the relevant provisions of the Tariff are available from the Carrier upon request. In the event of inconsistency between these Freight Conditions and the Tariff, the former shall prevail.

**3 Freight**

1 Freight shall be deemed earned on receipt of the Goods by the Carrier and shall be paid in any event and is non-returnable. Pre-payable freight and charges shall be payable at the latest upon receipt of the Goods by the Carrier and freight and charges, if any, payable at destination shall be payable at the latest on the date when the Goods are delivered or should have been delivered. Interest at 2 per cent per month compounded, or, in the event of mandatory national provisions, at such other rate that is compulsorily applicable, shall run from the date when freight and charges are due.

2 The Merchant's attention is drawn to the stipulations concerning currency in which the freight and charges are to be paid, rate of exchange, devaluation and other contingencies relative to freight and charges in the relevant tariff conditions. If no such stipulation exists or is applicable then the following clause shall apply:
If the currency in which freight and charges are quoted is devalued or an alteration in the rate of exchange occurs with the same effect as a devaluation between the date of the Contract of Carriage and the date when the freight and charges are payable, then all freight and charges shall be automatically and immediately increased in proportion to the extent of the devaluation of the said currency.
In case the Carrier has consented to payment in another currency than the above mentioned currency, then all freight and charges shall, subject to the preceding paragraph, be paid at the highest selling rate of exchange for bankers' sight draft current on the day when such freight and charges are paid. If the banks are closed on the day when the freight and charges are paid, the rate to be used will be the one in force on the last day when the banks were open.

3 In the event of increase in price for bunkers, fuel and/or other hydrocarbon oils, freight rates may be adjusted, without notice to the Merchant, in order to compensate the Carrier for increased fuel and lubricating costs as from the day of such increase.

4 For the purpose of verifying the freight basis, the Carrier reserves the right to have the contents of Articles of Transport inspected in order to ascertain the weight, measurement, value or nature of the Goods.

5 If the particulars supplied by or on behalf of the Merchant are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged or to double the correct freight less the freight charged, whichever is the smaller, shall be payable as liquidated damages to the Carrier, notwithstanding any other sum having been stated as freight payable.

6 The Shipper shall be liable for the payment of all freights, charges and demurrage etc. payable at destination, which the Carrier cannot obtain from the receiver.

7 All charges shall be paid without any set-off, counter claim, deduction or stay of execution whatsoever.

**4 Lien**

The Carrier shall have a lien on the Goods and any documents relating thereto for all sums of whatsoever kind and nature due at any time to the Carrier from the Merchant and for General Average contributions to whomsoever due and for the costs of recovering the same and also in respect of any previously unsatisfied amounts of the same nature and for the same costs and expenses of exercising such a lien and the Carrier shall have the right to sell the Goods and documents by public auction or private treaty, without further notice to the Merchant and at the Merchant's expense and without any liability towards the Merchant. Such lien and liability shall remain notwithstanding the Goods have been landed, stored or otherwise dealt with. If on the sale of the Goods the proceeds fail to realise the amount due, the Carrier shall be entitled to recover the difference from any of the parties included in the term Merchant.

**5 Inspection of Articles of Transport**

The Carrier is entitled, but not obliged, to open, at any time, any Article of Transport consolidated and prepared for conveyance by the Merchant in order to inspect such Article of Transport and its contents for the purposes of Clauses 19 and 20 (l) a- c. If any Article of Transport, as aforesaid, is opened and/or inspected by any Customs or other Government Authority at any time, the costs and expenses of opening and/or inspection, as aforesaid, shall be for the Merchant's account and the Carrier shall not be liable for any loss, damage, delay, costs or expenses incurred or suffered by the Merchant by reason thereof and the Merchant shall indemnify the Carrier for all consequences arising from such openings and/or inspections. The Merchant is obliged to correct at his risk and expense any inadequacy or defect found, failing which the Carrier is entitled to treat the transport as terminated and place the Goods at the Merchant's disposal at any place. In such case the Carrier is entitled to full freight and indemnification as described above in this Clause.

