

**Tariff Rule Information****Pantainer (H.K.) Limited****NRA Rules Tariff No. 01 – Between USA & World & World & USA**

Org No. 023561

Amendment No: 2

Pantainer (H.K.) Limited

Original Title Page

Tariff No: 01

Organization No: 023561

Non-Vessel Operating Common Carrier

Effective Date: June 1, 2014

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**TITLE PAGE**

Tariff No. 01

Negotiated Rate Arrangements Governing Rules Tariff

Naming Rules and Regulation on cargo moving in containers and breakbulk between U.S. ports and points to foreign ports and points and between foreign points and ports to U.S. ports and points

Pantainer (H.K.) Limited is a foreign based Non-Vessel Operating Common Carrier (NVOCC) registered with the Federal Maritime Commission.

**NOTICE TO TARIFF USERS**

Carrier has opted to be exempt from tariff publication requirements pursuant to 46 C.F.R 520 and 532. In this respect Carrier has opted for the exclusive use of Negotiated Rate Arrangements ("NRA"). An NRA is a written and binding arrangement between a shipper or consignee and Carrier to provide specific transportation service for a stated cargo quantity from origin to destination on and after receipt of the cargo by Carrier or its agent (originating carrier in the case of through Transportation).

Carrier shall issue quotation sheets, booking confirmations, e-mail communications and other writings with applicable rates and charges for the shipments subject of the NRA, and shipper's or consignee's response by e-mail or other writing (collectively "the writings") which will constitute an offer by the Carrier and acceptance by Shipper or Consignee for transportation services pursuant to 46 C.F.R. 520.13 and 532. The terms contained in the writings shall be a valid offer for thirty (30) days from the booking date, unless otherwise rescinded by the Carrier prior to receiving Shipper's cargo. Carrier's or Carriers' agent's receipt of the cargo for this shipment constitutes final acceptance by Shipper or Consignee of this offer, and the terms of the NRA shall bind the parties. If the writing provided by shipper or consignee to accept the offer does not contain the legal name and address of the shipper or consignee and its affiliates agreeing to the NRA, the shipper or consignee must provide these by separate writing which shall be considered part of the NRA. All applicable origin and destination local terminal and/or port charges shall apply to all NRAs. Rates may not be modified in an NRA after the time the shipment is received by the carrier or its agent (including originating carriers in the case of through transportation).

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## Tariff Rule Information

Pantainer (H.K.) Limited

NRA Rules Tariff No. 01 – Between USA & World & World & USA

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## Tariff Details

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## Organization Information

Number: 023561  
Name: Pantainer (H.K.) Limited  
Trade Name: Pantainer Express Line  
Type: Non-Vessel-Operating Common Carrier  
Hdq. Country: Hong Kong  
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## **Tariff Rule Information**

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### Rule 1: Scope

Rules and regulations published herein apply FROM/TO all United States Atlantic, Gulf, Pacific and Great Lakes Ports, U.S. Territories and Possessions and U.S. Inland Points TO/FROM all Worldwide Ports and Points.

#### B. SUBSTITUTED SERVICE (ALTERNATE PORT SERVICE)

This provision shall govern the transfer of cargo by trucking or other means of transportation at the expense of the Ocean Carrier. In no event shall any such transfer arrangements be such as to result directly or indirectly in any lessening or increasing of the cost or expense which the shippers would have borne had the shipment cleared through the port originally intended.

Carrier will provide through intermodal service via all combination of air, barge, motor and rail service.

Intermodal rates will be shown as single-factor through rates as specified in individual NRAs, or combination through rates constructed by the addition of applicable inland rate factors.

Carrier's liability will be determined in accordance with the provisions indicated in their Bill of Lading/Waybill.

### Rule 2: Intermodal Service

Intermodal through rates apply **between** points in the U.S. and worldwide.

### Rule 3: Notice to Tariff Users

Carrier has opted to be exempt from tariff publication requirements pursuant to 46 C.F.R 520 and 532. In this respect Carrier has opted for the exclusive use of NRA's. An NRA is a written and binding arrangement between a shipper or consignee and Carrier to provide specific transportation service for a stated cargo quantity from origin to destination on and after receipt of the cargo by Carrier or its agent (originating carrier in the case of through Transportation).

Carrier shall issue quotation sheets, booking confirmations, e-mail communications and other writings with applicable rates and charges for the shipments subject of the NRA, and shippers or consignee's response by e-mail or other writing (collectively "the writings") which will constitute an offer by the Carrier and acceptance by Shipper or Consignee for transportation services pursuant to 46 C.F.R. 520.13 and 532. Carrier's or Carrier's agent's receipt of the cargo for this shipment constitutes final acceptance by Shipper or Consignee of this offer, and the terms of the NRA shall bind the parties. If the writing provided by shipper or consignee to accept the offer does not contain the legal name and address of the shipper or consignee and its affiliates agreeing to the NRA, the shipper or consignee must provide these by separate writing which shall be considered part of the NRA. All applicable origin and destination local terminal and/or port charges shall apply to all NRAs. Rates may not be modified in an NRA after the time the shipment is received by the Carrier or its agent (including originating carriers in the case of through transportation).

### Rule 4: Application of Charges

1. For LCL shipments, charges apply per 1 cubic meter (M) or 1,000 kilograms (W), as indicated, whichever basis yields the greater revenue, except as otherwise specified. Where the word "Weight" or the letter "W" appears next to an article or commodity, weight rates are applicable without regard to measurement. Where the word "Measurement" or the letter "M" appears next to an article or commodity, measurement rates are applicable without regard to weight.
2. Minimum LCL charge per shipment is equal to 1 metric ton or 1 CBM.
3. All freight charges shall be based on the actual gross weight and/or overall measurement of each piece or package, except as otherwise provided.
4. All freight charges indicated by W/M or WM are optional weight or measurement rates and the rate yielding the greater revenue will be charged.
5. Except as otherwise provided, all charges apply from/to places where the Carrier originates or terminates its actual ocean carriage of cargo. Tolls, wharfage, cost of landing, and all other expenses beyond the port terminal area are for the account of Merchant.
6. Charges may be shown as all inclusive rates or a combination of rates constructed by the addition of applicable inland rate factors. Alternatively, at shipper's request, Carrier will arrange for inland transportation as shipper's agent. All associated costs will be for the account of the Merchant. Overland carriers will be utilized on an availability of service basis and not restricted to any preferred carriers, except as Carrier deems necessary to guarantee safe and efficient movement of said cargo. Carrier shall not be obligated to transport the goods in any particular type of container or by any particular vessel, train, motor, barge or air carrier, or in time for any particular market or otherwise than the reasonable dispatch. Selection of water carriers, railways, motor, barge or air carrier used for all or any portion of the transportation of the goods shall be within the sole discretion of the Carrier.
7. Except as otherwise provided, charges apply only to the specific commodity named and cannot be applied to analogous goods.
8. Any additional charges which may be imposed upon the cargo by governmental authorities will be for the account of the Merchant.
9. FCL Pick-up/delivery charges are based on live loads/unloads at the place of receipt/place of delivery with 2 hours of free time.
10. Demurrage, detention, port storage and chassis charges will be for the account of the Merchant.

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### 11. LIMITATION OF SERVICE

- A. A prior booking is required for all shipments.
- B. The Carrier is not obligated under these rules and specific NRA's to transport goods for which suitable equipment is not available, nor is transportation to be performed under impractical or unsafe circumstances in the judgment of the Carrier.
- C. Nothing in these rules and NRA's shall be construed as to create any obligation for the Carrier to institute or maintain any services from or to any places.

### 12. SHIPPERS LOAD, STOWAGE, COUNT AND SEAL

Where containers are loaded by shipper or his agent and sealed, Carrier will accept such shipments subject to "Shipper's Load, Stowage, Count and Seal" and Bill of Lading/Waybill shall be so claused and Carrier will not be responsible either directly or indirectly for damage resulting from improper loading or mixing of articles in the container or any discrepancy in count or concealed damage to articles. The shipper shall furnish Carrier with a list of contents showing description of goods and the gross weight and cubic measurements of the contents of the container. The Carrier reserves the right to open and inspect the contents of a container and so indicates on the Bill of Lading/Waybill, resealing the container. When containers loaded with goods moving subject to shipper's load, stowage, count and seal are delivered to consignee or his agent, consignee or his agent must furnish the Carrier with a claim-free receipt prior to release of container or contents for delivery.

### 13. CUSTOMS CLEARANCE

Goods not cleared through customs for any reasons may be turned over to the customs authorities without any further responsibility on the part of Pantainer (H.K.) Limited.

### 14. SHIPPER-SUPPLIED INFORMATION FOR SUBMISSION TO U.S. CUSTOMS AND BORDER PROTECTION (CBP)

Carrier participates in the U.S. Customs and Border Protection (CBP) Automated Commercial Environment (ACE) and takes responsibility filing Cargo Declarations with CBP Ocean ACE e-manifest (M1) by directly transmitting data to and receiving data from the U.S. Customs and Border Protection computer for all ocean shipments to the United States, no later than 24 hours prior to vessel loading in accordance with U.S. Customs and Border Protection regulations. In doing so, Carrier must rely on its shippers or consignees, or both, for critical information it submits in the Cargo Declarations including, without limitation, precise description of goods, marks and numbers, numbers and quantities of the lowest external packaging unit, weights, the shipper's, consignee's and notify party's complete name and address, hazardous materials codes (UN No.) and flashpoint (if applicable), and container seal numbers no later than 72 hours prior to vessel loading. By using Carrier's services, shippers and consignees agree to provide Carrier with true and accurate information for submission to CBP.

### 15. MEANS OF TRANSPORTATION

Carrier shall be obligated to transport or arrange for transport of goods with reasonable dispatch. Selection of water carriers, railways, motor or air carrier used for all or any portion of the transportation of the goods shall be within the sole discretion of Carrier. Carrier is free to choose any underlying carrier and any routing necessary to transport cargo through any Ports of Loading and/or Discharge.

### 16. MARKING OF FREIGHT

- A. Each single carton, package or other separate articles **MUST** be plainly and durably marked with the name and address of the shipper and the name and address of the consignee.
- B. Export marks may be used as marking identification in lieu of names and addresses, provided such marks can be readily matched with the descriptions shown on the dock receipt and other papers accompanying the shipment.
- C. The shipper will be liable, and solely responsible for any loss, damage, misrouting or other problems resulting from non-compliance with Paragraphs A and B in this rule

### 17. PACKAGING REQUIREMENTS

- A. Where packing requirements are specified the rate will only apply when the commodity is tendered in the packing specified.
- B. Where no package specifications are prescribed in the individual items, the goods will be accepted in any package which, in the judgment of the Carrier, adequately protects the goods from any damage in ordinary handling, stowage and transport.
- C. Any article which, by its very nature, may be shipped without boxing, crating or wrapping without danger by ordinary handling and stowage, will be considered as "suitably packaged".

### 18. ON DECK STOWAGE

Carrier reserves the right to load/stow containers on or under deck at Carrier's option. Merchant agrees that the Carrier is not required to note "On-Deck Stowage" on the face of the B/L or Waybill. Merchant indemnifies Carrier, whether cargo is carried on or under deck for any non-delivery, mis-delivery, delay, loss or damage to goods, so carried on deck.

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### ***Rule 5: Shipper Owned Containers/Equipment***

1. Acceptance of shipper owned container/equipment is at discretion of the Carrier.
2. Any related charges will be the responsibility of the Merchant.
3. The container must be of body and frame construction acceptable to the Carrier and must be manufactured and equipped in accordance with all applicable United States, other local National and International Laws, Regulations and Safety requirements.
4. Shipper furnished containers/equipment will be subject to inspection, approval and acceptance for carriage. Acceptance of any shipper owned containers or equipment found to be unsuitable will not be accepted for carriage.
5. Each shipper owned container or equipment and its cargo will be subject to all, rules and regulations of this tariff.
6. Shipper may be required by the Carrier to submit documentary evidence of ownership or leaseholdship of the container offered for shipment.

### ***Rule 6: LCL Weight Limitation***

Maximum weight per piece for LCL cargo is 2500 kilograms.

The Carrier may at the request of the Customer, perform certain services for the Customer in order to facilitate the movement of the cargo in line with local customary and usages of the port outside of the normal Bill of Lading/Waybill transaction. These services could involve, but are not limited to: local Customs compliance assistance, issuing arrival notices, checking manifest for cargo to be discharged, arrange for unloading, arrange for temporary storage (if required) contact consignee or agent for update on customs documentation issued by consignee or agent, arranging to have cargo loaded onto trucks for offsite discharge, arrange to unload cargo from special equipment or maltrailers for inland delivery. It is recognized that these services are over and above those performed in the traditional movement of cargo and Carrier will pass on the costs for such services to the Customer. All costs and expenses will be for the account of the Merchant.

### ***Rule 7: Late Document Charge***

Timely submission of the required data to the Carrier is the sole and exclusive responsibility of the Merchant named on the Bill of Lading/Waybill. This includes submission of Bill of Lading/Waybill instructions (SLI) and confirmed export clearance (in the US AES filing citation or proof of exemption). This must be provided within the documentation cut-off time provided by the Carrier.

In the event the Merchant fails to comply with the above obligations, the Merchant shall be liable to the Carrier for, and shall hold the Carrier harmless from, any loss, damage, delay, expense, charges, fines, penalties, or liability incurred by, or levied upon, the Carrier or the goods, including but not limited to demurrage, roll-over and/or storage charges, as a result of the non-compliance. In addition, a Late Documentation Charge may be levied.

### ***Rule 8: Heavy Lift***

Heavy Lift charges are for the account of Merchant when applicable.

### ***Rule 9: Extra Length***

Extra Length charges are for the account of the Merchant when applicable.

### ***Rule 10: Pro-Rating for Per Container Rate Basis***

Carrier will, upon shipper's request, apportion the freight for a given shipment between two or more Bills of Lading/Waybills. This apportionment shall be done on the basis of total cubic meters as indicated in the formula below.

The total freight for all Bills of Lading/Waybills apportioned from a given kind of container must equal the freight for those containers.

Formula: Ocean Freight Total divided by total CBM = Ocean Freight per CBM

### ***Rule 11: Cargo Roll Over Fee***

Carrier will require complete and accurate shipping instructions by the "Document Due By Date". If not received by the "Document Due By Date", or if cargo arrives after "Cargo Cut-Off Date, or if cargo is rolled over at request of Merchant, cargo will be rolled/postponed to the next available vessel and all costs associated with the postponement (handling, storage, demurrage, etc.) will be billed to the Shippers/Owners Account. A Cargo Roll-Over Fee may be charged at Carrier's discretion.

### ***Rule 12: Destination Terminal Handling Charge (THC)***

In destination countries where a Destination THC is required to be prepaid, Carrier may require the same prior to shipment.

