TERMS AND CONDITIONS

1. DEFINITIONS

"Carrier"	means DAL Deutsche Afrika-Linien GmbH & Co. KG
"Merchant"	includes the Shipper, Holder, Consignee, Receiver of the Goods, any Person owning or entitled to the possession of the Goods or of this Bill of Lading and anyone acting on behalf of any such Person.
"Holder"	means any Person for the time being in possession of this Bill of Lading
"Person"	includes an individual, group, company or other entity.
"Sub-Contractor"	includes owners and operators of vessels (other than the Carrier), stevedores, terminal and groupage operators, road and rail transport operators and any independent contractor employed by the Carrier in performance of the Carriage and any sub-sub-contractors thereof.
"Indemnity"	includes defend, indemnify and hold harmless whether or not the obligation arises out of negligent acts or omissions of the Carrier, his servants, agents or sub-contractors.
"Goods"	means the whole or any part of cargo received from this Shipper and includes the packing and any equipment or container not supplied by or on behalf of the Carrier.
"Container"	includes any container, trailer, transportable tank, flatrack or pallet, or any similar article used to consolidate Goods and any ancillary equipment.
"Carriage"	means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods covered by this Bill of Lading.
"Combined Transport"	arises if the Place of Receipt and/or the Place of Delivery are indicated on the face hereof in the relevant spaces.
"Port to Port"	arises if the Carriage is not Combined Transport.
"Freight"	includes all charges payable to the Carrier in accordance with the applicable Tariff and this Bill of Lading.

2. CARRIER'S TARIFF

The terms and conditions of the Carrier's applicable Tariff are incorporated herein. Particular attention is drawn to the terms and conditions therein relating to container and vehicle demurrage. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier or his Agents upon request. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

3. WARRANTY

The Merchant warrants that in agreeing to the terms and conditions hereof he is, or has the authority of, the Person owning or entitled to the possession of the Goods and this Bill of Lading.

4. SUB-CONTRACTING AND INDEMNITY

(1) The Carrier shall be entitled to sub-contract the Carriage on any terms whatsoever.

(2) The Merchant undertakes that no claim or allegation shall be made against any Person whomsoever by whom the Carriage is performed or undertaken (including all Sub-Contractors of the Carrier), other than the Carrier, which imposes or attempts to impose upon any such Person, or any vessel owned by any such Person, any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of such Person and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing every such Person or vessel shall have the benefit of every right, defence, limitation and liberty of whatsoever nature herein contained or otherwise available to the Carrier including the law and jurisdiction clause in clause 24 hereof as if such provisions were expressly for his benefit; and in entering into this contract, the Carrier, to the extent of these provisions, does so not only on his own behalf but also as agent and trustee for such Persons.

(3) The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person other than in accordance with the terms and conditions of this Bill of Lading which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods, or the Carriage of the Goods, whether or not arising out of negligence on the part of the Carrier and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

(4) The provisions of clause 4 (2) above, including but not limited to the undertakings of the Merchant contained therein, shall extend to claims or allegations of whatsoever nature against other Persons chartering space on the carrying vessel.

5. CARRIER'S RESPONSIBILITY

(1) Port-to-Port Shipment

(a) When loss or damage has occurred between the time of loading of the Goods by the Carrier at the Port of Loading or the time of discharge by the Carrier at the Port of Discharge, the responsibility of the Carrier shall be determined in accordance with German law making the Hague-Visby Rules compulsorily applicable to the Bill of Lading. However, in the event the Bill of Lading has been issued in Germany or a country in which the Hague Rules are compulsorily applicable and this Bill of Lading covers a shipment from or to Germany and such aforesaid countries, the responsibility of the Carrier shall be determined in accordance with German law, making the Hague Rules compulsorily applicable.

(b) The Carrier shall be under no liability whatsoever for loss or damage to the Goods occurring, if such loss or damage arises prior to loading on, or subsequent to the discharge from the vessel. However, in the event that the applicable compulsory law provides the contrary, the Carrier shall have the benefit of every right, defence limitation and liberty in the Hague-Visby Rules or Hague Rules, whichever is applicable as determined under clause 5 (1) (a).

(2) Combined Transport

(a) If the place of damage to or loss of the Goods is known, the responsibility of the Carrier is determined by the law applicable to this leg of Carriage.