**6 Methods and routes of Carriage**

1 The Carrier is entitled, without notice to the Merchant, to perform the Carriage in any reasonablemanner and by any reasonable means, methods and routes whatsoever.

2 In the event of carriage by sea, reasonable means, methods and routes includes, but is not limited to, vessels sailing with or without pilots, undergoing repairs, adjusting equipment, dry-docking and assisting vessels in all situations.

**7 Sub-contracting**

1 The Carrier shall be entitled to sub-contract on any terms whatsoever, the whole or any part of the carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by the Carrier in relation to the Goods.

2 For the purposes of the Contract of Carriage and subject to the provisions in these Freight Conditions, the Carrier shall be responsible for the acts and omissions of any person whose services he makes use of for the performance of the Contract of Carriage.

**8 Carrier's Consolidation, Carriage of Articles of Transport on or under deck**

1 Goods may be Consolidated by the Carrier in Articles of Transport.

2 Articles of Transport, whether Consolidated by the Carrier or received by the Carrier in a Consolidated condition from the Merchant, may be carried on or under deck without notice to the Merchant.

**9 Delivery**

If the Merchant does not take delivery of the Goods within 14 days after the Carrier calls upon him or his agents so to do, the Carrier shall, without further notice to the Merchant, be at liberty to store the Goods on behalf of the Merchant and at the Merchant's sole risk and expense. Subject, if requisite, to the lien provisions of clause 4 hereof . Such storage shall constitute delivery for the purposes of clause 13 to 16 of these Freight Conditions and the liability of the Carrier in respect of the goods stored shall wholly cease. The costs of such storage, if paid by the Carrier or any agent or sub-contractor of the Carrier, shall be paid, on demand, by the Merchant to the Carrier.

**10 Matters affecting performance**

1 The Carrier shall use reasonable endeavours to complete the Carriage and to deliver the Goods at the place of delivery or the port of discharge.

2 If, at any time, the performance of the Contract of Carriage is or will be affected by any hindrance, risk, delay, strike/lockout, difficulty or disadvantage of any kind whatsoever and if by virtue of sub clause (1) the Carrier has no duty to complete the performance of the Contract the Carrier, whether or not the Carriage has commenced, may elect to:
   a) treat the performance of the Contract of Carriage as terminated and place the Goods at the Merchant's disposal at any place which the Carrier shall deem safe and convenient; or
   b) deliver the Goods at the place of delivery or the port of discharge.

In any event the Carrier shall be entitled to full Charges for any Goods received for Carriage and additional compensation for extra costs resulting from the circumstances referred to above.

**11 Heavy Lifts**

All expenses relating to tendering, loading and discharging of Goods that require equipment, gear or appliances not permanently fitted to or available at the quayside or on the Vessel to be forthe Merchant's account.

**12 Time bar and Notice of loss**

All liability whatsoever of the Carrier shall cease unless suit is brought within:
   a) in respect of Multimodal Transport - 9 months, or
   b) in respect of Port-to-Port or Gate-to-Gate Carriage - 12 months

after delivery of the Goods or the date when the Goods should have been delivered.
If loss of or damage to the Goods is apparent then notice of the loss or damage, and the general nature of it, shall be given in writing to the Carrier at the place of delivery before or at the time of the removal of the Goods or, if the loss or damage is not apparent, within three consecutive days thereafter, failing which, the removal of the Goods into the custody of the person entitled to delivery thereof shall be prima facie evidence of the delivery by the Carrier of the Goods in the same condition as received by the Carrier.

**13 Carrier's Liability for Loss of or Damage to the Goods**

1 Port-to-Port or Gate-to-Gate
Where the Carriage is Port-to-Port or Gate-to-Gate, then the liability of the Carrier for loss of or damage to the Goods occurring during the Carriage shall be determined in accordance with the Hague-Visby Rules.