### ***Rule 13: Shipment Received***

A shipment may not be considered as "received" until the full Bill of Lading/Waybill quantity has been received.

### ***Rule 14: Bill of Lading Fee***

Bill of Lading/Waybill fees or amendment fees are considered origin and destination local charges and shall be for the account of the Merchant.

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### Rule 15: Surcharges, Assessorials & Arbitraries

All surcharges applicable to the shipments are for the account of the Merchant.

Carrier may establish with immediate effect changes in Surcharges, Assessorials & Arbitraries which are not under the control of Carrier and which Carrier passes through to its customers without mark-up. Certain of Carrier's charges to Shippers are based on rates charged to Carrier by third parties, such as terminals, public authorities and vessel operating carriers. From time to time, these third parties impose bunker and other fuel charges or other surcharges on Carrier in a manner that prohibits Carrier from providing thirty days notice of the increase. When Carrier passes these increases through to Shippers without mark-up, they will be established in appropriate Negotiated Rate Arrangements with an effective date matching the effective date of the underlying service provider. Although Carrier will endeavor to advise Shippers of these pass through charges as quickly as possible after it receives notice, they may, in some cases, take effect immediately upon the effective date of the underlying third party's publication.

### Rule 16: Co-Loading in Foreign Commerce

DEFINITION: Co-loading shall mean the combining of cargo, in the import or export foreign commerce of the U.S., by two or more NVOCC's for tendering to an ocean carrier under the name of one or more of the NVOCC's.

EXTENT OF ACTIVITY: Carrier participates in co-loading agreements on a carrier-to-carrier relationship. Carrier shall notify shipper of such action by annotating each applicable Bill of Lading/Waybill with the identity of any other NVOCC with which its cargo has been co-loaded. And/or Carrier participates in co-loading on a Shipper/Carrier relationship, meaning the receiving NVOCC issues a Bill of Lading/Waybill to the tendering NVOCC for carriage of the co-loaded cargo. Carrier shall co-load cargo at its discretion and shall notify Shipper of such action by annotating each applicable Bill of Lading/Waybill with the identity of any other NVOCC with which its shipment has been co-loaded. Where Carrier is the tendering NVOCC, Carrier shall be responsible to the receiving NVOCC for payment of any charges for the transportation of the cargo.

LIABILITY: Carrier's liability to the Shipper shall be as specified on the Shipper's Bill of Lading/Waybill regardless of whether or not the cargo has been co-loaded.

#### SPECIAL RULES AND REGULATIONS APPLICABLE TO CO-LOADING ACTIVITIES OF NON-VESSEL OPERATING COMMON CARRIERS

Pantainer (H.K.) limited occasionally tenders cargo to other NVOCC's for Co-Loading with that NVOCC'S cargo instead of tendering cargo directly to a Vessel Operating Common Carrier (VOCC) for through or Ocean Transportation, in order to obtain the most cost effective and/or expeditious transportation of the shipment possible.

The tendering of cargo to another NVOCC for Co-Loading does not increase, reduce, alter or remove Carrier's liability for the cargo as stated in the Carrier's Bill of Lading/Waybill issued at time of shipment.

The tendering of cargo to another NVOCC for Co-Loading does not alter or relieve Carrier of any responsibility for the payment of any other underlying common carrier rates and charges for the transportation of the shipment from Origin named in the Bill of Lading/Waybill to Destination named in the Bill of Lading/Waybill. However, all charges for transportation and/or other services prior to Carrier's receipt of cargo for transportation and subsequent to Carrier's tendering cargo at destination, whether advanced by the Carrier or not, shall be for the account of the cargo. Additionally all charges and expenses incurred by Carrier in attempting to re-consign, redirect or redeliver cargo upon the instructions of Shipper, Consignee and/or their Agent shall be for the account of the cargo, unless specific provisions and charges for such services are named in this Tariff.

In the event the receiving NVOCC issues a house bill of lading to the tendering NVOCC, it is the intention of the parties to enter into a carrier-to-carrier relationship and no presumption to the contrary is intended. Pantainer (H.K.) Limited will accept shipments from other NVOCC's for Co-Loading as defined by the Federal Maritime Commission. Receiving Carrier will issue to the tendering NVOCC a Bill of Lading/Waybill covering the shipment and will assess the applicable rate named in this tariff for the transportation and/or other services performed.

Co-Load cargo will be SUBJECT to the following provisions:

- A. No Hazardous, Obnoxious or Incompatible Commodities may be tendered except with the prior approval of the Carrier.
- B. Cargo tendered by NVOCC must be packed so that it will withstand normal handling in Ocean or Overland Transportation. No "Bulk" or "loose" Cargo will be accepted for transportation except with the prior approval of the Carrier.
- C. The tendering NVOCC will furnish to the Carrier at the time of shipment a master list of all cargo tendered to Carrier showing:
  1. A description of contents of each separate shipment.
  2. The Marks, Weight and Cubic Measurement of each shipment.
  3. The names and addresses of the actual Shipper and Consignee for each shipment.
- D. The NVOCC must issue its own Bill of Lading/Waybill for each shipment to cover its relations with the Shipper/Consignee. Each Bill of Lading/Waybill issued by the tendering NVOCC shall bear the following notation on its face in a clear and legible manner:

"(Name of Tendering NVOCC) has tendered the cargo moving on this Bill of Lading/Waybill to (here insert name of receiving Carrier) for Co-Loading Service."

E. All Freight or other Charges for cargo shipped under this Rule MUST be paid prior to release of the cargo, except when credit privileges have been extended to tendering NVOCC.

F. Freight forwarder Compensation will not be paid on cargo moving under this Rule.

## **Tariff Rule Information**

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### **Rule 17: Shippers Request in Foreign Commerce**

Any shipper situated in the United States may transmit his requests and complaints as hereinafter defined to the Carrier or to any agent acting for him in the Port of Loading, or the Carrier's agents in the United States at the address indicated in this rules tariff. Any written notice including telex, cable or other printed electronic communication is acceptable.

As used in this rule, the phrase "Requests and Complaints" means any communication requesting a change in NRA's, rules or regulations; objecting to rate increase or other charges; and protests against erroneous billings. Routine requests for rate information, sailing schedules, space availability and the like are not included in the foregoing. Consultation will be arranged upon receipt of a written request by the Carrier in order to resolve any disputes, claims or Controversies which may arise.

### **Rule 18: Overcharge Claims**

A. All claims for adjustment of freight charges must be presented to the Carrier in writing, within three (3) years after the date of shipment. Any expenses incurred by the Carrier in connection with its investigation of the claim shall be borne by the party responsible for the error, or, if no error be found, by the Claimant.

B. Claims for freight rate adjustments will be acknowledged by the Carrier within 20 days of receipt by written notice to the Claimant of all governing Tariff provisions and Claimants rights under the Shipping Act of 1984.

C. Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C., 20573, within three years of the date the cause of action occurs.

D. Complaints seeking reparation pursuant to Section 11(G) of the Shipping Act of 1984 shall be filed within three (3) years after the cause of action is accrued.

### **Rule 19: Use of Carrier Equipment**

With respect to any shipment for which vessel operating common carrier equipment is used, the shipper, the consignee, and the signatory of the equipment interchange agreement, if any, shall be jointly and severally liable for the payment of all detention charges that may be imposed with respect to the use of that equipment. The liability shall be imposed notwithstanding whether these parties have executed an equipment interchange agreement with the vessel operating common carrier and notwithstanding whether any equipment interchange agreement pertaining to such equipment shall provide for such liability.

Detention charges shall be charged for each calendar day following free time and will be for the account owner.

These charges will be billed directly to the shipper or consignee separately from the normal freight charges. The Merchant will be responsible for all per diem charges caused by this type of delay. The Merchant will be responsible for the return of all equipment upon demand by the Lessor.

### **Rule 20: NVOCC's in Foreign Commerce: Bonds & Agents**

A. Carrier has filed with the Federal Maritime Commission a bond as required by regulations under 46 CFR 515 to ensure the financial responsibility of the Carrier for the payment of any judgment for damages arising from its transportation related activities, orders for reparations issued pursuant to section 11 of the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998, or penalties assessed pursuant to Section 13 thereof.

American Alternative Insurance Corporation  
(A Delaware Corporation)  
555 College Road East  
Princeton, NJ 08543

Bond# 20361001

B. Pantainer (H.K.) Limited doing business as Pantainer Express Line's resident agent in the United States, designated under 46 CFR 515.24 as its legal agent for the service of judicial and administrative process, including subpoenas, is:

Panalpina, Inc.  
703 Waterford Way  
Suite 890  
Miami, FL 33126

C. In any instance in which the legal agent designated above cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission will be deemed to be the legal agent for service of process.

### **Rule 21: Access to Rules Tariff**

This rules tariff is published on the Internet web site of the Panalpina Group at [www.panalpina.com](http://www.panalpina.com).



# Tariff Rule Information

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## Rule 22: Bill of Lading (front face)

### OCEAN OR COMBINED TRANSPORT BILL OF LADING

Shipper

Consignee or Order

Notify Party

Pre-carriage by	Place of Receipt
Vessel & Voyage No.	Port of Loading
Port of Discharge	Place of Delivery
Container Nos., Seal Nos., Marks and Nos.	Number and Kind of Packages

### NON-NEGOTIABLE COPY

B/L No.:
Export Reference:
Customs Reference:
Forwarding Agent Reference:



Carrier: Pantainer (H.K.) Limited, Top Floor ATL Logistics Centre B,  
Berth 3 Kwai Chung Container Terminal, Hong Kong SCAC: PNEP

For Delivery please apply to:

Particulars as declared by Merchant:

Description of Goods	Gross Weight/Measurement
----------------------	--------------------------

NON-NEGOTIABLE COPY

Freight and Charges:

Received by the Carrier for carriage in apparent good order and condition (unless otherwise stated herein) the total number or quantity of Containers or other packages or units indicated in the box headed "TOTAL NUMBER OF CONTAINERS OR OTHER PACKAGES OR UNITS RECEIVED BY THE CARRIER" from the Place of Receipt or the Port of Loading (whichever is applicable) to the Port of Discharge or the Place of Delivery (whichever is applicable) as indicated above subject to the terms and conditions hereof (INCLUDING THE TERMS AND CONDITIONS CONTAINED ON THE REVERSE SIDE HEREOF AND THE TERMS AND CONDITIONS OF THE CARRIER'S APPLICABLE TARIFFS). In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its terms and conditions, whether printed, stamped, written or otherwise incorporated, notwithstanding the non-signing of this Bill of Lading by the Merchant. Merchant's attention is drawn to the fact that the terms and conditions of this BILL OF LADING CONTAIN PROVISIONS EXEMPTING OR LIMITING CARRIER FROM LIABILITIES OR REQUESTING MERCHANT TO PROVIDE INDEMNITIES IN CERTAIN CIRCUMSTANCES.  
IN WITNESS WHEREOF three (3) original Bills of Lading have been signed if not otherwise stated, one of which being accomplished the other(s) shall be void.

Declared Value from Merchant (see Clause 7.7)

Prepaid at	Payable at
TOTAL NUMBER OF CONTAINERS OR OTHER PACKAGES OR UNITS RECEIVED BY THE CARRIER:	Number of Original B(s)/L
Place of Issue	Date of Issue

as agent for the carrier, Pantainer (H.K.) Limited

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## Rule 23: Waybill (front face)

### OCEAN OR COMBINED TRANSPORT WAYBILL

Shipper

Consignee

Notify Party

Pre-carriage by	Place of Receipt
Vessel & Voyage No.	Port of Loading
Port of Discharge	Place of Delivery
Container Nos.; Seal Nos.; Marks and Nos.	Number and Kind of Packages

### NON-NEGOTIABLE

Waybill No.:
Export Reference:
Customs Reference:
Forwarding Agent Reference:



Carrier: Pantainer (H.K.) Limited, Top Floor ATL Logistics Centre B,  
Berth 3 Kwai Chung Container Terminal, Hong Kong SCAC: PNEP

For Delivery please apply to:

Particulate as declared by Merchant

# NON-NEGOTIABLE

### Freight and Charges:

Received by the Carrier for carriage in apparent good order and condition (unless otherwise stated herein) the total number or quantity of Containers or other packages or units indicated in the box headed "TOTAL NUMBER OF CONTAINERS OR OTHER PACKAGES OR UNITS RECEIVED BY THE CARRIER" from the Place of Receipt or the Port of Loading (whichever is applicable) to the Port of Discharge or the Place of Delivery (whichever is applicable) as indicated above subject to the terms and conditions hereof (INCLUDING THE TERMS AND CONDITIONS CONTAINED ON THE FREIGHTS BOOK HEREIN AND THE TERMS AND CONDITIONS OF THE CARRIER'S APPLICABLE TARIFFS). The Shipper (for itself and on behalf of the Consignee and the other Merchants, and warrants that it has authority to do so) hereby expressly accepts and agrees to all the terms and conditions of this Waybill, whether printed, stamped, written or otherwise incorporated, notwithstanding the non-appearance of this Waybill by the Shipper. Merchant's attention is drawn to the fact that the terms and conditions of this WAYBILL CONTAIN PROVISIONS EXEMPTING OR LIMITING CARRIER FROM LIABILITIES OR REQUIRING MERCHANT TO PROVIDE INCENTIVES IN CERTAIN CIRCUMSTANCES.

This Waybill is not a document of title. Subject to the terms and conditions hereof, the Goods will be delivered to the Consignee or to authorized agent on reasonable proof of identity at the Port of Discharge or Place of Delivery (whichever is applicable) without production of this Waybill. Prior to delivery or deemed delivery of the Goods, the Shipper may change the Consignee by notice in writing to the Carrier provided that such notice must be received by the Carrier before the Consignee makes any claim or request for delivery of the Goods. The Carrier shall be under no liability whatsoever for mis-delivery unless caused by the Carrier's willful misconduct.

Declared Value from Merchant (see Clause 7.7)

Prepaid at	Payable at
TOTAL NUMBER OF CONTAINERS OR OTHER PACKAGES OR UNITS RECEIVED BY THE CARRIER:	
Place of Issue	Date of Issue

as agent for the carrier, Pantainer (H.K.) Limited

## **Tariff Rule Information**

**Pantainer (H.K.) Limited**

**NRA Rules Tariff No. 01 – Between USA & World & World & USA**

Org No. 023561

Amendment No: 2

### **Rule 24: Pantainer Bill of Lading Terms and Conditions**

#### **PANTAINER BILL OF LADING - TERMS AND CONDITIONS**

##### **1. DEFINITIONS**

In this Bill of Lading, unless the context otherwise requires:

"Carrier" means Pantainer (H.K.) Limited (a company incorporated in Hong Kong) carrying on business as Pantainer Express Line and on whose behalf this Bill of Lading has been issued.

