

# BROX LOGISTICS USA, LLC

## TERMS AND CONDITIONS

### 1. DEFINITIONS

"Carrier" means the Company stated on the front of this Bill of Lading as being the Carrier and on whose behalf this Bill of Lading has been signed. Carrier is a Non-Vessel Operating Common Carrier.  
"Merchant" includes the shipper, the person named on this Bill of Lading as shipper, the person for whose account the Goods are handled over the Carrier, the consignee, the holder of this Bill of Lading, the owner and the receiver of the Goods and the person who is entitled to receive the Goods on notification by the Merchant, and their agents, servants and subcontractors.

"Package" means any preparation for transportation whether or not that preparation conceals the Goods.  
"Goods" means the cargo, described on the face hereof and, if the cargo is packaged on pallets or cartons into similar articles of transport not supplied or furnished by or on behalf of the Carrier, includes such articles of transport as well.

"Servant", "Agent", or "Subcontractor" shall include all direct and indirect, dependent and independent servants, agents or subcontractors engaged by the Carrier including their respective agents, servants and subcontractors.

"Combined Transport" arises where the Carriage called for by this Bill of Lading is not Port to Port.

"Port to Port Shipment" arises only if both the place of acceptance and the place of delivery are ports and the Bill of Lading does not in the nomination of the place of acceptance or the place of delivery on the face hereof specify any place or spot within the area of the port so nominated.

"On board" means and includes on board the Vessel when the Goods are being transported from a port and on board a means of conveyance of Inland Carrier en route to the port of loading for transport from an inland point.

### 2. CARRIER'S TARIFF

The provisions of the Carrier's applicable Tariff as filed with the Federal Maritime Commission, if any, are incorporated herein. Copies of such provisions are obtainable from the Carrier or its agents upon request or, where applicable, from a government body with whom the Tariff has been filed. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

### 3. WARRANTY

The Merchant warrants that in accepting this Bill of Lading and thereby agreeing to its terms and provisions it is or has the authority of the person owning or entitled to the possession of the Goods and this Bill of Lading.

### 4. SUB-CONTRACTING

A. In addition to the liberties given to the Carrier under the other clauses hereof it is agreed that the Carrier shall be entitled to sub-contract, in any terms, 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 and thereby subject the Goods to other agreements, including but not limited to the Underlying Bills of Lading, which may, with the full consent of the Merchant, which the Merchant is deemed to have given by accepting this Bill of Lading, lead, or have led, as the case may be, to third parties acquiring rights, defences and immunities in regard of the Goods, without any recourse or remedy unless set out in this Bill of Lading or the Underlying Bill of Lading.

B. Himalaya Clause: For the purposes and subject to the provisions of this Bill of Lading, the Carrier shall be responsible for the acts and omissions of any person who provides services to the carrier for the performance of the contract evidenced by this Bill of Lading. The Merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the Carrier. If any claim or allegation should nevertheless be made against any person or vessel other than the Carrier, the Merchant agrees to indemnify and hold harmless the Carrier against all consequences thereof. Without prejudice to the foregoing, all defenses and limitations of the Carrier shall be available to all persons of whose services the Carrier makes use for the performance of this contract. Such persons shall include, but shall not be limited to, the demise and time charterers, Carrier's servants or agents, or the Carrier, including stevedores, terminal operators, carpenters, lashers, container repairmen, and all other persons of whose services the Carrier makes use to perform this contract. In entering into this contract, the Carrier, to the extent of these provisions, does so not only on its own behalf, but also as agent or trustee for such persons and vessels and such persons and vessels shall to this extent be or be deemed to be parties to this Contract.

### 5. METHODS AND ROUTES OF TRANSPORTATION

A. The Carrier is entitled to perform the transport in any reasonable manner and by any reasonable means, methods and routes.

B. The Carrier has the right to carry the Goods under deck or on deck. When the Goods are carried on deck and this is stated on the front page of this Bill of Lading as being carried on deck, the Shipper shall be deemed to have agreed to carriage on deck. The Carrier shall not be liable in any capacity whatsoever for any non-delivery, mis-delivery, and delay or loss of or damage to the Goods which are carried on deck, whether or not caused by the Carrier's negligence or the vessel's seaworthiness.

