

# NEWPORT TANK CONTAINERS COMBINED TRANSPORT BILL OF LADING

## I. GENERAL PROVISIONS

**1. Definitions.** "Carrier" shall mean Newport Tank Containers and includes any vessel carrying the goods.

"Underlying Carrier" shall include any water, rail, motor, air or other carrier utilized by the Carrier for any part of the carriage of the goods. "Water Carrier" shall include the owner, operator or charterer of any vessel used to perform the carriage as well as the vessel. "Vessel" shall include any ocean or other used vessel, feedership barge or other water craft, her master and crew. "Merchant" includes the Shipper, the Consignee, the Holder of this B/L and the Owner of the goods.

**2. Contract of Carriage. Tariffs.** All the terms of this B/L, whether on the front or back page hereof constitute the contract of carriage between the Merchant and the Carrier. The terms of the Carrier's applicable Tariffs are incorporated herein.

By accepting this B/L the Merchant agrees to be bound by all its terms as well as the provisions of the Tariffs of the Carrier and any underlying carriers as if they were accepted in writing by such Merchant any local customs or practice to the contrary notwithstanding.

The terms of this B/L shall be separable, and if any provisions hereof, or any part of any provision be held to be invalid or unenforceable, such holding shall not affect the validity or enforceability of any other provision or part thereof on this B/L.

**3. Claims. Time Bar.** All liability whatsoever of the Carrier shall cease unless suit is brought within 12 months after the delivery of the goods or the date when the goods should have been delivered.

Claims shall be addressed to the Carrier's local agent at the place where the goods are delivered and to the Carrier's general agent, in the respective country.

**4. Law. Jurisdiction.** Except as provided for in laws incorporated herein by Clause 12 hereof, all disputes arising under this B/L shall be determined in accordance with United States law. Any suit against the Carrier or any vessel owned, chartered or operated by the Carrier for any cause arising out of this B/L or the carriage of the goods shall be filed only in the United States Federal Court, Southern District of New York, which Court shall have exclusive jurisdiction of such suit.

## II. PERFORMANCE OF THE CONTRACT

**5. Sub-Contracting.** The Carrier shall be entitled to sub-contract on any terms the whole or any part of the carriage, loading, unloading, storing, warehousing, terminating, handling and any duties whatsoever undertaken by the Carrier in relation to the goods.

For the purpose of this contract and subject to the provisions in this B/L, the Carrier shall be responsible for the authorized conduct of any person of whose services he makes use for the performance of the contract evidenced by this document.

**6. Routes. Substitution and other liberties.** The goods may be carried by any route whatever, whether or not the most direct scheduled, advertised or customary route and by any vessel or mode of transport. The Carrier shall be entitled to tranship the goods and to substitute any vessel or other means of transport at any time and has the right to discharge and complete the vessel's cargo in respect of goods belonging to other merchants.

In accordance herewith, for instance, in the event of carriage by sea or water the vessel may sail with or without pilot, undergo repair, adjust equipment, dry dock, tow or be towed, assist other vessels in any situation, deviate for the purpose of saving life or property or of landing ill or injured persons, and call for fuel at any ports.

**7. Optional Stowage. Containerization. Comingling.** Goods may be containerized, de-containerized or comingling when the goods are received for shipment or at any time while the goods are in the charge of the Carrier.

Containers, whether stowed by the Carrier or received by him in stowed condition from the Merchant, may be carried on or under deck without notice to the Merchant.

**8. Special Containers. Refrigeration. Heating. Nitrogen.** Special containers or cargo space with refrigeration or heating or mechanical ventilation shall not be furnished unless indicated on the face of the B/L and extra freight paid. If a temperature range is noted on the B/L the Merchant shall deliver cargo at temperature within that range and the Carrier shall direct any underlying carrier to maintain temperature within the specified range and shall exercise due diligence to maintain temperature while the cargo is in its possession or control.