(b) Where applicable, liability shall be determined in accordance with the following conventions and agreements: CMR, CIM, Montreal Convention, Warsaw Convention, CMNI, and any amendments to these conventions and agreements. In cases where CMNI is applicable, the Carrier is not liable for losses of or damage to the Goods arising during the Carriage by inland waterway from an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the carrier exercised due diligence to ensure that – taking into account the goods to be carried – the vessel is in a state to receive the cargo, is seaworthy and is manned and equipped as prescribed by the regulations in force and is furnished with the necessary national and international authorizations for the Carriage of the Goods in question, unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result.

(c) IN THE EVENT THAT THE LAW WHICH IS APPLICABLE UNDER CLAUSE 5 (2) (a) OR (b) IS NOT MANDATORY FOR THIS TRANSPORT AND PROVIDES FOR LIABILITY EXCEEDING 2 SDR PER KILO OF THE GROSS WEIGHT OF THE GOODS LOST OR DAMAGED, THE MAXIMUM LIABILITY SHALL BE 2 SDR PER KILO OF THE GROSS WEIGHT OF THE GOODS LOST OR DAMAGED. SDR MEANS SPECIAL DRAWING RIGHT AS DEFINED BY THE INTERNATIONAL MONETARY FUND.

(d)I IF THE PLACE OF DAMAGE TO OR LOSS OF THE GOODS IS NOT KNOWN, THE CARRIER'S MAXIMUM LIABILITY SHALL IN NOT EXCEED 2 SDR PER KILO OF THE GROSS WEIGHT OF THE GOODS LOST OR DAMAGED.

(e) THE CARRIER SHALL NOT BE ENTITLED TO THE BENEFIT OF THE LIMITATION OF LIABILITY PROVIDED FOR IN CLAUSE 5 (2) (c) AND (d) IF IT IS PROVEN THAT THE DAMAGE RESULTED FROM AN ACT OR OMISSION OF THE CARRIER OR HIS SERVANTS DONE WITH INTENT TO CAUSE DAMAGE OR RECKLESSLY AND WITH KNOWLEDGE THAT DAMAGE WOULD PROBABLY RESULT. HOWEVER, IF THE LOSS OR DAMAGE HAS OCCURRED DURING THE CARRIAGE OF GOODS BY SEA, THE CARRIER IS ENTITLED TO THE BENEFIT OF LIMITATION OF LIABILITY AS PROVIDED FOR IN CLAUSE 5 (c) EXCEPT WHERE A LAW APPLICABLE MAKING THE HAGUE-VISBY RULES COMPULSORILY APPLICABLE OR IT IS PROVEN THAT THE DAMAGE RESULTED FROM AN ACT OR OMISSION OF THE CARRIER WITH INTENT TO CAUSE DAMAGE, OR RECKLESSLY AND WITH KNOWLEDGE THAT DAMAGE WOULD PROBABLY RESULT.

(3) Notice of Claim and Time for Suit
Unless notice of loss or damage and the general nature of such loss or damage is given in writing to the Carrier at the Port of Discharge or at the Place of Delivery at the time of delivery of the Goods into the custody of a person entitled to delivery or if in cases where the loss or damage is not apparent, such notice is not given within three days after such delivery, the absence of any such notice shall be prima facie evidence of the right and true delivery of the Goods and any such loss or damage which may have occurred to the Goods shall be deemed to be due to circumstances which are not the responsibility of the Carrier. In any event, the Carrier shall be discharged from all liability in respect of loss or damage to/ of the Goods, non-delivery, mis-delivery, delay, or any other loss or damage connected or related to the carriage unless suit is brought within one year after delivery of the Goods or the date when the goods should have been delivered.

6. SUNDRY LIABILITY PROVISIONS

(1) Delay

The Carrier does not undertake that the Goods arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use. The Carrier shall under no circumstances be liable for direct, indirect or consequential loss or damage caused by delay. If the Carrier notwithstanding the foregoing is being held responsible for delay, liability shall be limited:
(a) for cases of combined transport to three times the amount of the freight payable
(b) for a port-to-port shipment to the amount of the freight payable for the delayed Goods.

(2) Scope of Application and Exclusions

The rights, defences, limitations and liberties of whatsoever nature provided in this Bill of Lading shall apply in any action against the Carrier for loss or damage or delay of whatever nature, howsoever occurring and whether the action is founded in contract or in tort or on whatever basis and even in cases the loss, damage or delay of whatever nature arose as a result of unseaworthiness, negligence or fundamental breach of contract.