### 6. DESCRIPTION OF GOODS AND MERCHANT'S PACKING

A. 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 of the Goods, marks, numbers, quantity and weight as furnished by it and the Merchant shall indemnify the Carrier against all loss, damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars.

B. The Merchant shall be liable for any loss, damage or injury caused by faulty or insufficient packing of Goods or by faulty loading or packing within containers when such loading or packing has been performed by the Merchant or on behalf of the Merchant or by the defect or unsuitability of the containers, when supplied by the Merchant, and shall indemnify the Carrier against any additional expenses so caused.

### 7. DANGEROUS GOODS

A. The Merchant shall comply with rules which are mandatory according to the national law or by reason of international convention, relating to the carriage of Goods of a dangerous nature, and shall in any case inform the Carrier in writing of the exact nature of the danger, before Goods of a dangerous nature are taken in charge by the Carrier and indicate, if need be, the precautions to be taken.

B. If the Merchant fails to provide such information or the Carrier 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 Merchant shall be liable for all loss, damage, delay or expenses arising out of their being taken in charge, or the carriage, or of any service rendered, or the burden of proving that the Carrier 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 Carrier as to their dangerous nature shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the Carrier without liability on the part of the Carrier except to General Average, if any.

### 8. INSPECTION OF GOODS

The Carrier or any person authorized by the Carrier shall be entitled, but under no obligation, to open any container or package at any time to inspect the Goods.

### 9. REGULATIONS RELATING TO GOODS

The Merchant shall comply with all regulations or 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 declaration, marking, numbering or addressing of the Goods and indemnify the Carrier in respect thereof.

### 10. PARAMOUNT CLAUSE

The Hague Rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading, dated Brussels, 25th August 1924, or, but only if compulsorily applicable the Hague-Visby Rules, as contained in the Protocol of Brno, dated February 23rd, 1968, respectively, or, if the law of a different country is found to be compulsorily applicable, as enacted or applicable in that country shall apply to all carriage of Goods by sea and, also, where no mandatory international or national law applies, to the carriage of Goods by road and/or rail and/or inland waterways also and such provisions shall apply to all Goods whether carried on deck (without prejudice to clause 5 (b) above) or under deck including the time following receipt prior to loading and following discharge prior to delivery. In the case of carriage of goods where the contract evidenced by this Bill of Lading is governed by the Carriage of Goods by Sea Act of the United States approved April 16th, 1936 (COGSA) if the port of loading or the port of discharge is in the United States), then the provisions stated in this statute shall apply and the Carrier shall have the benefit of any and all rights and defences and limitations to which it is entitled under COGSA, for the time the Goods are in the possession of the Carrier or its subcontractors, including the time following receipt prior to loading and following discharge prior to delivery whether carried on deck (without prejudice to clause 5 (b) above) or under deck.

### 11. JURISDICTION AND CLAIMS

Any dispute or claim arising under this Bill of Lading shall be decided exclusively by arbitration in New York before a single arbitrator pursuant to the rules of the Society of Maritime Arbitrators Inc. if not exceeding \$50,000, and otherwise exclusively before the United States District Court for the Southern District of New York.

### 12. CARRIER'S LIABILITY

A. Port to Port Shipment The Carrier shall be under no liability whatsoever for loss of or damage to the Goods, howsoever occurring, if such loss or damage arises prior to loading on to or subsequent to the discharge from the vessel carrying the Goods. Notwithstanding the foregoing, in the event that any applicable compulsory law provides to the contrary, the carrier shall have the benefit of every right, defence, limitation and liberty in the Hague Rules as applied by clause 10 hereof during such additional compulsory period of responsibility, notwithstanding that the loss or damage did not occur at sea.

B. Combined Transport Save as otherwise provided in this Bill of Lading, the Carrier shall be liable for loss or damage to the Goods occurring between the time it takes the Goods into its charge and the time of delivery of the Goods from its charge.

