

## HORIZON LINES TERMS AND CONDITIONS

### The Continental U.S. and Hawaii or Guam or Puerto Rico

**RECEIVED** in apparent good order and condition from the shipper, or shipper's agent, the number of containers or other packages or units said by shipper to contain the goods described in the "Particulars Furnished By Shipper," to be transported from the Port of Loading (Box 15) or, if applicable, the Place of Initial Receipt (Box 13) to the Port of Discharge (Box 16) or, if applicable, the Place of Delivery by On-carrier (Box 17), there to be delivered to consignee or on-carrier on payment of all charges due thereon. Carrier makes no representation as to the correctness of the particulars furnished by the shipper.

In accepting this bill of lading, the shipper consignee, holder hereof and the owners of the goods (each of whom is sometimes referred to herein as "Merchant") agree, the same as if signed by each of them, that the receipt, custody, carriage, relay, delivery and any transshipping of the goods are subject to the terms appearing on the face and back hereof, which shall govern the relations, whatsoever they may be, between shipper, consignee, the owners of the goods and any holder hereof and Carrier, its agents, contractors, employees, master and vessel in every contingency occurring and whether Carrier be acting as such or bailee. Carrier shall have the right to stow containers, vans or trailers on deck and without notice as per Clause 9. The terms hereof shall not be deemed waived by Carrier except by written waiver signed by Carrier or its duly authorized agent.

**1. CLAUSE PARAMOUNT.** This bill of lading shall have effect subject to all the provisions of the Carriage of Goods by Sea Act of the United States of America, approved April 16, 1936, as if set forth herein. However, insofar as it may provide greater rights to the holder hereof, the provisions of the International Convention for the Unification of Certain Rules of Law Relating to Bill of Lading signed at Brussels, August 25, 1924 as amended by the 'Protocol,' signed at Brussels, February 23, 1968 (VISBY RULES) and at Brussels, December 21, 1979 (S.D.R. Protocol) shall apply to goods whether carried on or under deck, to carriage of goods between U.S. ports, or between non-U.S. ports, before the goods are loaded on and after they are discharged from the vessel, and throughout the entire time the goods are in the actual custody of Carrier, whether acting as carrier, bailee or stevedore.

If this bill of lading is issued in or the goods are delivered to a locality where there is in force a compulsorily applicable Carriage of Goods by Sea Act, ordinance of statute similar to the International Convention for the Unification of Certain Rules Relating to Bills of Lading dated at Brussels, August 25, 1924, then it is subject to such Act, ordinance or statute before the goods are loaded on and after they are discharged from the vessel and throughout the entire time the goods are in the actual custody of Carrier, whether acting as carrier, bailee or stevedore.

Carrier shall be entitled to the full benefit of all rights and immunity under, and all limitations of or exemptions from liability contained in any law of the United States or any other place whose law shall be compulsorily applicable. If any term of this bill of lading be repugnant to the Carriage of Goods by Sea Act of the United States or any other law compulsorily applicable, such term only shall be void to that extent but no further.

This bill of lading shall be construed and the rights of the parties hereunder determined according to the laws of the United States.

**2. PARTIES COVERED.** If the vessel or other craft in use is not owned by or chartered by demise to Carrier Horizon Lines, LLC, this bill of lading shall take effect for purposes of limitation of liability only, as a contract with the owner or demise charterer, as the case may be. If it shall be adjudged that any person other than the owner or demise charterer (including the master, time charterer, agents, stevedores, lashers, watchmen and other independent contractors) is the carrier or bailee of the goods, or is otherwise liable in contract or in tort, all rights, exemptions, and limitations of liability provided by law and by the terms of this bill of lading shall be available to such other persons. In contracting for the foregoing rights, exemptions, and limitations of liability, Carrier is acting as agent and trustee for the persons above mentioned. Particulars of the ownership of the vessel or other craft used may be obtained from Carrier or its agents.

**3. SCOPE OF VOYAGE.** The voyage herein contracted for shall include ports in or out of the advertised, geographical, usual or ordinary route or order. The vessel may omit calling at any port or ports whether scheduled or not, and may call at the same port more than once; may before or after proceeding toward the port of discharge, make trial trips or tests, take fuel or stores at any port in or out of the regular course of the voyage, sail with or without pilots, tow and be towed, and save or attempt to save life, vessels in distress or other property; and all of the foregoing are included in the contract voyage.

Carrier shall have the right, without notice, to substitute or employ a vessel, watercraft, or other means rather than the vessel named herein to perform all or part of the carriage. When the port of destination or discharge is not served by Carrier's container-ship, Carrier may, at any intermediate port, break bulk of cargo shipped in containers.