2 Multimodal Transport
Where the Carriage is Multimodal Transport, then the liability of the Carrier for loss of or damage to the Goods occurring between the time when the Carrier receives the Goods into his charge and the time of delivery to the Merchant shall be determined as follows:
(a) Where the stage of the Carriage during which the loss occurred is not known, the Carrier shall be relieved from liability where such loss or damage was caused by:
   (l) The wrongful act or neglect of the Merchant.
   (2) Compliance with the instructions of a person entitled to give them.
   (3) The lack or insufficiency of or defective condition of packing in the case of Goods, which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed .
   (4) Handling, loading, stowage or unloading of the Goods by or on behalf of the Merchant.
   (5) Inherent vice of the Goods.
   (6) Insufficiency or inadequacy of marks or numbers on the Goods.
   (7) Strikes or lock-outs or stoppages or restraints of labour from whatsoever cause whether partial or general.

(8) Fire, unless caused by the actual fault or privity of the Carrier.
(9) Act, neglect or default of the Master, Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the ship.
(10) Any cause or event which the Carrier could not avoid and the consequence whereof he could not prevent by the exercise of reasonable diligence.

(b) Where under sub-clause (a) above the Carrier is not under any liability for loss or damage caused by one or more of the causes, events or occurrences, he shall only be liable to the extent that those causes, events or occurrences for which he is liable under this clause have contributed to the loss or damage. The burden of proving that the loss or damage was due to one or more of the causes, events or occurrences specified in (1), (2) and (8) of sub-clause (a) above shall rest upon the Carrier. When the Carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the causes, events or occurrences, specified in (3) to (7) of sub-clause (a), it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of the causes, events or occurrences.

(c) Where the stage of the Carriage during which the loss occurred is known, the liability of the Carrier shall be determined in accordance with the provisions contained in any international convention or national law which provisions:
(1) cannot be departed from by private contract to the detriment of the Claimant; and
(2) would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof a Bill of Lading or any particular document which must be issued if such international convention or national law shall apply except that under no circumstances shall the Carrier's liability extend to live animals and/or Goods that are stated to be carried on deck and are so carried.

If no international convention or national law would apply by virtue of (c) above then, notwithstanding that the stage of the Carriage during which the loss occurred is known, the Carrier's liability if any for loss of or damage to cargo shall be determined in accordance with (a) & (b) above.

3 Subject to any national law that applies by compulsory application, if the Hague-Visby Rules apply to the Carriage the Carrier shall not be liable for loss, damage or delay in delivery resulting from or arising out of the carriage of (a) live animals and/or (b) deck cargo stated to be carried on deck in any document evidencing the contract of carriage and actually carried on deck, whether caused by unseaworthiness or negligence or any other cause whatsoever.

4 If the Hague-Visby Rules or any other convention or national law applies by compulsory application to the Carriage then any provision in these Freight Conditions that deviates from the Hague-Visby Rules will be null and void to the extent that it deviates, directly or indirectly from the Hague-Visby Rules but the nullity of such a provision does not affect the validity of the other provisions within these Freight Conditions.

**14 Carriers' Liability for Delay, Consequential Loss etc.**

1 Times shown in timetables, sailing plans or elsewhere are approximate and not guaranteed. They are not considered to be part of this contract of carriage and the Carrier reserves its right tochange these without notice to the Merchant.

2 The Carrier shall in no circumstances whatsoever and however arising be liable for direct, indirect or consequential loss or damage caused by delay. Without prejudice to the foregoing, if the Carrier should nevertheless be held legally liable for any such direct, indirect or consequential loss or damage caused by delay, then the Carrier's liability shall be limited to the freight for the Carriage or the value of the Goods as determined in clause 16, whichever is the lower.

3 Save as is otherwise provided herein, the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage arising from any other cause whatsoever or for loss of profits.

**15 Defences and Limits for the Carrier and the Carrier's Sub-Contractors, Agents and Servants**

1 The defences and limits of liability provided for in these Freight Conditions shall apply in any action against the Carrier for loss of or damage to the Goods whether the action be founded in contract, bailment, tort or otherwise.