"Carriage" means the whole or any part of the operations and services undertaken by Carrier in respect of the Goods covered by this Bill of Lading.

"Goods" means the whole or any part of the cargo provided by Merchant for Carriage and includes any Container, packing or equipment not supplied by or on behalf of Carrier.

"Container" includes any container, trailer, transportable tank, lift van, flat, pallet, skid, platform and similar article of transport used to consolidate or transport goods and any ancillary or associated equipment.

"Combined Transport" arises only if either or both of the Place of Receipt and the Place of Delivery are indicated in the relevant boxes on the face hereof.

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

"Freight" includes all charges, costs and expenses payable to Carrier in accordance with Carrier's applicable tariffs or this Bill of Lading.

"Hague Rules" means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

"Hague-Visby Rules" means the Hague Rules as amended by the Protocol signed at Brussels on 23 February 1968.

"US COGSA" means the Carriage of Goods by Sea Act 1936 of the United States of America.

"Liabilities" includes claims, losses, damages, liabilities, fines, penalties, costs and expenses (including legal costs and expenses) of whatsoever nature and howsoever arising.

"Merchant" includes any person who is or at any time has been or becomes the Shipper, the Consignee, the receiver of the Goods, the Holder of this Bill of Lading, any person owning or entitled to the possession of or otherwise having any interest in the Goods or this Bill of Lading, and any person acting on behalf of any of the persons aforesaid.

"Rights and Defences" includes rights, defences, exemptions, limitations of liability, liberties, immunities and benefits of whatsoever nature and howsoever acquired.

"Shipper" means the party indicated in the "Shipper" box on the face hereof.

"Sub-Contractors" includes the owners, charterers and operators of any Vessel, stevedores, terminal operators, forwarders, groupage operators, consolidators, warehouse operators, road, rail and air transport operators, and other independent contractors employed by or for or taking instructions from Carrier directly or indirectly in the performance of any of Carrier's obligations hereunder, and including sub-contractors of any degree.

"Vessel" includes the vessel named on the face hereof and any substitute vessel, feeder, lighter or other watercraft used in the performance of the Carriage, whether owned or chartered or operated or controlled by Carrier or any Sub-Contractor or any other person.

References to Clauses are to clauses of these Terms and Conditions. Clause headings and sub-headings are for convenience only and do not affect the construction of these Terms and Conditions.

##### **2. INTERPRETATION AND GENERAL**

2.1 In the event that anything herein is inconsistent with any applicable international convention or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of such inconsistency but not further be null and void. Unless otherwise specifically agreed in writing between the Merchant and the Carrier, the Terms and Conditions of this Bill of Lading supersede any prior agreements between the Merchant and Carrier.

2.2 Subject to Clause 2.1, provisions in these Terms and Conditions which exempt, exclude, relieve or limit the liability of Carrier, its servants, agents or Sub-Contractors shall be operative and effective notwithstanding (i) any act, omission (whether negligent, deliberate or otherwise) of Carrier, its servants, agents or Sub-Contractors, or (ii) the circumstances or cause of any loss or damage (to which such provisions relate) be unknown or unexplained, or (iii) any other matters or causes whatsoever.

2.3 Any right or remedy herein conferred on Carrier under this Bill of Lading is in addition to and without prejudice to all other rights and remedies available to it.

2.4 Notwithstanding anything to the contrary herein provided, nothing herein shall be construed to contractually apply the Hague-Visby Rules to this Bill of Lading.

##### **3. CARRIER'S TARIFFS**

The terms and conditions of Carrier's applicable tariffs, including without limitation provisions relating to Container and vehicle demurrage are incorporated herein. Copies of the applicable tariffs may be obtained from Carrier upon request. In the case of inconsistency between this Bill of Lading and the applicable tariffs, the terms of this Bill of Lading shall prevail.

##### **4. SUB-CONTRACTING**

4.1 Carrier shall be entitled to sub-contract the whole or any part of the duties undertaken by the Carrier in this Bill of Lading in relation to the Goods or Carriage or both, directly or indirectly on any terms whatsoever consistent with any applicable law.

4.2 Merchant warrants that no claim or demand shall be made against any person undertaking or performing such duties (including Carrier's servants, agents and Sub-Contractors) other than Carrier, which imposes or attempts to impose on any such person or any vessel owned or operated or controlled by any such person, any liability whatsoever in connection with the Goods or the Carriage or this Bill of Lading, whether or not arising out of negligence on the part of such person. If any such claim or demand should nevertheless be made, Merchant shall indemnify Carrier against all consequences thereof.

4.3 Without prejudice to the Merchant's indemnity obligations herein, the Sub-Contractors or each of them, shall have the benefit of all Rights and Defences herein provided for the benefit of or otherwise available to Carrier as if the same were expressly made also for such person's benefit. For the foregoing purposes, Carrier contracts for itself and as agent or trustee for all the aforesaid persons. For the purpose of this Clause 4, the Vessel and all its Sub-Contractors shall be deemed to be parties to the contract evidenced by this Bill of Lading.

4.4 If loss or damage to the Goods is known to have occurred during a period when the Goods were in the custody of Sub-Contractors then the Carrier shall have the benefit of any and all Rights and Defences contained in or incorporated by or compulsorily applicable to the Sub-Contractors' tariff(s) or contract(s) with the Carrier (in addition to all Rights and Defences contained in this Bill of Lading and the Carrier's tariff) and for this purpose such Rights and Defences shall be deemed to be incorporated herein, and copies are obtainable from the Carrier upon request.

##### **5. LIMITATION OF LIABILITY**

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Carrier shall be entitled to the same rights of limitation as are or would be available to the owner of the Vessel under the Brussels Limitation Convention of 1957, the London Limitation Convention of 1976 or any other applicable convention, statute or law, governing the rights of shipowners to limit their liability in accordance with the tonnage or value of the Vessel in the jurisdiction in which any claim is brought under this Bill of Lading.

### **6. CARRIER'S RESPONSIBILITY AND CLAUSE PARAMOUNT**

6.1 If the Carriage is Port to Port the responsibility (if any) of Carrier shall be limited to that Carriage from and during loading onto the Vessel at the Port of Loading up to and during discharge from the Vessel at the Port of Discharge, and shall be determined in accordance with Clause 6.5.

6.2 Carrier shall be under no liability whatsoever for loss or damage to the Goods or non-delivery or mis-delivery howsoever caused if such loss or damage, non-delivery or mis-delivery arises prior to loading onto or subsequent to discharge from the Vessel.

6.3 Notwithstanding Clause 6.2, if and to the extent that any compulsory applicable national law provides for any additional responsibility for those part(s) of Carriage before loading or subsequent to discharge, Carrier shall have the benefit of all Rights and Defences under the Hague Rules as applied by Clause 6.5 herein during such additional period of responsibility, even though the matter giving rise to Carrier's liability, loss or damage, did not occur at sea.

6.4 If the Carriage is Combined Transport, the Carrier undertakes to perform and/or in its own name to procure performance of the Carriage from the Place of Receipt or the Port of Loading (whichever is applicable) to the Port of Discharge or the Place of Delivery (whichever is applicable) and, save as is otherwise provided for in this Bill of Lading, the Liabilities incurred by Carrier for loss or damage to the Goods shall be in accordance with this Clause 6.4.

6.4.1 If the stage of Carriage where the loss or damage occurred is not known:

(a) The Carrier shall be relieved from all Liabilities for any loss or damage to the extent that such loss or damage was caused by or resulted from:

(i) an act or omission of the Merchant;

(ii) insufficiency or defective condition of packing or marking;

(iii) compliance with instructions of persons entitled to given them;

(iv) handling, loading, stowage or unloading of the Goods by the Merchant;

(v) inherent vice of the Goods;

(vi) strike, lockout, stoppage or restraint of labour from whatever cause whether partial or general;

(vii) a nuclear incident;

(viii) an act, neglect or default in the navigation or management of the Vessel occurring during carriage by water;

(ix) fire; and/or

(x) any other cause or event which the Carrier could not avoid and the consequences of whereof it could not prevent by the exercise of reasonable diligence.

(b) The burden of proof that the loss or damage was due to one or more of the causes, or events, specified in Sub-clause 6.4.1 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 or events specified in Sub-clause 6.4.1, it shall be presumed that it was so caused and in such circumstances the burden of proof shall be on the Merchant to prove that the loss or damage was not caused wholly or partly by one or more of these events.

(c) Subject to the Carrier's right to limit liability as provided for within this Bill of Lading, the Carrier's liability shall be calculated by reference to the value of the Goods at the time they were accepted for Carriage at the Place of Receipt or the Port of Loading (whichever applicable). Carrier shall have the option of replacing lost goods or repairing damaged goods.

(d) Where the Hague Rules, Hague-Visby Rules or any other rules compulsorily apply to the Carriage, the Carrier's liability shall in no event exceed the amounts provided for in the applicable rules.

(e) The Carrier's maximum liability hereunder shall in no event exceed GBP 100 per package or customary freight unit (whichever applicable) or US\$2 per kilo of gross weight of the Goods lost or damaged, whichever is lesser, unless the value of the Goods has been declared by the Merchant with the consent of the Carrier and excess Freight has been paid whereupon the declared value (if higher) as shown on the face of the Bill of Lading shall be substituted for the above limit and any partial loss or damage shall be adjusted on the basis of such declared value.

6.4.2 If the stage of Carriage where the loss or damage occurred is known, the Carriers' liability shall be determined as follows:

(a) by the provisions contained in any international convention or national law, which provisions cannot be departed from by private contract to the detriment of the Merchant, and would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of the Carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable; or

(b) If no international convention or national law is applicable then the liability of the Carrier shall be determined in accordance with Clause 6.4.1.

### 6.5 Clause Paramount

6.5.1 All Carriage under this Bill of Lading shall have effect subject to any legislation enacted in any country making the Hague or Hague-Visby Rules compulsorily applicable and in the absence of any such legislation, in accordance with the Hague Rules or US COGSA (in the case of Carriage to or from the United States of America).

6.5.2 In the circumstances where the Hague Rules are not compulsorily applicable but are contractually applicable then subject to Clause 7.7 (ad valorem declaration) the Carrier's responsibility shall in no event exceed GBP 100 per package or customary freight unit. For the avoidance of doubt the reference to gold value in Article 9 of the Hague Rules shall not apply.

6.5.3 If any terms of this Bill of Lading are held repugnant to the Hague Rules, Hague-Visby Rules, US COGSA or any other compulsorily applicable legislation then such provision shall be null and void without invalidating the remaining provisions hereof.

6.5.4 References in the Hague, Hague-Visby, or US COGSA to carriage by sea shall be deemed to include references to inland waterways or waterborne carriage.

### 6.6 USA Clause Paramount (if applicable)

6.6.1 If Carriage includes carriage to, from or through a port in the United States of America, this Bill of Lading shall be subject to US COGSA, the terms of which are incorporated herein and shall be paramount throughout carriage by sea and the entire time that the Goods are in the custody of the Carrier or its Sub-Contractors, including Goods carried on deck.

6.6.2 Where the Merchant requests the Carrier to procure Carriage by an inland carrier in the United States of America, such Carriage shall be procured by the Carrier as agent only for and on behalf of the Merchant and such Carriage shall be subject to the usual terms, conditions and tariffs of the inland carrier. If for any reason the Carrier is denied the right to act as agent only at these times, its liability for loss and damage to the Goods or non-delivery or mis-delivery thereof shall be determined in accordance with Clause 6.4.

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6.6.3 If US COGSA applies then the liability of the Carrier shall not exceed US\$500 per package or customary freight unit unless the value of the Goods has been declared on the face hereof with the consent of the Carrier and extra Freight has been paid in which case Clause 7.7 (ad valorem declaration) shall apply and the declared value (if higher) shall be substituted for the limit and any partial loss or damage shall be adjusted pro-rata on the basis of such declared value.

6.7 Subrogation When Carrier pays claims to Merchant, Carrier shall automatically be subrogated to all rights of Merchant against all others, including inland carriers, on account of the losses or damages for which such claims are paid.

### **7. GENERAL PROVISIONS**

7.1 Delay Carrier does not undertake that the Goods or any documents relating thereto shall arrive at the Port of Discharge, Place of Delivery or at any place at any particular time or to meet any particular market or use. In no circumstances shall the Carrier be liable for loss or damage due to delay. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the Freight applicable to the relevant stage of transport. It is hereby agreed that ad valorem arrangements pursuant to Clause 7.7 shall have no application to any claim for delay.

7.2 Consequential Loss Carrier shall in no circumstances whatsoever be liable for any loss of profits, loss of market, loss of contract, loss of revenue or use, or any other indirect, special or consequential loss, howsoever caused. For the avoidance of doubt, ad valorem arrangements pursuant to Clause 7.7 shall have no application in relation to consequential loss, which forms the subject matter of this Clause 7.2.

7.3 Value of Goods Subject to the limits of liability and the Rights and Defences of Carrier contained herein, compensation shall be calculated by reference to the value of the Goods, which is agreed to be the bona fide FOB invoice value plus Freight and insurance, if paid. If there is no bona fide invoice value of the Goods, the value of the Goods shall be their value as at the place and time they are or should have been delivered to Merchant, calculated by reference to the market value of goods of the same kind and quality.

#### **7.4 Heavy Lift**

(a) Single packages with a weight exceeding 2,240 pounds (long ton) gross not presented to Carrier in enclosed containers must be declared in writing by Merchant before receipt of the packages by Carrier. The weight of such packages must be clearly and durably marked on the outside of the package in letters and figures not less than two inches high.

(b) If Merchant fails to comply with the above provisions, Carrier shall not be liable for any loss of or damage to the goods, persons or property, and Merchant shall be liable for any loss of or damage to persons or property resulting from such failure and Merchant shall indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of such failure.

(c) Merchant agrees to comply with all laws or regulations concerning overweight containers and Merchant shall indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of Merchant's failure to comply with such laws or regulations.

7.5 Insurance Carrier will not arrange for insurance on the Goods except upon express written instructions from Merchant and then only at Merchant's expense and presentation of a declaration of value for insurance purposes prior to shipment.

7.6 Package or Unit Subject to Clause 2.1, a package or unit is the largest individual unit of partially or completely covered or contained cargo made up by or for the Shipper which is delivered and entrusted to Carrier, including palletized units and each Container stuffed and sealed by the Shipper or on its behalf, although the Shipper may have furnished a description of the contents of such sealed Container on this Bill of Lading. For the avoidance of doubt, if the Goods are received by Carrier in a Container, the Container shall be the "package" for the purpose of calculating limitation of Carrier's liability, unless compulsorily applicable law in the individual case stipulates otherwise.

