

# MULTIMODAL TRANSPORT BILL OF LADING

CODE NAME: "MULTIDOC 95"

## I. GENERAL PROVISIONS

### 1. Applicability

The provisions of this Contract shall apply irrespective of whether there is a unimodal or a Multimodal Transport Contract involving one or several modes of transport.

### 2. Definitions

"Multimodal Transport Contract" means a single Contract for the carriage of Goods by at least two different modes of transport.

"Multimodal Transport Bill of Lading" (MT Bill of Lading) means this document evidencing a Multimodal Transport Contract and which can be replaced by electronic data interchange messages insofar as permitted by applicable law and is issued in a negotiable form.

"Multimodal Transport Operator" (MTO) means the person named on the face hereof who concludes a Multimodal Transport Contract and assumes responsibility for the performance thereof as a Carrier.

"Carrier" means the person who actually performs or undertakes to perform the carriage, or part thereof, whether he is identical with the Multimodal Transport Operator or not.

"Merchant" includes the Shipper, the Receiver, the Consignor, the Consignee, the holder of this MT Bill of Lading and the owner of the Goods.

"Consignor" means the person who concludes the Multimodal Transport Contract with the Multimodal Transport Operator.

"Consignee" means the person entitled to receive the Goods from the Multimodal Transport Operator.

"Taken in charge" means that the Goods have been handed over to and accepted for carriage by the MTO.

"Delivery" means

- the handing over of the Goods to the Consignee, or
- the placing of the Goods at the disposal of the Consignee in accordance with the Multimodal Transport Contract or with the law or usage of the particular trade applicable at the place of delivery, or
- the handing over of the Goods to an authority or other third party to whom, pursuant to the law or regulations applicable at the place of delivery, the Goods must be handed over.

"Special Drawing Rights" (SDR) means the unit of account as defined by the International Monetary Fund.

"Goods" means any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by the MTO, irrespective of whether such property is to be or is carried on or under deck.

### 3. MTO's Tariff

The terms of the MTO's applicable tariff at the date of shipment are incorporated herein. Copies of the relevant provisions of the applicable tariff are available from the MTO upon request. In the case of inconsistency between this MT Bill of Lading and the applicable tariff, this MT Bill of Lading shall prevail.

### 4. Time Bar

The MTO shall, unless otherwise expressly agreed, be discharged of all liability under this MT Bill of Lading unless suit is brought within nine months after

- the Delivery of the Goods; or
- the date when the Goods should have been delivered; or
- the date when, in accordance with sub-clause 10 (e) failure to deliver the Goods would give the Consignee the right to treat the Goods as lost.

### 5. Law and Jurisdiction

Disputes arising under this MT Bill of Lading shall be determined by the courts and in accordance with the law at the place where the MTO has his principal place of business.

## II. PERFORMANCE OF THE CONTRACT

### 6. Methods and Routes of Transportation

- The MTO is entitled to perform the transport in any reasonable manner and by any reasonable means, methods and routes.
- In accordance herewith, for instance, in the event of carriage by sea, vessels may sail with or without pilots, undergo repairs, adjust equipment, drydock and tow vessels in all situations.

### 7. Optional Stowage

- Goods may be stowed by the MTO by means of containers, trailers, transportable tanks, flats, pallets, or similar articles of transport used to consolidate Goods.
- Containers, trailers, transportable tanks and covered flats, whether stowed by the MTO or received by him in a stowed condition, may be carried on or under deck without notice to the Merchant.

### 8. Delivery of the Goods to the Consignee

The MTO undertakes to perform or to procure the performance of all acts necessary to ensure Delivery of the Goods:

- when the MT Bill of Lading has been issued in a negotiable form "to bearer", to the person surrendering one original of the document; or
- when the MT Bill of Lading has been issued in a negotiable form "to order", to the person surrendering one original of the document duly endorsed; or
- when the MT Bill of Lading has been issued in a negotiable form to a named person, to that person upon proof of his identity and surrender of one original document; if such document has been transferred "to order" or is blank, the provisions of (i) above apply.

### 9. Hindrances, etc. Affecting Performance

(a) The MTO shall use reasonable endeavours to complete the transport and to deliver the Goods at the place designated for Delivery.