2 Himalaya Clause and Circular Indemnity: the Merchant undertakes that no claim or allegation arising in contract, bailment, tort or otherwise can be made against any servant, agent, or subcontractor of the Carrier which imposes or attempts to impose upon any of them or any vessel owned or chartered by 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 person, and, if any such claim or allegation shall nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent, and sub-contractor shall have the benefit of all the terms in the Freight Conditions of whatsoever nature herein contained or otherwise benefiting the Carrier, including Clause 23 hereof, the Law & Jurisdiction clause, as if such Freight Conditions (including Clause 23 hereof) were expressly for their benefit, and in entering into this contract the Carrier, to the extent of such Freight Conditions, does so not only on its own part, but also as agent and trustee for such servants, agents and sub-contractors.

3 In any case the aggregate of all amounts recoverable from the Carrier and his servants, agents or sub-contractors, including stevedores and any of those referred to in sub-clause (ii) of Clause 7, shall in no case exceed the limits provided for in these Freight Conditions.

**16 The Amount of Compensation**

1 Where the Carrier is liable for compensation in respect of loss or damage to the Goods, such compensation shall be calculated by reference to the value of such Goods at the place and time they are delivered or should have been so delivered to the Merchant in accordance with this contract of carriage.

2 The value of the Goods shall be fixed according to the current commodity exchange price of the Goods or if there is none the current market price of the Goods or, if there is no commodity exchange price or current market price, by reference to the normal value of the Goods of the same kind and/or quality.

3 If the Merchant, with the consent of the Carrier, has declared a value for the Goods on any document evidencing the contract of carriage then the amount of the declared value shall be substituted for the limits otherwise set down in these Freight Conditions.

4 If the Hague-Visby Rules apply pursuant to clause 13 above, the Carrier's liability shall in no event exceed the amounts due under the Hague-Visby Rules as calculated by the applicable national law.

5 In Multimodal Transport, where the stage of carriage during which the loss or damage occurred is not known, or is known but no international convention or national law is applied by virtue of clause 13, compensation shall not exceed 2 SDRs per kilogram of gross weight of the Goods lost or damaged. SDR means Special Drawing Right as defined by the International Monetary Fund.

6 In Multimodal Transport where the stage of Carriage during which the loss or damage occurred is known, compensation shall be calculated in accordance with sub-clause 5 above. However if a compulsory law applies or would have applied pursuant to clause 13 then the Carrier's liability shall in no event exceed the amount due under such compulsory law.

**17 Carrier's Responsibility**

Where the Carrier issues a document evidencing the Contract of Carriage, it shall be prima facie evidence of the receipt by the Carrier of the Goods as therein described in respect of the particulars which the Carrier had reasonable means of checking. In respect of such particulars proof to the contrary shall not be admissible when such document is a negotiable document that has been transferred to a third party acting in good faith.

**18 Merchant's Responsibility**

The Merchant shall be deemed to have guaranteed to the Carrier the accuracy, at the time the Goods were taken in charge by the Carrier, of the description and particulars of the Goods, including but not limited to marks, numbers, quantity and weight, as furnished by the Merchant and the Merchant shall indemnify the Carrier against any liabilities, losses, damage, costs and expenses arising or resulting from any inaccuracies in, or inadequacy of, such description and particulars. The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, claim, liability or expense whatsoever arising from any breach of the provisions of this clause or from any cause in connection with the Goods for which the Carrier is not responsible.

**19 Dangerous & Marine Polluting Goods**

The Merchant's attention is drawn to the International Maritime Dangerous Goods (IMDG) Code and any amendments as may be in force at the time and supplements on Emergency Procedures for Ships Carrying Dangerous Goods (EmS) and Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).

It is the responsibility of the Merchant to ensure that all Dangerous & Marine Polluting Goods are packaged and packed in accordance with the IMDG Code and to supply, at the time of presentation of the goods for Carriage, the applicable dangerous goods packing note and any other documents relating to the Dangerous & Marine Polluting Goods that are required under the IMDG Code or any other national regulations in force at the time of presentation of the Goods for Carriage.

2 In Multimodal Transport, the European Agreement for the International Carriage of Dangerous Goods by Road (ADR) and Annex I (RID) to the contract for International Carriage of Goods by Rail (CIM) or special arrangements made between the contracting parties in respect hereof will apply to the appropriate leg.