7.7 Ad Valorem The Merchant agrees that higher compensation than that provided for in this Bill of Lading may not be claimed unless the nature and value of the Goods have been declared by the Merchant prior to the commencement of the Carriage and inserted in this Bill of Lading in the space caption "Declared value from Merchant" and extra Freight paid on such declared value, if required. In such case, the declared value if embodied in the Bill of Lading shall be the basis for calculating the Carrier's liability (if any), provided that such value shall only be prima facie evidence, but shall not be conclusive evidence of such value and further provided that such declared value does not exceed the true value of the Goods at destination. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value. Provided always that the foregoing provisions of this Clause 7.7 shall not apply and no extra Freight will be accepted by Carrier for higher compensation or compensation in relation to claims for delay or consequential loss referred to in Clause 7.1 and Clause 7.2.

7.8 Notice of Claim Subject to Clause 2.1, Carrier shall be deemed to have effected timely delivery of the Goods unless notice of any loss, damage or claim indicating the general nature of such loss and damage, shall have been given in writing to Carrier or to its representative 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 the person entitled to the delivery thereof under this Bill of Lading, or, if the loss or damage is not apparent, within three consecutive days thereafter.

#### **7.9 Time-bar**

7.9.1 Subject to Clause 7.9.2, Carrier shall be discharged of all Liabilities under this Bill of Lading unless suit is brought and written notice thereof given to Carrier within nine months after delivery of the Goods or, in the case of total loss or non-delivery of the Goods, within ten months after the date of issue of this Bill of Lading.

7.9.2 Notwithstanding Clause 7.9.1, where COGSA, the Hague Rules or the Hague Visby-Rules apply by force of law or incorporation, the Carrier shall be discharged from all Liabilities whatsoever in respect of the Goods, unless suit is brought and jurisdiction is obtained over Carrier by service of summons within one year of their delivery or the date when they should have been delivered.

7.10 The Rights and Defences of Carrier provided for in this Bill of Lading shall apply in any action or claim against Carrier whether founded in contract, tort, bailment, trust or breach of express or implied warranty or otherwise and notwithstanding any negligence, unseaworthiness, deviation, non-delivery, mis-delivery (including mis-delivery arising from the delivery of the Goods without the presentation of this Bill of Lading) or any other breach by the Carrier of the contract evidenced by this Bill of Lading.

### **8. DESCRIPTION OF GOODS**

8.1 This Bill of Lading shall be prima facie evidence of the receipt by Carrier from the Shipper in apparent good order and condition, except as otherwise noted, of the total number of Containers or other packages or units indicated on the face hereof as "TOTAL NUMBER OF CONTAINERS OR OTHER PACKAGES OR UNITS RECEIVED BY THE CARRIER".

8.2 Save as provided in Clause 8.1, Carrier makes no representation or acknowledgement and assumes no responsibility whatsoever as to any weight, measure, quantity, quality, content, description, marks, numbers, place of origin, value or condition of the Goods (all of which are unknown to it).

8.3 Any information on the face of this Bill of Lading relating to any invoice, export or import license, documentary credit, order, contract, or like matters is included solely at the request of Merchant and is not verified by Carrier. Any such information shall not constitute any declaration of value of the Goods and shall in no way increase Carrier's liability hereunder.

### **9. MERCHANT'S WARRANTIES AND INDEMNIFICATION**

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9.1 All persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the fulfillment of all obligations, responsibilities and warranties undertaken by the Merchant either in the Bill of Lading, or as required by law and shall remain so liable throughout the transportation and to pay Freight due under it without deduction or set off notwithstanding their having transferred this Bill of Lading and/or title to the Goods to another party.

9.2 The Merchant warrants that in accepting this Bill of Lading, the Merchant agrees to be bound by all stipulations, exceptions, terms and conditions on the face and back thereof, whether written, typed, stamped or printed, as fully as if signed by Merchant.

9.3 The Merchant in accepting these Terms and Conditions is either the person or the authorized agent of the person who owns or is entitled to the possession of the Goods and/or this Bill of Lading, and accepts these Terms and Conditions for itself as well as for such person and any other person who may hereafter have any interest in the Goods and/or this Bill of Lading and/or the Carriage.

9.4 The Merchant warrants that the description and particulars of the Goods set out on the face hereof are furnished by the Merchant and have been checked by Merchant on receipt of this Bill of Lading, and that such particulars and all other information whether relating to the Goods or otherwise provided by Merchant are complete, accurate and true. The Merchant shall indemnify the Carrier against all Liabilities arising or resulting from inaccuracies or inadequacy of such particulars.

9.5 The Merchant shall comply with all applicable laws, regulations and requirements (including but not limited to any imposed at any time before or during the Carrier relating to anti-terrorism measures) of customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses and losses (including without prejudice to the generality of the foregoing, Freight for any additional Carriage undertaken) incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

9.6 The Merchant further warrants, represents and agrees that (i) the Goods and any Container loaded by the Merchant are packed and secured in such a manner as to be handled in the ordinary course of the transportation without damage to the Goods, Vessel, Containers or other property or persons; (ii) any Goods placed by the Merchant in Containers are compatible and suitable for transportation in Containers; and (iii) if the Container is not supplied by or on behalf of the Carrier, that the Container meets all ISO and/or other applicable national or international safety standards and is fit in all respects for Carriage by the Carrier.

9.7 The Merchant warrants that the Goods are lawful goods and contain no contraband or prohibited items.

9.8 The Merchant shall not tender for transportation any Goods which require refrigeration or other stable temperature conditions without giving written notice of their nature and the required temperature setting of the thermostatic controls before receipt of the Goods by the Carrier.

9.9 Any Container released into the care of the Merchant for packing, unpacking or any other purpose whatsoever shall be at the sole risk of the Merchant until proper redelivery to the Carrier at the time and place prescribed by the Carrier. If the Merchant fails to deliver the Container at such prescribed time and place, the Merchant shall pay the Carrier the applicable demurrage or detention charges arising therefrom. The Merchant is responsible for returning the empty Container, with interiors brushed and clean, to the point or place designated by the Carrier, his servants or agents. The Merchant shall be liable for any charges, loss or any other expenses arising therefrom. The Merchant shall be responsible for any loss and/or damage to, and any Liabilities caused or incurred by such Container whilst in its custody and/or control.

9.10 The Merchant warrants that when the Goods are for Carriage to or through or from the United States of America, all information relating to the Goods is complete, accurate and true and in all respects in conformity and compliance with cargo declaration requirements of the U.S. Customs Regulations and other related laws, rules and regulations.

9.11 Merchant shall indemnify and hold harmless Carrier from and against any and all Liabilities incurred due to a breach of any of Merchant's obligations, representations and warranties contained in this Bill of Lading.

### **10. SHIPPER PACKED CONTAINERS**

10.1 If a Container has not been filled, packed, stuffed or loaded by the Carrier, the Carrier shall not be liable for loss of or damage to the contents and the Merchant shall indemnify the Carrier against all Liabilities incurred by the Carrier, if such Liabilities has been caused by:

- (a) the manner in which any Container has been filled, packed, stuffed or loaded;
- (b) the unsuitability for Carriage of the contents of any Container;
- (c) if Container was not supplied by Carrier, the unsuitability, defective condition or the incorrect setting of temperature controls of the Container actually used;
- (d) if Container was supplied by Carrier, the unsuitability, defective condition or incorrect setting of temperature controls of the Container which could have been discovered upon reasonable inspection by Merchant at or prior to the time the Container was filled, packed, stuffed or loaded; or
- (e) the packing in any Container of temperature controlled Goods that are not at the correct temperature for Carriage.

10.2 The Shipper is responsible for the packing and sealing of all Shipper-packed Containers. The Shipper shall inspect Containers before stuffing them and the use of the Containers shall be prima facie evidence of the receipt of the Container by Shipper and the Container is in good order and condition.

10.3 Delivery of a Shipper-packed Container by Carrier with its original seal intact shall be deemed to be a full and complete delivery under this Bill of Lading. Carrier shall not be liable for any shortage of Goods. If a claim for shortage is made against the Carrier, the Merchant agrees to indemnify the Carrier against all and any Liabilities of whatsoever nature suffered and/or incurred in connection with such claim (including, without limitation, legal costs).

10.4 It is the sole responsibility of the Merchant to ascertain the applicability of and ensure compliance in sufficient time with the requirements as to the verified gross mass ("VGM") of Containers to be loaded by the Carrier on board the Vessel contained in SOLAS Chapter VI (the "SOLAS VGM Requirements") for any Goods provided by the Merchant to the Carrier. Where the Merchant is unable, refuses, fails or is reasonably anticipated to be unable to or fail to comply in full with the SOLAS VGM Requirements or with such other reasonable requests of the Carrier in connection thereto, the Carrier may, at its sole discretion but without any obligation to do so, reject the Goods for shipment or undertake and comply with that obligation on the Merchant's behalf as the Merchant's agent at the Merchant's risk and expense. All consequences of the Merchant's inability, refusal or failure, including delay and Liabilities suffered by any party, shall be solely for the Merchant to bear and the Merchant shall keep the Carrier indemnified from the same. The Merchant represents that the Carrier is entitled to rely on the accuracy of the VGM information and to counter-sign, endorse or otherwise provide its own certified weight on behalf of the Merchant to the Sub-Contractors or any other relevant parties. The Merchant agrees that it shall indemnify and hold the Carrier harmless from any and all claims, losses, penalties or other costs resulting from any statements of the VGM provided by Merchant or its agent or contractor or by the Carrier on the Merchant's behalf.

### **11. FCL MULTIPLE BILLS OF LADING**

11.1 Goods will only be delivered in a Container to an individual Merchant if all Bills of Lading in respect of the content of the Container have been surrendered authorizing delivery to a single Merchant at a single place. In the event that this requirement is not fulfilled the Carrier may in its absolute discretion unpack the Container and, in respect of Goods for which Bills of Lading have been surrendered, deliver them to the Merchant. Such delivery shall constitute due delivery hereunder but will only be effected against payment by the Merchant of the appropriate charges.

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11.2 This Bill of Lading is a FCL Multiple Bill of Lading if the tally acknowledged overleaf bears the qualification to the effect that it is one of the part cargoes in the Container. In such event, the Goods detailed overleaf are said to comprise part of the contents of the Container indicated. The special arrangement of receiving Goods on basis of FCL Multiple Bills of Lading being issued shall only be undertaken in Carrier's absolute discretion and the following provisions shall apply in addition to any other conditions which Carrier may stipulate:

- (a) Particulars of the Goods detailed overleaf are said to comprise part of the contents of the Container indicated in respect of which Carrier has not verified and makes no representation or acknowledgement (all such particulars being unknown to Carrier).
- (b) The Goods will only be delivered in the Container to Merchant if the originals of all the Bills of Lading in respect of the different contents of the Container have been surrendered authorizing delivery of all the different parts of the contents in the Container to a single Merchant at a single place.
- (c) In the event that the requirement under Clause 11.2(b) is not fulfilled, Carrier may in its absolute discretion unpack the Container and deliver the Goods for which Bills of Lading have been surrendered without the Container to Merchant. Such delivery shall constitute due delivery hereunder, but will only be effected against payments by Merchant of LCL service charges and any charges appropriate to LCL Goods (as laid down in Carrier's applicable tariffs) together with the actual costs incurred for any additional services rendered.
- (d) Further, if all or part of the total Goods within the Container consists of bulk Goods or unappropriated Goods, or is or becomes mixed or unmarked or unidentifiable, the Merchant shall take delivery thereof (including any damaged portion thereof) and bear any shortage thereof in such proportions as Carrier shall in its absolute discretion determine, and such delivery shall constitute due delivery hereunder.
- (e) Carrier shall not in any event be liable for any shortage, loss, damage or discrepancies of the Goods, which are found upon unpacking the Container.
- (f) Instructions in relation to Carriage which a Merchant may otherwise be entitled to give must be given in writing by all Merchants of the different parts of the contents in the Container simultaneously and, if so required by Carrier, the originals of all Bills of Lading covering the different parts of the contents in the Container must be produced to Carrier at the same time.
- (g) Merchant undertakes to indemnify Carrier from and against any and all Liabilities arising from accepting the Goods for Carriage on the basis of FCL Multiple Bills of Lading being issued.

### **12. CARRIER'S CONTAINERS**

Where the Carrier is instructed to provide a Container, in the absence of a written request to the contrary accepted by the Carrier, the Carrier shall not be under an obligation to provide a container of any particular type or quality.

### **13. INSPECTION**

13.1 Carrier or any person authorized by the Carrier shall be entitled, but under no obligation, to open any Container or bale, parcel, bag, bundle, crate, carton, pallet, package or other individual unit of partially or completely covered or contained cargo, whether in the Container or not, at any time without liability and notice to Merchant to inspect, examine, weigh or measure the contents thereof.

13.2 If it appears at any time that the contents of the Container or any part thereof cannot safely or properly be carried or carried further, either at all, or without incurring additional expense or taking any measures in relation to the Container or its contents or any part thereof, the Carrier may at the sole risk and expense of the Merchant abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue the Carriage or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against all additional expenses resulting therefrom.

13.3 The Carrier is not responsible for any damage or loss to Container or its contents resulting from inspection by customs or other authorities and Merchant shall be responsible for any expenses, costs, fines, or penalties incurred as a result of such inspection or otherwise.

13.4. The Carrier in exercising the liberties contained in this Clause shall not be under any obligation to take any particular measures and shall not be liable for any loss, delay or damage howsoever arising from any action or lack of action under this Clause.

### **14. DANGEROUS GOODS**

14.1 No Goods which are or may become of a dangerous (whether or not listed in the IMDG Code), hazardous, inflammable, damaging or injurious (including radio-active materials) nature or which may become liable to cause damage to the Vessel or property or person shall be tendered by the Merchant to the Carrier for Carriage without (i) previously giving the Carrier written notice of their nature and having received the Carrier's express consent in writing; (ii) distinctly and durably indicating and marking the Goods and the Container or other packages or units in compliance with any laws or regulations which may be applicable during the Carriage; and (iii) submitting to Carrier and the appropriate authorities all documents required by any laws or regulations or otherwise required by Carrier.

14.2 Merchant warrants that all dangerous goods tendered or provided to Carrier are adequately packed in compliance with all applicable laws or regulations and requirements having regard to the nature of the Goods. If the Goods are not packed into the Container by or on behalf of Carrier, Merchant warrants that no incompatible goods are packed in the same Container.

14.3 Goods which are or which, in the opinion of the Carrier, may at any time become dangerous, inflammable, radioactive or damaging may, at any time or place be unloaded, destroyed or rendered harmless by Carrier or any Sub-Contractor without compensation to the Merchant and if the Merchant has not given notice of their nature to the Carrier under Clause 14.1, the Carrier shall be under no liability to make any General Average contribution in respect of such Goods.