(b) If at any time the performance of the Contract as evidenced by this MT Bill of Lading is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind, and if by virtue of sub-clause 9 (a) the MTO has no duty to complete the performance of the Contract, the MTO (whether or not the transport is commenced) may elect to

- terminate the performance of this Contract as terminated and place the Goods at the Merchant's disposal at any place which the MTO shall deem safe and convenient; or
  - deliver the Goods at the place designated for Delivery.
- (c) If the Goods are not taken Delivery of by the Merchant within a reasonable time after the MTO has called upon him to take Delivery, the MTO shall be at liberty to put the Goods in safe custody on behalf of the Merchant at the latter's risk and expense.
- (d) In any event the MTO shall be entitled to full freight for Goods received for transportation and additional compensation for extra costs resulting from the circumstances referred to above.

## III. LIABILITY OF THE MTO

### 10. Basis of Liability

(a) The responsibility of the MTO for the Goods under this Contract covers the period from the time the MTO has taken the Goods into his charge to the time of their Delivery.

(b) Subject to the defences set forth in Clauses 11 and 12, the MTO shall be liable for loss of or damage to the Goods, as well as for delay in Delivery, if the occurrence which caused the loss, damage or delay in Delivery took place while the Goods were in

his charge as defined in sub-clause 10 (a), unless the MTO proves that no fault or neglect of his own, his servants or agents or any other person referred to in sub-clause 10 (c) has caused or contributed to the loss, damage or delay in Delivery. However, the MTO shall only be liable for loss following from delay in Delivery if the Consignor has made a written declaration of interest in timely Delivery which has been accepted in writing by the MTO.

(c) The MTO shall be responsible for the acts and omissions of his servants or agents, when any such servant or agent is acting within the scope of his employment, or of any other person of whose services he makes use for the performance of the Contract, as if such acts and omissions were his own.

(d) Delay in Delivery occurs when the Goods have not been delivered within the time expressly agreed upon or, in the absence of such agreement, within the time which would be reasonable to require of a diligent MTO, having regard to the circumstances of the case.

(e) If the Goods have not been delivered within ninety (90) consecutive days following the date of Delivery determined according to Clause 10 (d) above, the claimant may, in the absence of evidence to the contrary, treat the Goods as lost.

### 11. Defences for Carriage by Sea or Inland Waterways

Notwithstanding the provisions of Clause 10 (b), the MTO shall not be responsible for loss, damage or delay in Delivery with respect to Goods carried by sea or inland waterways when such loss, damage or delay during such carriage results from

- act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the vessel;
- fire, unless caused by the actual fault or privity of the Carrier;
- the causes listed in the Hague-Visby Rules article 4 2 (c) to (f);

however, always provided that whenever loss or damage has resulted from unseaworthiness of the vessel, the MTO can prove that due diligence has been exercised to make the vessel seaworthy at the commencement of the voyage.

### 12. Limitation of Liability

(a) Unless the nature and value of the Goods have been declared by the Consignor before the Goods have been taken in charge by the MTO and inserted in the MT Bill of Lading, the MTO shall in no event be or become liable for any loss of or damage to the Goods in an amount exceeding

(i) when the Carriage of Goods by Sea Act of the United States of America, 1936 (US COGSA) applies USD 500 per package or customary freight unit; or

(ii) when any other law applies, the equivalent of 666 67 SDR per package or unit or two SDR per kilogramme of gross weight of the Goods lost or damaged, whichever is the higher.

(b) Where a container, pallet, or similar article of transport is loaded with more than one package or unit, the packages or other shipping units enumerated in the MT Bill of Lading as packed in such article of transport are deemed packages or shipping units. Except as aforesaid, such article of transport shall be considered the package or unit.

(c) Notwithstanding the above-mentioned provisions, if the Multimodal Transport does not, according to the Contract, include carriage of Goods by sea or by inland waterways, the liability of the MTO shall be limited to an amount not exceeding 8 33 SDR per kilogramme of gross weight of the Goods lost or damaged.