3 Dangerous & Marine Polluting Goods must be removed from the port of discharge as soon as is practicable unless specific permission has been obtained for the Goods to remain in the port.

4 Dangerous & Marine Polluting Goods which have not been declared, or declared incorrectly, to the Carrier and Dangerous Goods which subsequently become a risk to the method of transport, other cargoes or the environment may be discharged, destroyed or be rendered harmless and be disposed of by the Carrier. Such undertaking shall be at the Merchant's risk and expense, except when General Average is declared.

5 The Merchant shall be liable for any damage, loss and expense, howsoever caused, if the foregoing provisions, as applicable, are not complied with and the Merchant shall indemnify the Carrier against any liabilities, loss or damage. Costs and expenses arising out of or resulting from any breach of the Merchant's obligations set out in the foregoing provisions.

**20 Merchant's Consolidation, reefer and heating machines**

1 If an Article of Transport has not been Consolidated and prepared for conveyance by the Carrier, the Carrier shall, without prejudice to the rights available to the Carrier under Clause 13 and 16 hereof, not be liable for damage to or loss of the Goods therein nor for damage to or loss of the Article of Transport itself and the Merchant shall indemnify the Carrier for any loss, damage or expense incurred by the Carrier, if such loss, damage or expense is attributable to:
a) overloading, negligent or inadequate Consolidation, securing, covering or locking of the Article of Transport;
b) the Goods being unsuitable for carriage in the Article of Transport actually used;
c) the unsuitability or defective condition of the Article of Transport, unless the Article of Transport has been supplied by the Carrier and the unsuitability and/or defective condition would have been apparent by reasonable means of checking at the time when the Carrier accepted the Article of Transport for conveyance.

2 The Carrier does not accept liability for the consequences of malfunctioning of refrigeration, heating, atmospheric control or other equipment of whatsoever nature attached to, or forming part of, the Article of Transport.

**21 General Average**

1 General Average shall be adjusted according to York - Antwerp Rules 2016, or subsequently, at any port or place at the option of the Carrier whether declared by the Carrier or a subcontractor of the Carrier. This provision shall cover all Goods whether carried on or under deck as well as deck cargo and live animals. The Merchant shall deliver such cash deposit and/or other security as the Carrier may deem sufficient to cover the estimated general average contribution of the Goods before delivery if the Carrier requires, or, if the Carrier does not require, within three months of the delivery of the Goods, whether or not at the time of the delivery the Merchant had notice of the Carriers lien. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel belonged to strangers. If the Carrier delivers the Goods to the Merchant without claiming any average bond or other security for contribution to General Average, the Merchant, by receiving the Goods, becomes personally liable for the contribution up to the CIF value of the Goods provided the Carrier notifies the Merchant within three months after receipt by the Merchant of the Good of his intention to declare General Average. The Merchant undertakes, if so requested by the Carrier, to disclose the CIF value of the Goods and the name and address of the Underwriter. Unless the Merchant provides the Carrier with an undertaking from such Underwriter to pay General Average contribution the Merchant shall give the Carrier such other security as he may approve.

**22 Both-to-Blame Collision Clause and New Jason Clause**

The Both-to-Blame Collision Clause and New Jason Clause as adopted by BIMCO are incorporated herein.

**23 Law and Jurisdiction**

1 1 These conditions are subject to Norwegian law.

2 2 Disputes arising under or in relation to the contract of carriage shall be determined at the option of the claimant by the competent court and subject to the provisions of these Freight Conditions in accordance with the law at :
a) the principal place of business or, in the absence thereof, the habitual residence of the Carrier;
b) the place where the contract of carriage was made provided the Carrier has a place of business, branch or agency there through which the contract of carriage was made; or
c) the place where the Goods were taken in charge by the Carrier or the place designated for the delivery or the place where the Goods were actually delivered.

No proceedings may be brought before any other court unless the parties expressly agree on both the choice of another court or arbitration tribunal and the law to be then applicable.