14.4 If the requirements of Clause 14.1 are not complied with, the Merchant shall indemnify Carrier from and against any and all Liabilities of whatsoever nature arising out of the carriage of such Goods or Containers including without limitation environmental damages, direct and indirect clean up or rehabilitation expenses, legal costs, fines and penalties.

### **15. PERISHABLE GOODS/TEMPERATURE CONTROLLED GOODS**

15.1 The Merchant undertakes not to tender for Carriage any Goods which require temperature control and/or specific settings in terms of humidity, CO2 levels, ventilation etc. without previously giving written notice of their nature and particular temperature range to be maintained.

15.2 In case of refrigerated Containers packed by or on behalf of Merchant, the Merchant undertakes that the Goods have been properly stowed in the Container and that the Container has been properly pre-cooled and the thermostatic controls have been properly set. It is Merchant's obligation to set and/or check that the temperature controls on the Container are at the required temperature and to properly set the vents.

15.3 If the requirements of Clauses 15.1 and 15.2 are not complied with by the Merchant, the Carrier shall not be liable for any loss of or damage to the Goods caused by such non-compliance and the Merchant shall indemnify the Carrier for any resulting loss the Carrier suffers.

15.4 Insofar as Carrier provides empty refrigerated Containers to Merchant for stuffing by Merchant, Carrier is not responsible for the temperature of those Containers on delivery to Merchant.

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15.5 Merchant acknowledges that refrigerated Containers are not designed to freeze down cargo which has not been presented for stuffing at or below its designated carrying temperature and Carrier shall not be responsible for the consequences of Goods presented at a higher temperature than that required for Carriage.

15.6 Carrier shall not be held liable for any loss or damage to the Goods resulting from defects, faults, breakdown, and stoppage of the temperature controlling machinery, plant, insulation or any apparatus of any Container used to transport the Goods.

### **16. OPTIONAL STOWAGE AND DECK CARGO**

16.1 Goods may be packed by Carrier in any type of Containers and consolidated with other goods.

16.2 Goods, whether or not packed in Containers, may be carried on deck or under deck at the sole discretion of Carrier without notice to Merchant, and such stowage and Carriage shall not be a deviation of whatsoever nature or degree. All Goods whether carried on deck or under deck shall participate in General Average, and (save as provided in Clause 16.3) such Goods (other than live animals) shall be deemed to be within the definition of goods for the purposes of the Hague Rules, the Hague-Visby Rules or the US COGSA, as the case may be.

16.3 Goods which are stated on the face hereof as being carried on deck and which are so carried (and live animals whether or not carried on deck) are carried at the sole risk of Merchant and without any responsibility on the part of Carrier for loss or damage of whatsoever nature arising during carriage by sea, whether or not caused by unseaworthiness or negligence or any other cause whatsoever. If the requirements of this Clause 16.3 are satisfied, the Hague Rules, Hague-Visby Rules and US COGSA shall not apply to such Carriage. Merchant shall indemnify Carrier against any extra costs incurred for any reason whatsoever in connection with such Carriage.

### **17. NOTIFICATION AND DELIVERY**

17.1 Any mention in this Bill of Lading of any party to be notified of the arrival of the Goods is only for Carrier's information. Failure to give such notice shall not subject Carrier to any Liabilities nor relieve Merchant of any obligation hereunder.

17.2 Merchant shall take delivery of the Goods (notwithstanding any loss or damage or any other matter whatsoever) within the time and at the address for collection provided in Carrier's applicable tariffs, or otherwise notified to Merchant or the Notify Party named on the face hereof. If Merchant fails to take delivery of the Goods within the prescribed time at the prescribed place, the Goods shall be deemed to have been duly delivered to Merchant under this Bill of Lading upon expiration of such time.

17.3 Without prejudice to Clause 17.2, where Merchant fails to take delivery of the Goods as provided in Clause 17.2, Carrier shall be entitled without notice, but subject to its lien, to unpack the Goods (if packed in Containers) and/or store the Goods ashore, afloat, in the open or under cover at the sole risk and expense of Merchant.

Thereupon, the Carrier's liability in respect of the Goods shall cease wholly and the costs of such storage (if paid or payable by the Carrier or any agent or Sub-contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.

17.4 If after arrival of the Goods, Carrier in accordance with the applicable custom or practice or law or regulation hands over the Goods into the custody of any customs, port or other authority or any other person having authority, such hand-over shall be deemed to be due delivery of the Goods to Merchant under this Bill of Lading.

17.5 In the event that Carrier, in its entire discretion, agrees at the request of Merchant to deliver the Goods at a port of discharge or a place of delivery other than the Port of Discharge or Place of Delivery indicated on the face hereof, Carrier shall act only as the agent of Merchant in arranging for the delivery of the Goods to the revised port of discharge or the revised place of delivery, and shall be under no liability whatsoever arising from such revised carriage.

17.6 In all circumstances, the Carrier shall not be liable whatsoever for delivering or releasing the Goods in its actual or constructive possession to any person holding or presenting forged or fraudulent documents purporting to be an original Bill of Lading or other original documents entitling such person to the delivery or possession of the Goods so long as the Carrier acts innocently and does not intentionally deliver the Goods to persons known by him to have no right to possession under the Bill of Lading.

### **18. LIEN**

18.1 Carrier shall have a lien on the Goods and any document relating thereto for all monies earned, or due or payable to Carrier under this Bill of Lading and/or any other contract with the Merchant or, on account of the Goods or Carriage, storage or handling of the Goods including but not limited to General Average contributions, Freight, delivery, destination, demurrage, detention, port and/or handling charges, to whomever due and/or for the cost of recovering the same and/or any fines or penalties levied against the Carrier by reason of any acts or omissions for which the Merchant is responsible. Carrier may at its sole discretion exercise its lien at any time and in any place, whether the contractual transportation is completed or not. The lien shall survive the delivery of the Goods.

18.2 For the purpose of enforcing and satisfying the lien, the Carrier shall have the right to sell at the cost and expense of Merchant the Goods by public auction or private treaty or other means, without giving any notice or incurring any liability to Merchant and without the need to obtain an order for sale from any Court and to apply the proceeds (net of expenses) thereof in or towards satisfaction of any monies due to Carrier. The Carrier shall be entitled to claim the difference in the event that the sale proceeds fail to cover the full amount due to the Carrier.

### **19. FREIGHT AND CHARGES**

19.1 Freight is calculated on the basis of the particulars furnished by Merchant. The Carrier may at any time open any Container or other package or unit and inspect, reweigh, remeasure or revalue the contents at the Merchant's sole expense. If the particulars furnished are incorrect, Merchant shall, in addition to the correct Freight, pay to Carrier a sum equal to three times the difference between the correct Freight and the Freight charged as liquidated damages, notwithstanding any other sum having been stated herein as freight payable.

19.2 Quotations as to Freight, rates of duty, insurance premiums or other charges or fees given by Carrier are for information only and are subject to changes without notice and shall not under any circumstances be binding upon Carrier.

19.3 Freight shall be deemed fully earned on receipt of the Goods by or for Carrier and shall be paid and non-returnable, whether Freight is indicated to be prepaid or payable elsewhere.

19.4 All Freight shall be paid in full without any set off or counterclaim or deduction whatsoever.

19.5 All Freight shall be paid at or within the time stipulated in Carrier's applicable tariffs and in any event before delivery of the Goods. Payment shall be made in cash in the currency named in this Bill of Lading, or, at the option of Carrier in another currency specified by Carrier. Simple interest at the rate of 12% per annum shall be payable on any overdue amount from the date when payment is due until payment in full. All costs and expenses incurred by or on behalf of Carrier in the recovery of any monies due from Merchant including legal costs, recovery or collection fees and expenses shall be recoverable from Merchant as a debt.

19.6 Merchant shall be liable for all Freight, charges, dues, duties, fines, penalties, taxes, consular fees, levies on or relating to the Goods and Merchant shall reimburse Carrier for any and all advances made by Carrier in Carrier's own discretion. Merchant shall be liable for additional or return Freight on the Goods if they are refused export or import by any government body or authority or any other person having authority.

### **20. ABANDONMENT OF GOODS ETC.**

In the event that Merchant fails to take delivery of the Goods as per Clause 17.2, or Carrier reasonably considers that there is any breach by Merchant of any of Merchant's warranties contained herein, or in the sole opinion of Carrier the Goods are likely to deteriorate, decay or become worthless or cause any danger to the Vessel or other



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goods or property or any person or incur charges, then Carrier may (but without obligation) at any time (in its sole discretion and without liability and without notice to Merchant or requiring any Court order) sell or otherwise dispose of or abandon or store the Goods ashore or afloat, under cover or in the open, at any place at the sole risk and expense of Merchant and apply any proceeds of sale in reduction of the sums due to Carrier from Merchant under this Bill of Lading. Upon such sale, disposal, abandonment or storage, the Goods shall be deemed duly delivered to Merchant under this Bill of Lading. Merchant shall indemnify Carrier from and against any and all Liabilities incurred by Carrier in relation to such sale, disposal, abandonment and storage.

### **21. METHODS AND ROUTES OF TRANSPORTATION**

21.1 Carrier may at any time and without notice to Merchant:

- (a) use any means of carriage or storage whatsoever;
- (b) transfer the Goods from one conveyance to another, including without limitation transshipping the Goods or carrying them on a Vessel other than that named on the face hereof, even though transshipment or forwarding of the Goods may not have been provided for herein;
- (c) unpack and remove the Goods which have been packed in a Container and forward them in another Container or otherwise;
- (d) proceed by any route (whether or not the nearest or most direct or customary or advertised route) in its discretion, at any speed, and proceed to or stay at any place or port whatsoever, once or more often and in any order;
- (e) load or unload the Goods at any place or port and store the Goods at any such place or port;
- (f) comply with any orders, directions or recommendations given by any government or authority, or any person or body acting or purporting to act as or on behalf of such government or authority, or having under the terms of any insurance on any conveyance used for the Carriage the right to give orders or directions;
- (g) permit the Vessel to proceed with or without pilots, to tow or to be towed, or to be dry-docked, with or without Goods and/or Containers on board.

21.2 Carrier may invoke any of the liberties under Clause 21.1 for any purpose whatsoever, whether or not connected with the Carriage of the Goods, including but not limited to loading or unloading the Goods, bunkering, undergoing repairs, adjusting instruments, towing or being towed, sailing with or without pilots, drydocking, picking up or landing any persons. Anything done in accordance with Clause 21.1 or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation. If, in invoking any of the liberties under Clause 21.1, any service provided by any third party is involved, Carrier may without notice to Merchant conclude a contract with such third party as agent of the Merchant, and in respect of such services Carrier shall have no liability whatsoever.

### **22. MATTERS AFFECTING PERFORMANCE**

If at any time the performance of the contract contained in or evidenced by this Bill of Lading is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind whatsoever and howsoever arising and which cannot be avoided by reasonable endeavours, the Carrier may (whether or not the Carriage has commenced) and without prior notice to Merchant and at its sole discretion, elect any one or more of the following:

- (a) treat the performance of this contract as terminated and place the Goods or any part of them at Merchant's disposal at any place or port which Carrier may reasonably deem safe and convenient, whereupon all the responsibility of Carrier under this Bill of Lading shall cease absolutely and the Goods shall be deemed to have been duly delivered by Carrier under this Bill of Lading; or
- (b) acting as a Merchant's agent only, suspend the Carriage of the Goods and store them ashore or afloat at Merchant's expense upon the terms of this Bill of Lading and use reasonable endeavours to forward them as soon as practicable to the Port of Discharge or Place of Delivery; or
- (c) carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, by an alternative route by any means in the sole discretion of Carrier.

### **23. GENERAL AVERAGE**

General Average to be adjusted in any currency at any place selected by the Carrier and according to the York-Antwerp Rules 1974 as amended in 1990 and 1994. Any claims and/or disputes relating to General Average shall be exclusive subject to the laws and jurisdiction set out at Clause 28. Merchant shall indemnify Carrier from and against any claim of a General Average nature which may be made on Carrier, and shall provide to Carrier prior to delivery of the Goods such cash deposit or security as Carrier may consider sufficient to cover the estimated General Average contribution of the Goods and any salvage and special charges thereon. Carrier shall be under no obligation to exercise any lien or collect or procure any security for General Average contribution due to Merchant.

### **24. BOTH TO BLAME COLLISION AND NEW JASON CLAUSES**

The Both-to-Blame Collision and New Jason clauses published and/or approved by BIMCO and obtainable from Carrier or its agent upon request are incorporated herein.

### **25. NOTICE OF ENDORSEE AND/OR HOLDER AND/OR TRANSFEREE**

By taking up this Bill of Lading, whether by endorsement and/or becoming a holder and/or by transfer hereof and/or by presenting this Bill of Lading to obtain delivery of the Goods herein and/or otherwise, the endorsee, holder, transferee and the Carrier agree that the holder, endorsee, transferee thereupon become a party to a contract of carriage with the Carrier on the basis herein.

### **26. EXCEPTIONS CLAUSE**

Carrier shall not be liable for any loss, damage, delay or failure in performance hereunder occurring at any time including before loading on or after discharge from the Vessel or during any voyage, arising or resulting from the happening and/or threat and/or after effects of one or more of the following acts of God, act of war, force majeure, quarantine restrictions, embargo, acts of public enemies, thieves, pirates, assailing thieves, hijacking, arrest or restraint of princes, rulers or people, seizure under legal process, act or omission of Shipper, its agent or representative, strikes or lock-outs or stoppage or restraint of labour from whatsoever cause, partial or general, riots or civil commotions, fire or latent defect.

### **27. VARIATION OF CONTRACT**

Merchant agrees that this Bill of Lading constitutes the entire agreement between the parties. There are no understandings to the subject matter of this agreement other than as herein set forth, and any such actual or purported prior to or contemporaneous understandings or communications are hereby abrogated. No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized by the Carrier. Subject to Clause 3, all agreements or freight engagements for the shipment of the Goods are superseded by this Bill of Lading.

### **28. APPLICABLE LAW AND JURISDICTION**

28.1 This Bill of Lading, the contract contained in and/or evidenced hereby, and the rights and obligations of all parties concerned in connection with the Carriage of the Goods hereunder shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region.

28.2 All claims, suits, proceedings or disputes howsoever arising in connection with or arising out of this Bill of Lading and/or the contract contained in and/or evidenced by this Bill of Lading against Carrier shall be determined exclusively by the Courts of the Hong Kong Special Administrative Region to which jurisdiction Merchant irrevocably submits.

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28.3 Carrier shall be entitled to bring any claim, suit, proceeding or dispute against Merchant in the Courts of the Hong Kong Special Administrative Region or any other Court of competent jurisdiction.