(d) In any case, when the loss of or damage to the Goods occurred during one particular stage of the Multimodal Transport, in respect of which an applicable international convention or mandatory national law would have provided another limit of liability if a separate contract of carriage had been made for that particular stage of transport, then the limit of the MTO's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory national law.

(e) If the MTO is liable in respect of loss following from delay in Delivery, or consequential loss or damage other than loss of or damage to the Goods, the liability of the MTO shall be limited to an amount not exceeding the equivalent of the freight under the Multimodal Transport Contract for the Multimodal Transport.

(f) The aggregate liability of the MTO shall not exceed the limits of liability for total loss of the Goods.

(g) The MTO is not entitled to the benefit of the limitation of liability if it is proved that the loss, damage or delay in Delivery resulted from a personal act or omission of the MTO done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

### 13. Assessment of Compensation

(a) Assessment of compensation for loss of or damage to the Goods shall be made by reference to the value of such Goods at the place and time they are delivered to the Consignee or at the place and time when, in accordance with the Multimodal Transport Contract, they should have been so delivered.

(b) The value of the Goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of Goods of the same kind and quality.

### 14. Notice of Loss of or Damage to the Goods

(a) Unless notice of loss of or damage to the Goods, specifying the general nature of such loss or damage, is given in writing by the Consignee to the MTO when the Goods are handed over to the Consignee, such handing over is prima facie evidence of the Delivery by the MTO of the Goods as described in the MT Bill of Lading.

(b) Where the loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within six consecutive days after the day when the Goods were handed over to the Consignee.

### 15. Defences and Limits for the MTO, Servants, etc.

(a) The provisions of this Contract apply to all claims against the MTO relating to the performance of the Multimodal Transport Contract, whether the claim be founded in contract or in tort.

(b) The Merchant undertakes that no claim shall be made against any servant, agent or other persons whose services the MTO has used in order to perform the Multimodal Transport Contract and if any claim should nevertheless be made, to indemnify the MTO against all consequences thereof.

(c) However, the provisions of this Contract apply whenever claims relating to the performance of the Multimodal Transport Contract are made against any servant, agent or other person whose services the MTO has used in order to perform the Multimodal Transport Contract, whether such claims are founded in contract or in tort. In entering into this Contract, the MTO, to the extent of such provisions, does so not only on his own behalf but also as agent or trustee for such persons. The aggregate liability of the MTO and such persons shall not exceed the limits in Clause 12.

## IV. DESCRIPTION OF GOODS

### 16. MTO's Responsibility

The information in the MT Bill of Lading shall be prima facie evidence of the taking in charge by the MTO of the Goods as described by such information unless a contrary indication, such as "shipper's weight, load and count", "shipper-packed container" or similar expressions, have been made in the printed block superimposed on the document. Contrary to the contrary shall not be admissible when the MT Bill of Lading has been transferred, or the equivalent electronic data interchange message has been transmitted to and acknowledged by the Consignee who in good faith has relied and acted thereon.

### 17. Consignor's Responsibility

(a) The Consignor shall be deemed to have guaranteed to the MTO the accuracy, at the time the Goods were taken in charge by the MTO, of all particulars relating to the general nature of the Goods, their marks, number, weight, volume and quantity and, if applicable, the dangerous character of the Goods as furnished by him or on his behalf for insertion in the MT Bill of Lading.

(b) The Consignor shall indemnify the MTO for any loss or expense caused by inaccuracies in or inadequacies of the particulars referred to above.

(c) The right of the MTO to such indemnity shall in no way limit his liability under the Multimodal Transport Contract to any person other than the Consignor.

(d) The Consignor shall remain liable even if the MT Bill of Lading has been transferred by him.

### 18. Return of Containers

(a) Containers, pallets or similar articles of transport supplied by or on behalf of the MTO shall be returned to the MTO in the same order and condition as when handed over to the Merchant, normal wear and tear excepted, with interiors clean and within the time prescribed in the MTO's tariff or elsewhere.

(b) The Consignor shall be liable, for any loss of, damage to, or delay, including demurrage, of such articles, incurred during the period between handing over to the Consignor and return to the MTO for carriage.

(c) The Consignor and the Consignee shall be jointly and severally liable for any loss of, damage to, or delay, including demurrage, of such articles, incurred during the period between handing over to the Consignee and return to the MTO.