**4. RISKS AND LIBERTIES.** In any situation which in the judgment of Carrier or the master is likely to give rise to risk of seizure, arrest, detention, damage, delay to, or loss

of any goods or the vessel, or to make it imprudent for any other reason to receive, keep or load the goods, or continue the voyage, or discharge the goods. Carrier or the master shall have the right (a) to decline to receive, keep or load the goods or to discharge or devan them at any convenient port or place and to require the shipper or person entitled thereto to take delivery and if he fails to do so, to store them at the risk and expense of the goods; or (b) to discharge or devan the goods into any lighter, craft, depot or other place; or (c) to retain the goods on board until the return trip or until such time as Carrier or the master deems advisable; or (d) to substitute another vessel or to transship or forward the goods, or any part thereof, by any means, but always at the risk and expense of the goods. Any disposition of the goods pursuant to this clause shall constitute complete performance of this contract by Carrier who shall be free of further responsibility. For any and all service rendered as herein provided, Carrier shall be entitled to reasonable extra compensation and shall have a lien on the goods.

Goods shut out or not loaded on a vessel for any reason can be forwarded on a subsequent vessel or by feederships, lighters, aircraft, trucks, trains or other means in addition to the ocean vessel, or its substitute, to accomplish the carriage herein.

**5. GOVERNMENTAL ORDERS.** Carrier or the master shall have liberty to comply with any orders, directions, regulations, requests or suggestions given by or received from the government of any nation or by any person purporting to act with the authority of such government. Any disposition of the goods pursuant to this clause shall constitute completion of the contract of carriage by Carrier, and the goods thereafter shall be solely at their own risk and expense.

**6. PACKING OF CONTAINERS - SHIPPER'S GUARANTY - INDEMNITY.** Carrier shall not be responsible for the safe and proper stowing of cargo in containers if such containers are packed by the shipper or shipper's agent and no responsibility shall attach to Carrier for any loss or damage caused to contents by shifting, overloading, or failure to label or properly chock, lash or pack the goods in the container within their individual packages. The shipper or shipper's agent shall properly seal containers loaded by them. The shipper, or its agent shall carefully inspect and clean containers, if necessary, before packing them. Acceptance and packing of the containers shall be prima facie evidence that the containers were sound, clean and suitable for use and shall relieve Carrier of responsibility for any damage to goods carried resulting from the condition of the container used. "Containers" as used herein include all types of containers for dry, liquid, and perishable cargo, as well as vans and trailers.

The shipper, consignee, holder hereof and owner of the goods agree to be liable for and shall hold harmless and indemnify Carrier for any injury, loss or damage, including fines, penalties, and reasonable attorney's fees arising from the shipper's failure to properly describe, label, stow or secure the goods in containers or to clean containers and also for damage or expense caused by the goods to the containers, other property, or for injury or death to persons.

**7. PERISHABLE GOODS.** Goods of a perishable nature are carried in dry containers without environmental or atmospheric control or other special services unless the face of this bill of lading notes that the goods are to be carried in a refrigerated, heated, specially ventilated or otherwise specially equipped container. This carriage is subject to the special services and charges offered in the Carrier's tariff.

The Merchant is responsible for bringing the goods to the proper temperature before loading the goods into the containers, for the proper stowage of the goods within the container, for setting the temperature (including maintenance and repair), during all times before containers are delivered to the Carrier and after they are delivered by the Carrier. The Carrier is not responsible for product deterioration caused by inherent vice, defects in the merchandise or transit times in excess of the product's shelf life. Refrigerated, heated, specially ventilated or otherwise specially equipped containers are not equipped to change the temperature of goods. (They are equipped only to maintain temperature.) Merchant will give written notice of requested temperature setting of the thermostatic controls before receipt of the goods by the Carrier. When a loaded container is received, the Carrier will verify that the thermostatic controls are set to maintain container temperature as requested. The Carrier is unable to determine whether the goods were at the proper temperature when they were loaded into the container or when the container is delivered to the Carrier. Air temperature at the unit sensor will be maintained within a range of plus or minus 5 degrees Fahrenheit of the temperature requested by the shipper on the face of this bill of lading, if the goods were at that temperature when loaded into the container and if the temperature controls were properly set when the container was loaded. The Carrier is not responsible for temperature fluctuations that do not exceed 4 hours duration.

**8. LIVE ANIMALS.** Live animals, birds, and fish are received, kept and carried solely at shipper's risk of accident, disease or mortality and without warranty or undertaking whatsoever by Carrier.