The Carrier does not warrant refrigerating or heating machinery and shall exercise reasonable care in its operation and maintenance. The Carrier shall not be responsible for control and care of refrigeration units on containers when such containers are not in the actual possession of the Carrier.

**9. Hindrances, delay etc. affecting performance.** If any situation whatsoever before or during transportation is, in judgement of the Carrier or any underlying carrier, likely to give rise to risk of seizure, fine, detention, delay, or disadvantage to the goods, the containers or the Carrier, or is otherwise likely to affect the performance to the disadvantage of the Carrier, the Carrier may:

a) treat the performance of this contract as terminated and require the Merchant to take delivery thereof at the place of shipment or at any other place or port which the Carrier shall deem convenient.

b) without prior notice to the Merchant, discharge, transship, store, surrender, return, or forward the goods at the risk and expense of the Merchant and without responsibility of the Carrier.

c) deliver the goods at the price designated for delivery. In any event the Carrier shall be entitled to full freight for the goods received for transportation and to additional compensation for extra costs resulting from the circumstances referred to above.

**10. Delivery from or to lighters or port authorities.** At ports or places where the Carrier is required by law or custom to receive or deliver goods from or to lighters or port authorities, receipt and delivery of the goods by the Carrier shall take place at the end of the ship's tackle or manifold, or when the Carrier obtains or loses control of the goods. Lighterage or custody before or after such receipt or delivery, as the case may be, shall be at the expense and risk of the Merchant.

## III. CARRIER'S LIABILITY

### 11. Period of responsibility.

(a) Pier-to-Pier (Port-to-Port) Shipments. The Carrier shall be responsible for the goods from the time when the goods are received by him at the port of loading until they are discharged and made available for delivery at the Port of Discharge (see also Clause 10).

(b) Combined Transport. If either the Place of Shipment or Place of Delivery or both as set forth herein are inland points or ports other than Port of Loading or Port of Discharge and freight is paid for the Combined Transport, the Carrier shall be responsible for the goods during the entire Combined Transport from the time when he has received the goods at the place of shipment until they are made available for delivery at the place of delivery.

(c) Failure to take delivery. If for any reason whatsoever the consignee refuses or fails to take delivery of the goods upon their being made available for delivery to the consignee at the place of discharge or delivery, as provided in 11(a) or 11(b), the Carrier shall regardless of any free time prescribed by tariff or local regulations, have the right without notice to store the goods at the risk of the Merchant. Such storage shall constitute final delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the goods shall cease.

**12. Carrier's liability.** Irrespective of whether this B/L has been issued in respect of a Pier-to-Pier (Port-to-Port) Shipment or of a Combined Transport, the liability of the Carrier shall be determined according to the following provisions.

(a) With respect to sea or water transportation, the B/L shall be subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, or to any similar Hague Rules or Hague-Visby Rules or law if compulsorily applicable to this B/L, which act or law shall be deemed to be incorporated herein. The provisions of said act or law (except as otherwise specifically provided for herein) shall also govern before the goods are loaded on and after they are discharged from the vessel while the shipment is in the custody of the Carrier. Such act or law shall also apply to containers on deck.

The Carrier and his insurers shall by this contract of carriage be entitled to all limitations and exemptions from liability authorized by the provisions of sections 4281 to 4289, inclusive of the Revised Statutes of the United States, the same as if they were the owner of the vessel used to transport goods.

The Carrier shall not be liable for any loss or damage to goods occurring at any time (including before loading on or after discharge from the vessel) by reason of any fire whatsoever: unless such fire shall be caused by his personal design or neglect.

(b) With respect to overland transportation in the U.S.A., the terms and conditions of the Uniform I.C.C. Bill of Lading, when applicable, shall also apply together with the underlying carrier's tariff, both of which shall be deemed to be incorporated herein as if set forth at length.