### 19. Dangerous Goods

(a) The Consignor shall comply with all internationally recognised requirements and all rules which apply according to national law or by reason of international convention, relating to the carriage of Goods of a dangerous nature, and shall in any event inform the MTO in writing of the exact nature of the danger before Goods of a dangerous nature are taken in charge by the MTO and inform him, if needed, of the precautions to be taken.

(b) If the Consignor fails to provide such information and the MTO is unaware of the dangerous nature of the Goods and the necessary precautions to be taken and if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation and the Consignor shall be liable for all loss, damage, delay or expenses arising out of their being taken in charge, or their carriage, or their service incidental thereto.

The burden of proving that the MTO knew the exact nature of the danger constituted by the carriage of the said Goods shall rest upon the person entitled to the Goods.

(c) If any Goods shipped with the knowledge of the MTO as to their dangerous nature shall become a danger to the vessel or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the MTO without liability on the part of the MTO except to General Average, if any.

### 20. Consignor-packed Containers, etc.

(a) If a container has not been filled, packed or stowed by the MTO, the MTO shall not be liable for any loss of or damage to its contents and the Consignor shall be liable for any loss or expense incurred by the MTO if such loss, damage or expense has been caused by

- negligent filling, packing or stowing of the container;
- the contents being unsuitable for carriage in container; or
- the unsuitability or defective condition of the container unless the container has been supplied by the MTO and the unsuitability or defective condition would not have been apparent upon reasonable inspection at or prior to the time when the container was filled, packed or stowed.

(b) The provisions of sub-clause (a) of this Clause also apply with respect to trailers, transportable tanks, flats and pallets which have not been filled, packed or stowed by the MTO.

(c) The MTO does not accept liability for damage due to the unsuitability or defective condition of reefer equipment or trailers supplied by the Merchant.

## V. FREIGHT AND LIEN

### 21. Freight

(a) Freight shall be deemed earned when the Goods have been taken into charge by the MTO and shall be paid in any event.

(b) 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 as to devaluation exists or is applicable the following provision shall apply.

If the currency in which freight and charges are quoted is devalued or revalued between the date of the freight agreement and the date when the freight and charges are paid, then all freight and charges shall be automatically and immediately changed in proportion to the extent of the devaluation or revaluation of the said currency. When the MTO has consented to payment in other 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 banker's sight draft current on the day when such freight and charges are paid. If the banks are closed on the day when the freight is paid the rate to be used will be the one in force on the last day the banks were open.

(c) For the purpose of verifying the freight basis, the MTO reserves the right to have the contents of containers, trailers or similar articles of transport inspected in order to ascertain the weight, measurement, value, or nature of the Goods. If on such inspection it is found that the declaration is not correct, it is agreed that a sum equal either to five times the difference between the correct freight and the freight charges or to double the correct freight less the freight charges, whichever sum is the smaller, shall be payable as liquidated damages to the MTO notwithstanding any other sum having been stated on this MT Bill of Lading as the freight payable.

(d) All dues, taxes and charges levied on the Goods and other expenses in connection therewith shall be paid by the Merchant.

### 22. Lien

The MTO shall have a lien on the Goods for any amount due under this Contract and for the costs of recovering the same, and may enforce such lien in any reasonable manner, including sale or disposal of the Goods.

## VI. MISCELLANEOUS PROVISIONS

### 23. General Average

(a) General Average shall be adjusted at any port or place at the MTO's option, and to be settled according to the York-Antwerp Rules 1994, or any modification thereof, this covering all Goods, whether carried on or under deck. The New Jason Clause as approved by BIMCO to be considered as incorporated herein.

(b) Such security including a cash deposit as the MTO may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon, shall, if required, be submitted to the MTO prior to Delivery of the Goods.

### 24. Both-to-Blame Collision Clause

The Both-to-Blame Collision Clause as adopted by BIMCO shall be considered incorporated herein.

### 25. U.S. Trade

In case the Contract evidenced by this MT Bill of Lading is subject to U.S. COGSA, then the provisions stated in said Act shall govern before loading and after discharge and throughout the entire time the Goods are in the Carrier's custody.