**9. STOWAGE ON DECK.** Goods may be stowed in any covered-in space or loaded in or on a container, van or trailer and carried on deck and such shall be deemed to be stowed under deck for all purposes, including General Average and the Carriage of Goods by Sea Act, the Hague Rules or other compulsorily applicable legislation.

If the goods are shipped on deck not in containers, they will be carried solely at the risk of the goods and without any liability, but in any event, the Carrier shall have the benefits, defenses and limitations of liability available under the Carriage of Goods by Sea Act, the Hague/Visby Rules or as contained herein.

**10. TRANSSHIPMENT.** If the goods are destined for a port or destination not served by Horizon Lines, LLC, or other carriers serving through routes with Horizon Lines, then upon the request and at the risk of the shipper, the goods will be delivered for trans-shipment or forwarding at the Port of Discharge or Place of Delivery by On-carrier served by Carrier's(\*) vessel(s) or other mode of transport. In such case, Horizon Lines, LLC or participating carriers will have not further duty or responsibility whatsoever as Carrier, this bill of lading operating only as a document of title thereafter.

**11. DELIVERY AND STORAGE.** Except at ports where Carrier delivers goods directly to the consignee, delivery shall take place and Carrier shall have no further responsibility when the goods are landed upon a safe dock, lighter, or other craft and custody is taken by port or government authorities, terminal operator or lighterman. At ports where Carrier delivers goods to consignee, if the consignee does not take delivery as soon as the goods are ready, the goods shall thereafter be at their own risk and expense. Carrier shall have the right, but not the duty, to store containers in the open before loading or after discharge.

**12. EXPENSE, FINES.** The shipper and consignee shall be liable for, and shall indemnify Carrier and vessel and hold them harmless against, and Carrier shall have a lien on the goods for all expenses and charges of mending, cooping, repairing, fumigating, devanning, restowing, storing or reconditioning, and all expenses incurred for the benefit or protection of the goods, also for any payment, duty, fine or other expenses including but not limited to court costs, expenses, and reasonable attorney's fees incurred or levied upon Carrier or the vessel in connection with the goods because of shipper's failure to comply with any laws or regulations.

**13. FREIGHT, LIENS, QUANTITY.** Freight shall be payable, at Carrier's option, on gross weight, measurement ton, or on value as set forth in Carrier's tariff. Carrier shall have the right, but not the duty, to open packages or containers, and if shipper's particulars are found to be erroneous, the shipper, consignee and the goods shall be liable for the correct freight charge and any expenses incurred in examining, weighing, measuring or valuing the goods.

Full freight to the port of discharge named on the face of this document and all advance charges against the goods shall be considered completely earned on receipt of the goods by Carrier, even though the vessel or goods are damaged or lost or the voyage is frustrated or abandoned.

All sums payable to Carrier are due when incurred and shall be paid in full, in United States currency, or, at Carrier's option, in its equivalent in the currency of the port of loading or the port of discharge, or as specified in tariffs or conference agreement.

The shipper, consignee, holder hereof, and owner of the goods shall be jointly and severally liable to Carrier for the payment of all freight, demurrage, General Average and other charges, including but not limited to court costs, expenses and reasonable attorney's fees incurred in collecting sums due Carrier. Payment of ocean freight and charges to a freight forwarder, broker or anyone other than Horizon Lines, LLC or its authorized agent, shall not be deemed payment to the Carrier and shall be made at payor's sole risk.

Carrier shall have a lien on the goods, which shall survive delivery, for all charges due and may, without notice, enforce this lien by public or private sale of the goods and other property belonging to the shipper, consignee, holder hereof or owner of the goods which may be in Carrier's possession.

**14. BOTH TO BLAME COLLISIONS.** If the vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or of the servants of Carrier in the navigation or in the management of the vessel, the owners of the goods carried hereunder will indemnify Carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners if said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying vessel or Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in additions to, the colliding ships or objects are at fault in respect of a collision, contact, stranding or other accident.

**15. GENERAL AVERAGE.** General Average shall be adjusted, stated and settled according to York Antwerp Rules 1974, except Rule XXII thereof, at the place selected by Carrier, and as to matters not provided for by these Rules, according to the laws and usage at the port of New York. Average agreement or bond and such additional security as may be required by Carrier, must be furnished before delivery of the goods.

In the event of accident, danger, damage or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, Carrier is not responsible, by statute, contract or otherwise, the goods, the shipper and the consignee shall contribute with Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of goods. If a salvaging ship is owned or operated by Carrier, salvage shall be paid for as fully and in the same manner as if the salvaging ship belonged to strangers. Cargo shall pay its contribution to General Average even when such average is the result of fault, neglect or error of the master, pilot or crew. The shippers and consignees expressly renounce all codes, statutes, laws or regulations which might otherwise apply.