(c) With respect to overland transportation outside of the U.S.A. the terms and conditions of the contracts of carriage of the relevant underlying carrier shall apply and are deemed to be incorporated herein as if set forth at length. The provisions of the Convention of the Contract for the International Carriage of Goods by Road, 1956 (C.M.R.) and of the International Agreement on Railway Transports, 1980 (C.I.M.) whether or not the countries concerned in the transportation are parties thereto, are deemed to be incorporated and to override any conflicting provision of any contract of carriage, tariffs and local laws.

(d) The liability of the Carrier shall in no event be greater than the liability of the relevant underlying carrier(s) under his (their) contract of carriage of B/L, which are deemed to be incorporated herein, and the Carrier shall be entitled to all exemptions from and limitations of liability contained therein. Sample copies of underlying carrier terms and conditions may be obtained from the Carrier's agent in the respective country.

(e) When loss or damage to goods occurs during any Combined Transport but it cannot be determined which carrier actually had custody of the goods at the time of the loss or damage, it shall be deemed that the loss or damage occurred aboard the ocean vessel and Clause 12(a) shall apply.

(f) The Carrier shall not be liable for any consequential loss resulting from loss or damage to goods.

(g) Trade Allowance. Carrier shall be entitled to a minimum of no less than one-half of one percent trade allowance per mode of handling of the goods carried unless a higher customary allowance is applicable.

**13. Damages, Delay, Consequential Loss, etc.** The liability of the Carrier for loss of or damage to the goods shall be calculated on the basis of the sound value of the goods at the place of delivery and shall in no event exceed such sound value. The Carrier shall have the option of replacing lost goods and reconditioning damaged goods.

If the Carrier is held liable in respect of unreasonable delay or of consequential loss or damage, the liability of the Carrier shall be limited to the freight for the transport covered by this B/L.

**14. Limitation of Liability.** The Carrier shall in no event be liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding U.S. \$500, per customary freight unit, unless the nature and value of such goods have been declared by the Shipper before shipment and inserted on the face of this B/L and the Shipper has paid the additional charges on such declared value.

**15. Notice of Loss.** Unless notice of loss or damage to the goods and general nature of it be given in writing to the Carrier's agent at the Port of Discharge or Place of Delivery as applicable, before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under this B/L, or if the loss or damage be not apparent, within three consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Carrier of the goods in good condition, as described in this B/L.

**16. Defenses and limits for Insurers, underlying carriers, independent contractors, servants etc. employed by the Carrier.** If an action for loss, damage or delay to the goods is brought by the Merchant against any insurer, charterer, underlying carrier, servant, agent, independent contractor, or subcontractor, including stevedores, carpenters and watchmen, such person shall be entitled to avail himself of the defenses and limits of liability which the Carrier is entitled to invoke under this B/L. For the purpose of this clause, all such persons are parties to this contract, made on their behalf by the Carrier.

The aggregate of the amounts recoverable from the Carrier and all other such persons shall in no case exceed the limits of liability of the Carrier according to the provisions of this B/L.

**17. Subrogation, Recourse.** Nothing herein shall be deemed a waiver by the Carrier of any right of subrogation to any right(s) of the Merchant against any underlying carrier or other person referred to in Clause 16 of any right of recourse against any such person which the Carrier may otherwise be entitled to.

## IV. MERCHANT'S RESPONSIBILITY

**18. Shipper-stowed containers.** When container(s) is stowed by the Shipper or his agent, this B/L shall be a receipt only for the container(s), and the Carrier shall not be responsible for weight or measurement of the contents, nor for the particulars relating to the contents stated in this B/L. All containers stowed by the Shipper shall be sealed by him and the seal number shown hereon. Upon delivery the consignee shall give to the Carrier a receipt for the container(s) before the shipment is released.

The Carrier shall not be liable for leakage from or for concealed damage in container(s) stowed by the Shipper or his agent, and the Merchant shall hold the Carrier harmless from any loss, damage or injury caused by such leakage.

**19. Reconditioning of goods. Repair of containers.** The Merchant shall be liable for and indemnify the Carrier for all expenses incurred when reconditioning goods or repairing containers damaged by contents or while in the possession of the Merchant. This also applies to demurrage on such containers.