PBL V.05/2016

### **Rule 25: Pantainer Waybill Terms and Conditions**

#### **PANTAINER WAYBILL - TERMS AND CONDITIONS**

##### **1. DEFINITIONS**

In this Waybill, unless the context otherwise requires:

"Carrier" means Pantainer (H.K.) Limited (a company incorporated in Hong Kong) carrying on business as Pantainer Express Line and on whose behalf this Waybill has been issued.

"Carriage" means the whole or any part of the operations and services undertaken by Carrier in respect of the Goods covered by this Waybill.

"Goods" means the whole or any part of the cargo provided by Merchant for Carriage and includes any Container, packing or equipment not supplied by or on behalf of Carrier.

"Container" includes any container, trailer, transportable tank, lift van, flat, pallet, skid, platform and similar article of transport used to consolidate or transport goods and any ancillary or associated equipment.

"Combined Transport" arises only if either or both of the Place of Receipt and the Place of Delivery are indicated in the relevant boxes on the face hereof.

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

"Freight" includes all charges, costs and expenses payable to Carrier in accordance with Carrier's applicable tariffs or this Waybill.

"Hague Rules" means the provisions of the International Convention for the Unification of Certain Rules relating to Waybills signed at Brussels on 25 August 1924.

"Hague-Visby Rules" means the Hague Rules as amended by the Protocol signed at Brussels on 23 February 1968.

"US COGSA" means the Carriage of Goods by Sea Act 1936 of the United States of America.

"Liabilities" includes claims, losses, damages, liabilities, fines, penalties, costs and expenses (including legal costs and expenses) of whatsoever nature and howsoever arising.

"Merchant" includes any person who is or at any time has been or becomes the Shipper, the Consignee, the receiver of the Goods, the holder of this Waybill, any person owning or entitled to the possession of or otherwise having any interest in the Goods or this Waybill, and any person acting on behalf of any of the persons aforesaid.

"Rights and Defences" includes rights, defences, exemptions, limitations of liability, liberties, immunities and benefits of whatsoever nature and howsoever acquired.

"Pomerene Act" means the United States Federal Sea Waybill Act, 1916 49 U.S.C. 801 or any amendments thereto.

"Shipper" means the party indicated in the "Shipper" box on the face hereof.

"Sub-Contractors" includes the owners, charterers and operators of any Vessel, stevedores, terminal operators, forwarders, groupage operators, consolidators, warehouse operators, road, rail and air transport operators, and other independent contractors employed by or for or taking instructions from Carrier directly or indirectly in the performance of any of Carrier's obligations hereunder, and including sub-contractors of any degree.

"Vessel" includes the vessel named on the face hereof and any substitute vessel, feeder, lighter or other watercraft used in the performance of the Carriage, whether owned or chartered or operated or controlled by Carrier or any Sub-Contractor or any other person.

References to Clauses are to clauses of these Terms and Conditions. Clause headings and sub-headings are for convenience only and do not affect the construction of these Terms and Conditions.

##### **2. INTERPRETATION AND GENERAL**

2.1 This Waybill is issued for a contract of Carriage which is not covered by a Bill of Lading or similar document of title within the meaning of the Hague Rules or the Hague-Visby Rules or US COGSA.

2.2 This Waybill can be issued either as a paper Waybill or electronically. If this Waybill is issued electronically, the Carrier shall transmit to the Shipper the relevant data for the booked and accepted Goods in Adobe Acrobat Document Format ("PDF") without a signature. In all events, these Terms and Conditions are incorporated into this Waybill whether or not they are stated on the paper or electronic version. The Carrier shall not be liable for any Liabilities or delay arising out of or in connection with the Goods or any consequential or indirect damage to the Merchant resulting from the malfunctioning or non-functioning of the Merchant's software or hardware equipment.

2.3 In the event that anything herein is inconsistent with any applicable international convention or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of such inconsistency but not further be null and void. Unless otherwise specifically agreed in writing between the Merchant and the Carrier, the Terms and Conditions of this Waybill supersede any prior agreements between the Merchant and Carrier.

2.4 Subject to Clause 2.3, provisions in these Terms and Conditions which exempt, exclude, relieve or limit the liability of Carrier, its servants, agents or Sub-Contractors shall be operative and effective notwithstanding (i) any act, omission (whether negligent, deliberate or otherwise) of Carrier, its servants, agents or Sub-Contractors, or (ii) the circumstances or cause of any loss or damage (to which such provisions relate) be unknown or unexplained, or (iii) any other matters or causes whatsoever.

2.5 Any right or remedy herein conferred on Carrier under this Waybill is in addition to and without prejudice to all other rights and remedies available to it.

2.6 Notwithstanding anything to the contrary herein provided, nothing herein shall be construed to contractually apply the Hague-Visby Rules to this Waybill.

##### **3. CARRIER'S TARIFFS**

The terms and conditions of Carrier's applicable tariffs, including without limitation provisions relating to Container and vehicle demurrage are incorporated herein. Copies of the applicable tariffs may be obtained from Carrier upon request. In the case of inconsistency between this Waybill and the applicable tariffs, the terms of this Waybill shall prevail.

##### **4. SUB-CONTRACTING**

4.1 Carrier shall be entitled to sub-contract the whole or any part of the duties undertaken by the Carrier in this Waybill in relation to the Goods or Carriage or both, directly or indirectly on any terms whatsoever consistent with any applicable law.

4.2 Merchant warrants that no claim or demand shall be made against any person undertaking or performing such duties (including Carrier's servants, agents and Sub-Contractors) other than Carrier, which imposes or attempts to impose on any such person or any vessel owned or operated or controlled by any such person, any liability whatsoever in connection with the Goods or the Carriage or this Waybill, whether or not arising out of negligence on the part of such person. If any such claim or demand should nevertheless be made, Merchant shall indemnify Carrier against all consequences thereof.

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4.3 Without prejudice to the Merchant's indemnity obligations herein, the Sub-Contractors or each of them, shall have the benefit of all Rights and Defences herein provided for the benefit of or otherwise available to Carrier as if the same were expressly made also for such person's benefit. For the foregoing purposes, Carrier contracts for itself and as agent or trustee for all the aforesaid persons. For the purpose of this Clause 4, the Vessel and all its Sub-Contractors shall be deemed to be parties to the contract evidenced by this Waybill.

4.4 If loss or damage to the Goods is known to have occurred during a period when the Goods were in the custody of Sub-Contractors then the Carrier shall have the benefit of any and all Rights and Defences contained in or incorporated by or compulsorily applicable to the Sub-Contractors' tariff(s) or contract(s) with the Carrier (in addition to all Rights and Defences contained in this Waybill and the Carrier's tariff) and for this purpose such Rights and Defences shall be deemed to be incorporated herein, and copies are obtainable from the Carrier upon request.

### 5. LIMITATION OF LIABILITY

Carrier shall be entitled to the same rights of limitation as are or would be available to the owner of the Vessel under the Brussels Limitation Convention of 1957, the London Limitation Convention of 1976 or any other applicable convention, statute or law, governing the rights of shipowners to limit their liability in accordance with the tonnage or value of the Vessel in the jurisdiction in which any claim is brought under this Waybill.

### 6. CARRIER'S RESPONSIBILITY

6.1 If the Carriage is Port to Port the responsibility (if any) of Carrier shall be limited to that Carriage from and during loading onto the Vessel at the Port of Loading up to and during discharge from the Vessel at the Port of Discharge.

6.2 This Waybill shall be subject to the Hague Rules (Articles 1 to 8 inclusive only and for the avoidance of doubt the reference to gold value in Article 9 shall not apply) unless the governing law makes the Hague or the Hague-Visby Rules compulsorily applicable in which case the said Hague or Hague-Visby Rules will apply to this Waybill only to the extent that they are compulsorily applicable. The Carrier shall be under no liability whatsoever for loss or damage to the Goods or non-delivery or mis-delivery howsoever caused if such loss or damage, non-delivery or mis-delivery arises prior to loading onto or subsequent to discharge from the Vessel.

6.3 Notwithstanding Clause 6.2, if and to the extent that any compulsory applicable national law provides for any additional responsibility for those part(s) of Carriage before loading or subsequent to discharge, Carrier shall have the benefit of all Rights and Defences under the Hague Rules as applied by Clause 6.4 herein during such additional period of responsibility, even though the matter giving rise to Carrier's liability, loss or damage, did not occur at sea.

6.4 If the Carriage is Combined Transport, the Carrier undertakes to perform and/or in its own name to procure performance of the Carriage from the Place of Receipt or the Port of Loading (whichever is applicable) to the Port of Discharge or the Place of Delivery (whichever is applicable) and, save as is otherwise provided for in this Waybill, the Liabilities incurred by Carrier for loss or damage to the Goods shall be in accordance with this clause 6.4.

6.4.1 If the stage of Carriage where the loss or damage occurred is not known:-

(a) The Carrier shall be relieved from all Liabilities for any loss or damage to the extent that such loss or damage was caused by or resulted from:

- (i) an act or omission of the Merchant;
- (ii) insufficiency or defective condition of packing or marking;
- (iii) compliance with instructions of persons entitled to give them;
- (iv) handling, loading, stowage or unloading of the Goods by the Merchant;
- (v) inherent vice of the Goods;
- (vi) strike, lockout, stoppage or restraint of labour from whatever cause whether partial or general;
- (vii) a nuclear incident;
- (viii) an act, neglect or default in the navigation or management of the Vessel occurring during carriage by water;
- (ix) fire; and/or
- (x) any other cause or event which the Carrier could not avoid and the consequences of whereof it could not prevent by the exercise of reasonable diligence.

(b) The burden of proof that the loss or damage was due to one or more of the causes, or events, specified in Sub-clause 6.4.1 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, or events, specified in Sub-clause 6.4.1, it shall be presumed that it was so caused and in such circumstances the burden of proof shall be on the Merchant to prove that the loss or damage was not caused wholly or partly by one or more of these events.

(c) Subject to the Carrier's right to limit liability as provided for in this Waybill, the Carrier's liability shall be calculated by reference to the value of the Goods at the time they were accepted for Carriage at the Place of Receipt or the Port of Loading (whichever applicable). Carrier shall have the option of replacing lost goods or repairing damaged goods.

(d) Where the Hague Rules, Hague-Visby Rules or any other rules compulsorily apply to the Carriage, the Carrier's liability shall in no event exceed the amounts provided for in the applicable rules.

(e) The Carrier's maximum liability shall hereunder shall in no event exceed GBP 100 per package or customary freight unit (whichever applicable) or US\$ 2 per kilo of gross weight of the Goods lost or damaged, whichever is lesser, unless the value of the Goods has been declared by the Merchant with the consent of the Carrier and excess Freight has been paid whereupon the declared value (if higher) as shown on the face of the Waybill shall be substituted for the above limit and any partial loss or damage shall be adjusted on the basis of such declared value.

6.4.2 If the stage of Carriage where the loss or damage occurred is known, the Carrier's liability shall be determined as follows:

(a) by the provisions contained in any international convention or national law, which provisions cannot be departed from by private contract to the detriment of the Merchant, and would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of the Carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable; or

(b) if no international convention or national law is applicable then the liability of the Carrier shall be determined in accordance with Clause 6.4.1.

6.5 Notwithstanding the provisions of this Clause 6.1 to 6.4, for Carriage to or from any port of the United States, its territories or possessions, or if suit is brought in the United States, this Waybill shall have effect subject to the provisions of the US COGSA and to the provisions of the Pomerene Act regardless of whether said Act would apply of its own force. The provisions of the US COGSA are incorporated herein and save as otherwise provided herein shall apply throughout the entire time the Goods are in the Carrier's custody, including before loading and after discharge as long as the Goods remain in the custody of the Carrier or its Sub-contractors, including Goods carried on deck. Nothing contained herein is to be deemed a surrender by the Carrier of its rights, immunities, exemptions or limitations or an increase of any of its responsibilities or liabilities under the US COGSA. Except for Clauses 6.1 to 6.4, every other term, condition, Rights and Defences whatsoever contained in this Waybill

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shall apply to Carriage in the US Trades. For limitation purposes under US COGSA, it is agreed that the meaning of the word “package” shall be any palletized and/or unitized assemblage of cartons which has been palletized and/or unitized for the convenience of the Merchant, regardless of whether said pallet or unit is disclosed on the face hereof.

6.6 Subrogation When Carrier pays claims to Merchant, Carrier shall automatically be subrogated to all rights of Merchant against all others, including inland carriers, on account of the losses or damages for which such claims are paid.

### **7. GENERAL PROVISIONS**

7.1 Delay Carrier does not undertake that the Goods or any documents relating thereto shall arrive at the Port of Discharge, Place of Delivery or at any place at any particular time or to meet any particular market or use. In no circumstances shall the Carrier be liable for loss or damage due to delay. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the Freight applicable to the relevant stage of transport. It is hereby agreed that ad valorem arrangements pursuant to Clause 7.7 shall have no application to any claim for delay.

7.2 Consequential Loss Carrier shall in no circumstances whatsoever be liable for any loss of profits, loss of market, loss of contract, loss of revenue or use, or any other indirect, special or consequential loss, howsoever caused. For the avoidance of doubt, ad valorem arrangements pursuant to Clause 7.7 shall have no application in relation to consequential loss, which forms the subject matter of this Clause 7.2.

7.3 Value of Goods Subject to the limits of liability and the Rights and Defences of Carrier contained herein, compensation shall be calculated by reference to the value of the Goods, which is agreed to be the bona fide FOB invoice value plus Freight and insurance, if paid. If there is no bona fide invoice value of the Goods, the value of the Goods shall be their value as at the place and time they are or should have been delivered to Merchant, calculated by reference to the market value of goods of the same kind and quality.

#### **7.4 Heavy Lift**

(a) Single packages with a weight exceeding 2,240 pounds (long ton) gross not presented to Carrier in enclosed containers must be declared in writing by Merchant before receipt of the packages by Carrier. The weight of such packages must be clearly and durably marked on the outside of the package in letters and figures not less than two inches high.

(b) If Merchant fails to comply with the above provisions, Carrier shall not be liable for any loss of or damage to the goods, persons or property, and Merchant shall be liable for any loss of or damage to persons or property resulting from such failure and Merchant shall indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of such failure.

(c) Merchant agrees to comply with all laws or regulations concerning overweight containers and Merchant shall indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of Merchant's failure to comply with such laws or regulations.

7.5 Insurance Carrier will not arrange for insurance on the Goods except upon express written instructions from Merchant and then only at Merchant's expense and presentation of a declaration of value for insurance purposes prior to shipment.