**16. FIRE.** Carrier shall not be liable for any loss or damage to goods occurring at any time, even though before loading on or after discharge from the vessel, by reasons or by means of any fire whatsoever, unless such fire shall be caused by the actual fault or privity of Carrier.

**17. VALUATION.** In the event of loss, damage or delay to or in connection with goods, exceeding in actual value the equivalent of \$1,000 lawful money of the United States, per package, or in case of goods not shipped in packages, per shipping unit, the value of the goods shall be deemed to be \$1,000 per package or unit, unless the nature and higher value of goods have been declared by the shipper herein and extra charges paid as provided in Carrier's tariff. However, Carrier's liability shall not exceed the invoice value of the goods. The word "package" shall include a unitized load, group, assemblage or dunnage, including a skid, cradle, or pallet. When the U.S. Carriage of Goods by Sea Act does not apply of its own force, the \$1,000 limitation shall apply to each shipping or customary freight unit or piece, provided always that any compulsorily applicable limitation which is greater than the \$1,000 limitation shall apply in place of the \$1,000 limitation.

**18. NOTICE OF CLAIM-TIME FOR SUIT-JURISDICTION.** Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by Carrier of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days after delivery.

Carrier and the vessel shall be discharged from all liability in respect of loss or damage unless a claim in writing has been made within one year after delivery of the goods or the date when the goods should have been delivered; or, if a claim has been timely made, but declined, suit is not brought within two years from the date of declaration of the claim in whole or part. Suit shall not be deemed brought against Carrier or vessel until jurisdiction shall have been obtained over Carrier or the vessel, or both, by service of process thereon.

Carrier may, at its sole discretion, and on the basis that it has not been prejudiced by the passage of time, waive notice requirements or other time limits. Nevertheless, Carrier will not entertain claims which are filed later than three years from the date of delivery of the goods, or the date when the goods should have been delivered.

**19. FINAL AGREEMENT.** All prior agreement, docks receipts or freight engagements for the shipment of the goods and all other arrangements are superseded by this bill of lading and Freight Tariff Rules and Regulations on file with the Surface Transportation Board, which are incorporated herein by reference and form part of this bill of lading as if set forth herein at length. Copies of the Freight Tariff Rules and Regulations are available upon request.

**20. SHIPPER'S WARRANTIES.** The shipper warrants that he is the owner of and entitled to possession of the goods or has the authority of the owner and all persons entitled to possession of the goods to agree to the terms hereof.

**21. THROUGH AND ON BOARD BILLS OF LADING.** When used in or endorsed on this bill of lading the words "ON BOARD" shall mean on board the exporting vessel or on board another mode of transportation operated by or on behalf of the originating carrier and en route to the port of loading for loading aboard the participating carrier's vessel.

The participating land carrier's bill of lading lawfully in effect on the date of issue of this bill of lading shall, together with the rules, tariffs and classifications of such participating carrier and applicable rules and regulations of government agencies with jurisdiction over such land carriage govern and control the possession and carriage of the goods by such participating carrier. Copies of said bill of lading form are available from such participating carrier or its agents on request. However, insofar as Clauses 1, 9, 17, 18 and 22 shall give greater rights to the holder hereof, they shall be applied.

**22. CLAIMS.** Claims for loss of or damage to the goods agreed to be carried under the terms of this bill of lading may be filed against Horizon Lines, LLC, which agrees to be solely responsible for processing said claims to conclusion. It is agreed that in the event of payment of any such claims by Horizon Lines, LLC, its consignee against all others, including participating carriers, on account of such loss or damage. Claims must be filed and suit commenced within the time limits provided by law and the terms of the bill of lading and tariff. When loss or damage occurs at any time from the time the cargo has been delivered to Carrier at the Port of Loading or, if applicable, Place of Initial Receipt until it has been delivered to the Consignee or its agent at the Port of Discharge or if applicable, the Place of Delivery by On-carrier, it shall be deemed, as between the shipper, consignee or holder hereof and Horizon Lines, LLC that the loss or damage occurred aboard the vessel while in the custody or control of Horizon Lines, LLC, all adjustments of such loss or damage shall be made in accordance with Clause 1, "CLAUSE PARAMOUNT" of this bill of lading. However, should Horizon Lines, LLC recover an amount greater than such adjustment from the actual person which was responsible for the loss or damage, such amounts shall be forwarded to the claimant upon receipt.

Except as otherwise provided herein, Carrier will not be liable for indirect, special or consequential damages.