**20. Hazardous goods.** Hazardous goods must be noted by Shipper on the front page of this B/L.

Goods of an inflammable, explosive, radio-active or dangerous nature, which are shipped by the Merchant without prior notice to and consent of the Carrier and/or without declaration of its exact description and nature herein, may at any time be landed at its place or destroyed or rendered innocuous by the Carrier without compensation to the Merchant. The Merchant shall indemnify the Carrier for any expenses, loss, damage or personal injury/death claims directly or indirectly arising out of or resulting from such goods.

**21. Guarantee of particulars.** The Shipper shall be deemed to have guaranteed to the Carrier the accuracy at the time the goods were accepted by the Carrier of the description of the goods, marks, number, quantity and weight and any statement as to the contents of containers, as furnished by him. The Shipper shall indemnify the Carrier against all loss, damage and expenses arising or resulting from inaccuracies or inadequacy of such particulars.

**22. Laws and regulations.** The Merchant shall be liable for all expenses resulting from his failure to supply information or otherwise comply with laws and regulations in connection with the goods, and shall indemnify the Carrier for any such expenses.

## V. FREIGHT, LIENS AND OTHER MATTERS

**23. Freight.** All freight charges or amounts due from the Merchant shall be paid directly to the Carrier without any offset, counterclaim or deduction in U.S. dollars unless otherwise agreed. The Shipper, Holder hereof, Consignees or Owners of the goods shall be jointly and severally liable to the Carrier for such payment.

For the purpose of verifying the freight basis, the Carrier reserves the right to inspect the goods and to check the particulars furnished by the Shipper. If the Shipper's particulars are erroneous and additional freight is payable, the Merchant shall be liable for all expenses incurred for inspecting, weighing, measuring and valuing the goods.

Full freight to destination and, charges due hereunder, whether or not prepayable, shall be deemed earned upon receipt of the goods by the Carrier at the Port of loading or the Place of Shipment, and such freight or charges shall be paid to or retained by the Carrier in any event, vessel or other means of transportation and/or goods lost or not lost or the transportation broken up or abandoned.

**24. Carrier's Liens.** The Carrier shall have a lien on the goods for all unpaid ocean and inland freights, expenses, charges and other amounts due from the Merchant under this B/L. Such lien shall survive delivery of the goods and may be enforced public or private sale upon ten days notice to Consignee or Notify Person.

The Carrier shall also have such lien on the goods for demurrage, deadfreight, fines, dues, liens, surveys, lighterage, custom duties and port charges as well as legal fees and other expenses incurred in connection with attachment, seizure, detention, condemnation or other legal proceeding brought against the goods by authorities or third parties.

**25. General Average.** General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1974, except Rule XXII thereof, at such port or place as may be selected by the Carrier, and as to matters not provided for in these Rules, according to the laws and usage at the port of New York. Average agreement and bond and such additional security as may be required by the Carrier must be furnished before delivery of the goods. The Adjustment shall be made, by an Adjuster selected by the Carrier from the Association of Average Adjusters of U.S.A. and his Adjustment shall be prima facie evidence as against all interests.

In the event of accident, danger, damage or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible by statute, contract or otherwise, the goods and the Merchant shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salvaging ship is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if such a salvaging ship belonged to strangers. Contribution to General Average by all interests shall be paid to the owners even when such average is the result of fault, neglect or error of the Master, pilot or crew. The Merchant expressly renounces any and all codes, statutes, laws or regulations which might otherwise apply.

In the event General Average is declared by any water carrier, the goods and the Merchant shall contribute directly to such General Average in accordance with the contracts of the water carrier.

**26. Both-to-blame collisions.** If the ship comes into collision with another ship as a result of the negligence of the other ship, and any act, neglect or default of the Master, mariners, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against loss or liability to the other or non-carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or other owners to the owners of said goods and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or the Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to the colliding ships or objects are at fault in respect of a collision or contact.