7.6 Package or Unit Subject to Clause 2.3, a package or unit is the largest individual unit of partially or completely covered or contained cargo made up by or for the Shipper which is delivered and entrusted to Carrier, including palletized units and each Container stuffed and sealed by the Shipper or on its behalf, although the Shipper may have furnished a description of the contents of such sealed Container on this Waybill. For the avoidance of doubt, if the Goods are received by Carrier in a Container, the Container shall be the “Package” for the purpose of calculating limitation of Carrier's liability, unless compulsorily applicable law in the individual case stipulates otherwise.

7.7 Ad Valorem The Merchant agrees that higher compensation than that provided for in this Waybill may not be claimed unless the nature and value of the Goods have been declared by the Merchant prior to the commencement of the Carriage and inserted in this Waybill in the space caption “Declared value from Merchant” and extra Freight paid on such declared value, if required. In such case, the declared value if embodied in the Waybill shall be the basis for calculating the Carrier's liability (if any), provided that such value shall only be prima facie evidence, but shall not be conclusive evidence of such value and further provided that such declared value does not exceed the true value of the Goods at destination. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value. Provided always that the foregoing provisions of this Clause 7.7 shall not apply and no extra Freight will be accepted by Carrier for higher compensation or compensation in relation to claims for delay or consequential loss referred to in Clause 7.1 and Clause 7.2.

7.8 Notice of Claim Subject to Clause 2.3, Carrier shall be deemed to have effected timely delivery of the Goods unless notice of any loss, damage or claim indicating the general nature of such loss and damage, shall have been given in writing to Carrier or to its representative 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 the person entitled to the delivery thereof under this Waybill, or, if the loss or damage is not apparent, within three consecutive days thereafter.

#### **7.9 Time-bar**

7.9.1 Subject to Clause 7.9.2, Carrier shall be discharged of all Liabilities under this Waybill unless suit is brought and written notice thereof given to Carrier within nine months after delivery of the Goods or, in the case of total loss or non-delivery of the Goods, within ten months after the date of issue of this Waybill.

7.9.2 Notwithstanding Clause 7.9.1, where US COGSA, the Hague Rules or the Hague Visby-Rules apply by force of law or incorporation, the Carrier shall be discharged from all Liabilities whatsoever in respect of the Goods, unless suit is brought and jurisdiction is obtained over Carrier by service of summons within one year of their delivery or the date when they should have been delivered.

7.10 The Rights and Defences of Carrier provided for in this Waybill shall apply in any action or claim against Carrier whether founded in contract, tort, bailment, trust or breach of express or implied warranty or otherwise and notwithstanding any negligence, unseaworthiness, deviation, non-delivery, mis-delivery or any other breach by the Carrier of the contract evidenced by this Waybill.

### **8. DESCRIPTION OF GOODS**

8.1 This Waybill shall be prima facie evidence of the receipt by Carrier from the Shipper in apparent good order and condition, except as otherwise noted, of the total number of Containers or other packages or units indicated on the face hereof as “TOTAL NUMBER OF CONTAINERS OR OTHER PACKAGES OR UNITS RECEIVED BY THE CARRIER”.

8.2 Save as provided in Clause 8.1, Carrier makes no representation or acknowledgement and assumes no responsibility whatsoever as to any weight, measure, quantity, quality, content, description, marks, numbers, place of origin, value or condition of the Goods (all of which are unknown to it).

8.3 Any information on the face of this Waybill relating to any invoice, export or import license, documentary credit, order, contract, or like matters is included solely at the request of Merchant and is not verified by Carrier. Any such information shall not constitute any declaration of value of the Goods and shall in no way increase Carrier's liability hereunder.

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### **9. MERCHANT'S WARRANTIES AND INDEMNIFICATION**

9.1 All persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the fulfillment of all obligations, responsibilities and warranties undertaken by the Merchant either in the Waybill, or as required by law and shall remain so liable throughout the transportation and to pay Freight due under it without deduction or set off, notwithstanding their having transferred title to the Goods to another party. The Shipper warrants that in agreeing to the Terms and Conditions of this Waybill, he is the owner of the Goods or he does so with the authority of the owner of the Goods, or of the person entitled to the possession of the Goods or of this Waybill, or of the Merchant.

9.2 The Merchant warrants that in accepting this Waybill, the Merchant agrees to be bound by all stipulations, exceptions, terms and conditions on the face and back thereof, whether written, typed, stamped or printed, as fully as if signed by Merchant.

9.3 The Merchant in accepting these Terms and Conditions is either the person or the authorized agent of the person who owns or is entitled to the possession of the Goods and/or this Waybill, and accepts these Terms and Conditions for itself as well as for such person and any other person who may hereafter have any interest in the Goods and/or this Waybill and/or the Carriage.

9.4 The Merchant warrants that the description and particulars of the Goods set out on the face hereof are furnished by the Merchant and have been checked by Merchant on receipt of this Waybill, and that such particulars and all other information whether relating to the Goods or otherwise provided by Merchant are complete, accurate and true. The Merchant shall indemnify the Carrier against all Liabilities arising or resulting from inaccuracies or inadequacy of such particulars.

9.5 The Merchant shall comply with all applicable laws, regulations and requirements (including but not limited to any imposed at any time before or during the Carrier relating to anti-terrorism measures) of customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses and losses (including without prejudice to the generality of the foregoing, Freight for any additional Carriage undertaken) incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

9.6 The Merchant further warrants, represents and agrees that (i) the Goods and any Container loaded by the Merchant are packed and secured in such a manner as to be handled in the ordinary course of the transportation without damage to the Goods, Vessel, Containers or other property or persons; (ii) any Goods placed by the Merchant in Containers are compatible and suitable for transportation in Containers; and (iii) if the Container is not supplied by or on behalf of the Carrier, that the Container meets all ISO and/or other applicable national or international safety standards and is fit in all respects for Carriage by the Carrier.

9.7 The Merchant warrants that the Goods are lawful goods and contain no contraband or prohibited items.

9.8 The Merchant shall not tender for transportation any Goods which require refrigeration or other stable temperature conditions without giving written notice of their nature and the required temperature setting of the thermostatic controls before receipt of the Goods by the Carrier.

9.9 Any Container released into the care of the Merchant for packing, unpacking or any other purpose whatsoever shall be at the sole risk of the Merchant until proper redelivery to the Carrier at the time and place prescribed by the Carrier. If the Merchant fails to deliver the Container at such prescribed time and place, the Merchant shall pay the Carrier the applicable demurrage or detention charges arising therefrom. The Merchant is responsible for returning the empty Container, with interiors brushed and clean, to the point or place designated by the Carrier, his servants or agents. The Merchant shall be liable for any charges, loss or any other expenses arising therefrom. The Merchant shall be responsible for any loss and/or damage to, and any Liabilities caused or incurred by such Container whilst in its custody and/or control.

9.10 The Merchant warrants that when the Goods are for Carriage to or through or from the United States of America, all information relating to the Goods is complete, accurate and true and in all respects in conformity and compliance with cargo declaration requirements of the U.S. Customs Regulations and other related laws, rules and regulations.

9.11 Merchant shall indemnify and hold harmless Carrier from and against any and all Liabilities incurred due to a breach of any of Merchant's obligations, representations and warranties contained in this Waybill.

### **10. SHIPPER PACKED CONTAINERS**

10.1 If a Container has not been filled, packed, stuffed or loaded by the Carrier, the Carrier shall not be liable for loss of or damage to the contents and the Merchant shall indemnify the Carrier against all Liabilities incurred by the Carrier, if such Liability has been caused by:

- (i) the manner in which any Container has been filled, packed, stuffed or loaded;
- (ii) the unsuitability for Carriage of the contents of any Container;
- (iii) if Container was not supplied by Carrier, the unsuitability, defective condition or the incorrect setting of temperature controls of the Container actually used;
- (iv) if Container was supplied by Carrier, the unsuitability, defective condition or incorrect setting of temperature controls of the Container which could have been discovered upon reasonable inspection by Merchant at or prior to the time the Container was filled, packed, stuffed or loaded; or
- (v) the packing in any Container of temperature controlled Goods that are not at the correct temperature for Carriage.

10.2 The Shipper is responsible for the packing and sealing of all Shipper-packed Containers. The Shipper shall inspect Containers before stuffing them and the use of the Containers shall be prima facie evidence of the receipt of the Container by Shipper and the Container is in good order and condition.

10.3 Delivery of a Shipper-packed Container by Carrier with its original seal intact shall be deemed to be a full and complete delivery under this Waybill. Carrier shall not be liable for any shortage of Goods. If a claim for shortage is made against the Carrier, the Merchant agrees to indemnify the Carrier against all and any Liabilities of whatsoever nature suffered and/or incurred in connection with such claim (including, without limitation, legal costs).

10.4 It is the sole responsibility of the Merchant to ascertain the applicability of and ensure compliance in sufficient time with the requirements as to the verified gross mass ("VGM") of Containers to be loaded by the Carrier on board the Vessel contained in SOLAS Chapter VI (the "SOLAS VGM Requirements") for any Goods provided by the Merchant to the Carrier. Where the Merchant is unable, refuses, fails or is reasonably anticipated to be unable to or fail to comply in full with the SOLAS VGM Requirements or with such other reasonable requests of the Carrier in connection thereto, the Carrier may, at its sole discretion but without any obligation to do so, reject the Goods for shipment or undertake and comply with that obligation on the Merchant's behalf as the Merchant's agent at the Merchant's risk and expense. All consequences of the Merchant's inability, refusal or failure, including delay and Liabilities suffered by any party, shall be solely for the Merchant to bear and the Merchant shall keep the Carrier indemnified from the same. The Merchant represents that the Carrier is entitled to rely on the accuracy of the VGM information and to counter-sign, endorse or otherwise provide its own certified weight on behalf of the Merchant to the Sub-Contractors or any other relevant parties. The Merchant agrees that it shall indemnify and hold the Carrier harmless from any and all claims, losses, penalties or other costs resulting from any statements of the VGM provided by Merchant or its agent or contractor or by the Carrier on the Merchant's behalf.

### **11. FCL MULTIPLE WAYBILLS**

11.1 This Waybill is a FCL Multiple Waybill if the tally acknowledged overleaf bears the qualification to the effect that it is one of the part cargoes in the Container. In such event, the Goods detailed overleaf are said to comprise part of the contents of the Container indicated. The special arrangement of receiving Goods on basis of FCL

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Multiple Waybills being issued shall only be undertaken in Carrier's absolute discretion and the following provisions shall apply in addition to any other conditions which Carrier may stipulate:

- (a) Particulars of the Goods detailed overleaf are said to comprise part of the contents of the Container indicated in respect of which Carrier has not verified and makes no representation or acknowledgement (all such particulars being unknown to Carrier).
- (b) The Goods will only be delivered in the Container to all Merchants together at a single place or into the hands of a single representative agreed by all Merchants.
- (c) In the event that the requirement under Clause 11.1(b) is not fulfilled, Carrier may in its absolute discretion unpack the Container and deliver the Goods without the Container to the Merchant on a LCL basis. Such delivery shall constitute due delivery hereunder, but will only be effected against payments by Merchant of LCL service charges and any charges appropriate to LCL Goods (as laid down in Carrier's applicable tariffs) together with the actual costs incurred for any additional services rendered.
- (d) Further, if all or part of the total Goods within the Container consists of bulk Goods or unappropriated Goods, or is or becomes mixed or unmarked or unidentifiable, the Merchant shall take delivery thereof (including any damaged portion thereof) and bear any shortage thereof in such proportions as Carrier shall in its absolute discretion determine, and such delivery shall constitute due delivery hereunder.
- (e) Carrier shall not in any event be liable for any shortage, loss, damage or discrepancies of the Goods, which are found upon unpacking the Container.
- (f) Instructions in relation to Carriage which a Merchant may otherwise be entitled to give must be given in writing by all Merchants of the different parts of the contents in the Container simultaneously.
- (g) Merchant undertakes to indemnify Carrier from and against any and all Liabilities arising from accepting the Goods for Carriage on the basis of FCL Multiple Waybills being issued.

### **12. CARRIER'S CONTAINERS**

Where the Carrier is instructed to provide a Container, in the absence of a written request to the contrary accepted by the Carrier, the Carrier shall not be under an obligation to provide a container of any particular type or quality.

### **13. INSPECTION**

13.1 Carrier or any person authorized by the Carrier shall be entitled, but under no obligation, to open any Container or bale, parcel, bag, bundle, crate, carton, pallet, package or other individual unit of partially or completely covered or contained cargo, whether in Container or not, at any time without liability and notice to Merchant to inspect, examine, weigh or measure the contents thereof.

13.2 If it appears at any time that the contents of the Container or any part thereof cannot safely or properly be carried or carried further, either at all, or without incurring additional expense or taking any measures in relation to the Container or its contents or any part thereof, the Carrier may at the sole risk and expense of the Merchant abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue the Carriage or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under this Waybill. The Merchant shall indemnify the Carrier against all additional expenses resulting therefrom.

13.3 The Carrier is not responsible for any damage or loss to Container or its contents resulting from inspection by customs or other authorities and Merchant shall be responsible for any expenses, costs, fines, or penalties incurred as a result of such inspection or otherwise.

13.4 The Carrier in exercising the liberties contained in this Clause shall not be under any obligation to take any particular measures and shall not be liable for any loss, delay or damage howsoever arising from any action or lack of action under this Clause.

### **14. DANGEROUS GOODS**

14.1 No Goods which are or may become of a dangerous (whether or not listed in the IMDG Code), hazardous, inflammable, damaging or injurious (including radio-active materials) nature or which may become liable to cause damage to the Vessel or property or person shall be tendered by the Merchant to the Carrier for Carriage without (i) previously giving the Carrier written notice of their nature and having received the Carrier's express consent in writing; (ii) distinctly and durably indicating and marking the Goods and the Container or other packages or units in compliance with any laws or regulations which may be applicable during the Carriage; and (iii) submitting to Carrier and the appropriate authorities all documents required by any laws or regulations or otherwise required by Carrier.

14.2 Merchant warrants that all dangerous goods tendered or provided to Carrier are adequately packed in compliance with all applicable laws or regulations and requirements having regard to the nature of the Goods. If the Goods are not packed into the Container by or on behalf of Carrier, Merchant warrants that no incompatible goods are packed in the same Container.

14.3 Goods which are or which, in the opinion of the Carrier, may at any time become dangerous, inflammable, radioactive or damaging may, at any time or place be unloaded, destroyed or rendered harmless by Carrier or any Sub-Contractor without compensation to the Merchant and if the Merchant has not given notice of their nature to the Carrier under Clause 14.1, the Carrier shall be under no liability to make any General Average contribution in respect of such Goods.

14.4 If the requirements of Clause 14.1 are not complied with, the Merchant shall indemnify Carrier from and against any and all Liabilities of whatsoever nature arising out of the Carriage of such Goods or Containers including without limitation environmental damages, direct and indirect clean up or rehabilitation expenses, legal costs, fines and penalties.