C. In addition to all other defences contained in this Bill of Lading, the law incorporated into this Bill of Lading, and the law governing this Bill of Lading, the Carrier shall be relieved of liability for any loss or damage caused by:

- I. an act or omission of the Merchant or person other than the Carrier acting on behalf of the Merchant or from whom the Carrier took the Goods in charge;
- II. insufficiency or defective conditions of the packing or marks and/or numbers;
- III. handling, loading, stowage or unloading of the Goods by the Merchant or any person acting on behalf of the Merchant;
- IV. inherent vice of the Goods;
- V. strike, lockout, stoppage or restraint of labor;
- VI. a nuclear incident if the operator of a nuclear installation or a person acting for it is liable for this damage under an applicable international convention or national law governing liability in respect of nuclear energy;
- VII. any cause or event which the Carrier could not avoid or the consequences whereof it could not prevent by the exercise of reasonable care.

D. Notwithstanding the aforesaid, if a Container has been delivered to the Merchant, the Merchant has to prove that the damage to or loss of the Goods has occurred in the period in which the Carrier was responsible therefore in accordance with the terms of this Bill of Lading and the law applicable hereto.

E. The defences and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier for loss or damage to the Goods whether the action can be founded in contract or in tort.

### 13. AMOUNT OF COMPENSATION

A. Any liability of the Carrier shall be limited to the lesser of (i) USD 500 per Package or Shipping Unit or (ii) USD 2 per kilogram of gross weight of the Goods lost or damaged.

B. When the Carrier is liable for compensation in respect of loss of or damage to the Goods, such compensation shall be calculated by reference to the invoice value of the Goods plus freight charges and insurance if paid.

C. If there be no invoice value of the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time they are delivered to the Merchant in accordance with the Bill of Lading or should have been so delivered. The value of the Goods shall be fixed according to the commodity exchange price or current market price, by reference to the normal value of Goods at the same kind and quality.

D. If in case of Combined Transport it cannot be proven where the loss or damage occurred compensation shall be the lesser of USD 500 per Package or US\$ 2 per kilogram of gross weight of the goods lost or damaged unless a higher compensation is provided by applicable compulsory law.

E. Higher compensation may be claimed only when, with the consent of the Carrier, the value of the Goods declared by the Merchant has been stated in this Bill of Lading and the *ad valorem* freight rate is paid to the Carrier. In that case the amount of the declared value shall be substituted for the limits laid down in this clause. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

F. The Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to make the claim.

### 14. DELAY, CONSEQUENTIAL LOSS, ETC.

A. The Carrier does not undertake that the Goods shall arrive at any place at any particular time. The Carrier shall in no circumstances be liable for any direct, indirect or consequential loss or damage caused by delay, whether caused by unseaworthiness or negligence or any other cause whatsoever. If the Carrier is held liable for direct or indirect or consequential loss or damage caused by delay, such liability shall in no case exceed the freight for the transport covered by this Bill of Lading.

B. The BIMCO Both-to-Blame Collision Clause shall apply and operate as if the Carrier were the actual carrier and not an NVOCC and the Merchant shall indemnify the Carrier in regard of any and all claims brought against the Carrier by the actual carrier or any other third party by virtue of a Both-to-Blame Collision Clause.

### 15. NOTICE OF LOSS OR DAMAGE

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to Carrier or its agents at the port of discharge or the place of delivery, as the case may be, before or at the time of removal of the Goods into the custody of Merchant, such removal shall be prima facie evidence of the delivery by Carrier of the Goods as described in this Bill of Lading. Similarly, if the loss or damage is not apparent, then notice must be given within three (3) days of the delivery. In any event the Carrier shall be discharged of all liability under this Bill of Lading unless suit is brought within one year after the delivery of the Goods or the date when the Goods should have been delivered.

### 16. DELIVERY

A. Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.

B. Where the Carriage called for by this Document is Port to Port Shipment the Carrier shall be at liberty to discharge the Goods or any part thereof without notice directly where they come to hand, at or on to any wharf, craft or place, on any day and at any time, whereupon the liability of the Carrier (if any) in respect of the Goods or that part thereof discharged as aforesaid shall wholly cease notwithstanding any custom of the port to the contrary and notwithstanding that any charges, dues or other expenses may be or become payable. If crafts are used, other than at the request of the Merchant, in circumstances where the Goods or that part thereof so discharged could have been discharged ashore without additional delay, the Goods (or part thereof, as the case may be) shall nevertheless not be deemed to be discharged for the purposes of this Clause and of clause 17 (A) until they are discharged from such craft. The Merchant shall take delivery of the Goods upon such discharge. All expenses incurred by reason of the Merchant's failure to take delivery of the goods as aforesaid shall be for the Merchant's account.

C. Where the carriage called for by this Bill of Lading is Combined Transport, the Merchant shall take delivery of the Goods forthwith.

D. If delivery of the Goods or any part thereof is not taken by the Merchant at the time and place when and where the Carrier is entitled to call upon the Merchant to take delivery thereof, whether the carriage called for by this Bill of Lading is Port to Port Shipment or Combined Transport, the Carrier shall be entitled without notice to unstuff the Goods or that part thereof, if stowed in containers or flats and/or to store Goods or that part thereof ashore, afloat, in the open or under cover at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods or that part thereof stored as aforesaid (as the case may be) shall wholly cease and the cost of such storage (if paid or payable by the Carrier or any agent or subcontractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.

### 17. NON DELIVERY

Failure to effect delivery within 90 days after the expiry of a time limit agreed and expressed in this Bill of Lading or, where no time limit is agreed and so expressed, failure to effect delivery within 90 days after the time it would be reasonable to allow for diligent completion of the transport operation shall, in the absence of evidence to the contrary, give to the party entitled to receive delivery right to treat Goods as lost.

### 18. FAILURE TO NOTIFY

No claim shall under any circumstances whatever attach to the Carrier for failure to notify the Consignee or others concerned of the arrival of the Goods.

### 19. HINDRANCES ETC. AFFECTING PERFORMANCE

A. The Carrier 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 Bill of Lading is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind, and if by virtue of Clause 19 (a) the Carrier has no duty to complete the performance of the contract, the Carrier (whether or not the transport is commenced) may elect to

- I. treat the performance of this contract as terminated and place the Goods at the Merchant's disposal at any place which the Carrier shall deem safe and convenient; or
- II. deliver the Goods at the place designated for delivery.

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

### 20. FREIGHT AND CHARGES

A. Freight shall be deemed to be due and earned on receipt of the Goods by the Carrier and shall be paid in any event, ship/goods, lost or not lost.

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 clause to apply; if the conditions are varied the freight and charges are valued as if 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.

C. When the Carrier 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 as for banker's sight draft current on the day when such freight and charges are paid as published by the Wall Street Journal. 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.

D. For the purpose of verifying the freight basis, the Carrier reserves the right to have 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 charged or to double the correct freight less the freight charged, whichever sum is the smaller, shall be payable as liquidated damages to the Carrier notwithstanding any other sum having been stated on this Bill of Lading as the freight payable.

E. All dues, taxes, costs and expenses levied or incurred on the Goods and any other expenses incurred by the Carrier in connection therewith, including but without limitation, all legal and collection fees and disbursements to collect all amounts owing by the Merchant, shall be paid by the Merchant.

F. The Merchant shall pay the Carrier in cash, or, as otherwise agreed, all sums immediately when due without deduction or retention on account of any claim, counterclaim or set-off. Interest at the rate of 5% per year shall be charged on all overdue amounts.

### 21. LIEN

The Carrier shall have a general lien on the Goods (and documents relating thereto) for all claims for charges, expenses or advances incurred by the Carrier in connection with any shipments of the Merchant and for the costs of recovering the same, and may enforce such lien in any reasonable manner.

### 22. GENERAL AVERAGE

A. General Average to be adjusted at any part or place at the Carrier's option, and to be settled according to the York/Antwerp Rules 1974, 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. The Merchant shall indemnify the Carrier in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Carrier in this connection.

C. The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

### 23. TIME BAR

In any event the Carrier shall be discharged of all liability under this Bill of Lading unless suit is brought within one year after the delivery of the Goods or the date when the Goods should have been delivered.

### 24. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have power to waive or vary any term of this Bill of Lading unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

### 25. PARTIAL INVALIDITY

Should any clause or part thereof of this Bill of Lading be found to be invalid, the validity of the remaining clauses or the remaining part of the defective clause shall not be impaired. The validity of the remaining clauses shall not be affected thereby and this Bill of Lading contract shall be carried out as if such invalid or unenforceable clause were not contained herein.