### **15. PERISHABLE GOODS/TEMPERATURE CONTROLLED GOODS**

15.1 The Merchant undertakes not to tender for Carriage any Goods which require temperature control and/or specific settings in terms of humidity, CO2 levels, ventilation etc. without previously giving written notice of their nature and particular temperature range to be maintained.

15.2 In case of refrigerated Containers packed by or on behalf of Merchant, the Merchant undertakes that the Goods have been properly stowed in the Container and that the Container has been properly pre-cooled and the thermostatic controls have been properly set. It is Merchant's obligation to set and/or check that the temperature controls on the Container are at the required temperature and to properly set the vents.

15.3 If the requirements of Clauses 15.1 and 15.2 are not complied with by the Merchant, the Carrier shall not be liable for any loss of or damage to the Goods caused by such non-compliance and the Merchant shall indemnify the Carrier for any resulting loss the Carrier suffers.

15.4 Insofar as Carrier provides empty refrigerated Containers to Merchant for stuffing by Merchant, Carrier is not responsible for the temperature of those Containers on delivery to Merchant.

15.5 Merchant acknowledges that refrigerated Containers are not designed to freeze down cargo which has not been presented for stuffing at or below its designated carrying temperature and Carrier shall not be responsible for the consequences of Goods presented at a higher temperature than that required for Carriage.

15.6 Carrier shall not be held liable for any loss or damage to the Goods resulting from defects, faults, breakdown, and stoppage of the temperature controlling machinery, plant, insulation or any apparatus of any Container used to transport the Goods.

### **16. OPTIONAL STOWAGE AND DECK CARGO**

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16.1 Goods may be packed by Carrier in any type of Containers and consolidated with other goods.

16.2 Goods, whether or not packed in Containers, may be carried on deck or under deck at the sole discretion of Carrier without notice to Merchant, and such stowage and Carriage shall not be a deviation of whatsoever nature or degree. All Goods whether carried on deck or under deck shall participate in General Average, and (save as provided in Clause 16.3) such Goods (other than live animals) shall be deemed to be within the definition of goods for the purposes of the Hague Rules, the Hague-Visby Rules or the US COGSA, as the case may be.

16.3 Goods which are stated on the face hereof as being carried on deck and which are so carried (and live animals whether or not carried on deck) are carried at the sole risk of Merchant and without any responsibility on the part of Carrier for loss or damage of whatsoever nature arising during carriage by sea, whether or not caused by unseaworthiness or negligence or any other cause whatsoever. If the requirements of this Clause 16.3 are satisfied, the Hague Rules, Hague-Visby Rules and US COGSA shall not apply to such Carriage. Merchant shall indemnify Carrier against any extra costs incurred for any reason whatsoever in connection with such Carriage.

### **17. NOTIFICATION AND DELIVERY**

17.1 Any mention in this Waybill of any party to be notified of the arrival of the Goods is only for Carrier's information. Failure to give such notice shall not subject Carrier to any Liabilities nor relieve Merchant of any obligation hereunder.

17.2 Merchant shall take delivery of the Goods (notwithstanding any loss or damage or any other matter whatsoever) within the time and at the address for collection provided in Carrier's applicable tariffs, or otherwise notified to Merchant or the Notify Party named on the face hereof. If Merchant fails to take delivery of the Goods within the prescribed time at the prescribed place, the Goods shall be deemed to have been duly delivered to Merchant under this Waybill upon expiration of such time.

17.3 Without prejudice to Clause 17.2, where Merchant fails to take delivery of the Goods as provided in Clause 17.2, Carrier shall be entitled without notice, but subject to its lien, to unpack the Goods (if packed in Containers) and/or store the Goods ashore, afloat, in the open or under cover at the sole risk and expense of Merchant.

Thereupon, the Carrier's liability in respect of the Goods shall cease wholly and the costs of such storage (if paid or payable by the Carrier or any agent or Sub-contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.

17.4 If after arrival of the Goods, Carrier in accordance with the applicable custom or practice or law or regulation hands over the Goods into the custody of any customs, port or other authority or any other person having authority, such hand-over shall be deemed to be due delivery of the Goods to Merchant under this Waybill.

17.5 In the event that Carrier, in its entire discretion, agrees at the request of Merchant to deliver the Goods at a port of discharge or a place of delivery other than the Port of Discharge or Place of Delivery indicated on the face hereof, Carrier shall act only as the agent of Merchant in arranging for the delivery of the Goods to the revised port of discharge or the revised place of delivery, and shall be under no liability whatsoever arising from such revised carriage.

17.6 Should the Shipper request the Carrier to deliver the Goods to a person other than the Consignee named on the face hereof, agreement to such change shall be at the Carrier's sole discretion and the Carrier shall in any event not accept such change unless the Shipper's request is in writing and it is received by the Carrier in good time before notice of arrival of the Goods has been sent out by the Carrier's agent at destination. The Shipper hereby undertakes to indemnify the Carrier against any additional costs, expenses, delays and losses caused thereby.

### **18. LIEN**

18.1 Carrier shall have a lien on the Goods and any document relating thereto for all monies earned, or due or payable by to Carrier under this Waybill and/or any other contract with the Merchant or, on account of the Goods or Carriage, storage or handling of the Goods including but not limited to General Average contributions, Freight, delivery, destination, demurrage, detention, port and/or handling charges, to whomever due and/or for the cost of recovering the same and/or any fines or penalties levied against the Carrier by reason of any acts or omissions for which the Merchant is responsible. Carrier may at its sole discretion exercise its lien at any time and in any place, whether the contractual transportation is completed or not. The lien shall survive the delivery of the Goods.

18.2 For the purpose of enforcing and satisfying the lien, the Carrier shall have the right to sell at the cost and expense of Merchant the Goods by public auction or private treaty or other means, without giving any notice or incurring any liability to Merchant and without the need to obtain an order for sale from any Court and to apply the proceeds (net of expenses) thereof in or towards satisfaction of any monies due to Carrier. The Carrier shall be entitled to claim the difference in the event that the sale proceeds fail to cover the full amount due to the Carrier.

### **19. FREIGHT AND CHARGES**

19.1 Freight is calculated on the basis of the particulars furnished by Merchant. The Carrier may at any time open any Container or other package or unit and inspect, reweigh, remeasure or revalue the contents at the Merchant's sole expense. If the particulars furnished are incorrect, Merchant shall, in addition to the correct Freight, pay to Carrier a sum equal to three times the difference between the correct Freight and the Freight charged as liquidated damages, notwithstanding any other sum having been stated herein as freight payable.

19.2 Quotations as to Freight, rates of duty, insurance premiums or other charges or fees given by Carrier are for information only and are subject to changes without notice and shall not under any circumstances be binding upon Carrier.

19.3 Freight shall be deemed fully earned on receipt of the Goods by or for Carrier and shall be paid and non-returnable, whether Freight is indicated to be prepaid or payable elsewhere.

19.4 All Freight shall be paid in full without any set off or counterclaim or deduction whatsoever.

19.5 All Freight shall be paid at or within the time stipulated in Carrier's applicable tariffs and in any event before delivery of the Goods. Payment shall be made in cash in the currency named in this Waybill, or, at the option of Carrier in another currency specified by Carrier. Simple interest at the rate of 12% per annum shall be payable on any overdue amount from the date when payment is due until payment in full. All costs and expenses incurred by or on behalf of Carrier in the recovery of any monies due from Merchant including legal costs, recovery or collection fees and expenses shall be recoverable from Merchant as a debt.

19.6 Merchant shall be liable for all Freight, charges, dues, duties, fines, penalties, taxes, consular fees, levies on or relating to the Goods and Merchant shall reimburse Carrier for any and all advances made by Carrier in Carrier's own discretion. Merchant shall be liable for additional or return Freight on the Goods if they are refused export or import by any government body or authority or any other person having authority.

### **20. ABANDONMENT OF GOODS ETC.**

In the event that Merchant fails to take delivery of the Goods as per Clause 17.2, or Carrier reasonably considers that there is any breach by Merchant of any of Merchant's warranties contained herein, or in the sole opinion of Carrier the Goods are likely to deteriorate, decay or become worthless or cause any danger to the Vessel or other goods or property or any person or incur charges, then Carrier may (but without obligation) at any time (in its sole discretion and without liability and without notice to Merchant or requiring any Court order) sell or otherwise dispose of or abandon or store the Goods ashore or afloat, under cover or in the open, at any place at the sole risk and expense of Merchant and apply any proceeds of sale in reduction of the sums due to Carrier from Merchant under this Waybill. Upon such sale, disposal, abandonment

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or storage, the Goods shall be deemed duly delivered to Merchant under this Waybill. Merchant shall indemnify Carrier from and against any and all Liabilities incurred by Carrier in relation to such sale, disposal, abandonment and storage.

### **21. METHODS AND ROUTES OF TRANSPORTATION**

21.1 Carrier may at any time and without notice to Merchant:

- (a) use any means of carriage or storage whatsoever;
- (b) transfer the Goods from one conveyance to another, including without limitation transshipping the Goods or carrying them on a Vessel other than that named on the face hereof, even though transshipment or forwarding of the Goods may not have been provided for herein;
- (c) unpack and remove the Goods which have been packed in a Container and forward them in another Container or otherwise;
- (d) proceed by any route (whether or not the nearest or most direct or customary or advertised route) in its discretion, at any speed, and proceed to or stay at any place or port whatsoever, once or more often and in any order;
- (e) load or unload the Goods at any place or port and store the Goods at any such place or port;
- (f) comply with any orders, directions or recommendations given by any government or authority, or any person or body acting or purporting to act as or on behalf of such government or authority, or having under the terms of any insurance on any conveyance used for the Carriage the right to give orders or directions;
- (g) permit the Vessel to proceed with or without pilots, to tow or to be towed, or to be dry-docked, with or without Goods and/or Containers on board.

21.2 Carrier may invoke any of the liberties under Clause 21.1 for any purpose whatsoever, whether or not connected with the Carriage of the Goods, including but not limited to loading or unloading the Goods, bunkering, undergoing repairs, adjusting instruments, towing or being towed, sailing with or without pilots, drydocking, picking up or landing any persons. Anything done in accordance with Clause 21.1 or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation. If, in invoking any of the liberties under Clause 21.1, any service provided by any third party is involved, Carrier may without notice to Merchant conclude a contract with such third party as agent of the Merchant, and in respect of such services Carrier shall have no liability whatsoever.

### **22. MATTERS AFFECTING PERFORMANCE**

If at any time the performance of the contract contained in or evidenced by this Waybill is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind whatsoever and howsoever arising and which cannot be avoided by reasonable endeavours, the Carrier may (whether or not the Carriage has commenced) and without prior notice to Merchant and at its sole discretion, elect any one or more of the following:

- (a) treat the performance of this contract as terminated and place the Goods or any part of them at Merchant's disposal at any place or port which Carrier may reasonably deem safe and convenient, whereupon all the responsibility of Carrier under this Waybill shall cease absolutely and the Goods shall be deemed to have been duly delivered by Carrier under this Waybill; or
- (b) acting as a Merchant's agent only, suspend the Carriage of the Goods and store them ashore or afloat at Merchant's expense upon the terms of this Waybill and use reasonable endeavours to forward them as soon as practicable to the Port of Discharge or Place of Delivery; or
- (c) carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, by an alternative route by any means in the sole discretion of Carrier.

### **23. GENERAL AVERAGE**

General Average to be adjusted in any currency at any place selected by the Carrier and according to the York-Antwerp Rules 1974 as amended in 1990 and 1994. Any claims and/or disputes relating to General Average shall be exclusive subject to the laws and jurisdiction set out at Clause 28. Merchant shall indemnify Carrier from and against any claim of a General Average nature which may be made on Carrier, and shall provide to Carrier prior to delivery of the Goods such cash deposit or security as Carrier may consider sufficient to cover the estimated General Average contribution of the Goods and any salvage and special charges thereon. Carrier shall be under no obligation to exercise any lien or collect or procure any security for General Average contribution due to Merchant.

### **24. BOTH TO BLAME COLLISION AND NEW JASON CLAUSES**

The Both-to-Blame Collision and New Jason clauses published and/or approved by BIMCO and obtainable from Carrier or its agent upon request are incorporated herein.

### **25. CONTRACTING PARTIES**

The contract contained in or evidenced by this Waybill is between the Carrier and the Shipper. The Shipper is the only party entitled to give the Carrier instructions in relation to this contract of carriage. The Shipper undertakes to provide the Merchant and in particular the Consignee with a legible copy of all the Terms and Conditions contained in this Waybill.

### **26. EXCEPTIONS CLAUSE**

Carrier shall not be liable for any loss, damage, delay or failure in performance hereunder occurring at any time including before loading on or after discharge from the Vessel or during any voyage, arising or resulting from the happening and/or threat and/or after effects of one or more of the following acts of God, act of war, force majeure, quarantine restrictions, embargo, acts of public enemies, thieves, pirates, assailing thieves, hijacking, arrest or restraint of princes, rulers or people, seizure under legal process, act or omission of Shipper, its agent or representative, strikes or lock-outs or stoppage or restraint of labour from whatsoever cause, partial or general, riots or civil commotions, fire or latent defect.

### **27. VARIATION OF CONTRACT**

Merchant agrees that this Waybill constitutes the entire agreement between the parties. There are no understandings to the subject matter of this agreement other than as herein set forth, and any such actual or purported prior to or contemporaneous understandings or communications are hereby abrogated. No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized by the Carrier. Subject to Clause 3, all agreements or freight engagements for the shipment of the Goods are superseded by this Waybill.

### **28. APPLICABLE LAW AND JURISDICTION**

28.1 This Waybill, the contract contained in and/or evidenced hereby, and the rights and obligations of all parties concerned in connection with the Carriage of the Goods hereunder shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region.

28.2 All claims, suits, proceedings or disputes howsoever arising in connection with or arising out of this Waybill and/or the contract contained in and/or evidenced by this Waybill against Carrier shall be determined exclusively by the Courts of the Hong Kong Special Administrative Region to which jurisdiction Merchant irrevocably submits.

28.3 Carrier shall be entitled to bring any claim, suit, proceeding or dispute against Merchant in the Courts of the Hong Kong Special Administrative Region or any other Court of competent jurisdiction.



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### Rule 26: NVOCC Service Arrangements (NSA) Essential Terms



#### Pantainer (H.K.) Limited Essential Terms Publication

The following constitutes the essential terms of Pantainer (H.K.) Limited NSA Number: \_\_\_\_\_

Amendment No. \_\_\_\_\_

Amendment Effective Date: \_\_\_\_\_

**1. Duration:**

Effective Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**2. Scope:**

A. Origin: \_\_\_\_\_

B. Destination: \_\_\_\_\_

**3. Commodities:**

**4. Minimum Quantity Commitment:**