(3) Consequential Losses or Loss of Profits

In no circumstances whatsoever and howsoever arising the Carrier shall be liable for any direct or indirect or consequential losses or damages or any loss of profits. In case of liability the carrier shall, however, never be liable in excess of the limitation figure and/or defences provided by the Hague/ Hague Visby Rules.

Should the Carrier contrary to the foregoing be held responsible for any such consequential losses or damages or loss of profits it is hereby expressly agreed that the quantum of such liability howsoever arising shall never exceed three times of the maximum liability amount as calculated by applying Clause 5. (2) (e) above unless under the relevant legal regime a lower liability amount should be applicable which then shall apply instead.

(4) Inspection by Authorities

If by order of authorities at any place, a Container has to be opened for the Goods to be inspected, the Carrier shall not be liable for any loss or damage incurred as a result of any opening, unpacking, inspection or re-packing. The Carrier shall be entitled to recover the cost of such opening, unpacking, inspection and re-packing from the Merchant.

7. SHIPPER-PACKED CONTAINERS

If a Container has not been packed by or on behalf of the Carrier:

(1) The Carrier shall not be liable for loss of or damage to the Goods caused by:

(a) the manner in which the Container has been packed, or

(b) the unsuitability of the Goods for carriage in the Container supplied, or

(c) the unsuitability or defective condition of the Container or the incorrect setting of any refrigeration controls thereof, provided that, if the Container has been supplied by or on behalf of the Carrier, this unsuitability or defective condition could have been apparent upon inspection by the Merchant at or prior to the time when the Container was packed, or

(d) packing temperature controlled Goods that are not at the correct temperature for Carriage.

(2) The Shipper is responsible for the packing, securing and sealing of all Shipper-Packed Containers and, if a Shipper-Packed Container is delivered by the Carrier with its original seal as affixed by the Shipper intact, the Carrier shall not be liable for any shortage of Goods ascertained at delivery. If, nevertheless, a claim for shortage is made against the carrier by any person whomsoever, the shipper agrees to indemnify the carrier against the cost of any such claim, plus any costs incurred in respect thereof.

(3) The Merchant shall indemnify the Carrier against any loss, damage, liability or expense whatsoever and howsoever arising caused by one or more of the matters referred to in Clause 7 (1), save that, if the loss, damage, liability or expense was caused by a matter referred to in Clause 7 (1) (c), the Merchant shall not be liable to indemnify the Carrier in respect thereof unless the proviso referred to in that Clause applies.

8. INSPECTION OF GOODS

The Carrier or any Person to whom the Carrier has sub-contracted the Carriage or any Person authorised by the Carrier shall be entitled, but under no obligation, to open any Container or package at any time and to inspect weigh and/or measure of the Goods.

9. CARRIAGE AFFECTED BY CONDITION OF GOODS

If it appears at any time that, due to their condition, the Goods cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measure(s) in relation to the Container or the Goods the Carrier may without notice to the Merchant (but as his agent only) take any measure(s) and/or incur any additional expense to carry or to continue the Carriage thereof, and/or sell or dispose of the Goods, and/or abandon the Carriage and/or store them ashore or afloat, under cover or in the open, at any place, whichever the Carrier, in his absolute discretion, considers most appropriate, which abandonment, storage, sale or disposal shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any additional expense so incurred.

10. DESCRIPTION OF GOODS

(1) This Bill of Lading shall be prima facie evidence of the receipt by the 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 in the box on the face hereof entitled „Total No. of Containers/ Packages received by the Carrier".

(2) Except as provided in Clause 10 (1), no representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods, and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

(3) If any particulars of any Letter of Credit and/or Import Licence and/or Sale Contract and/or Invoice or Order number and/or details of any contract to which the Carrier is not a party are shown on the face of this Bill of Lading, such particulars are included solely at the request of the Merchant for his convenience. The Merchant agrees that the value of the goods is unknown to the Carrier and that the inclusion of such particulars shall not be regarded as a declaration of value and in no way increases the Carrier's liability under this Bill of Lading. The Merchant further agrees to indemnify the Carrier against all consequences of including such particulars in this Bill of Lading.

11. SHIPPER'S/MERCHANT'S RESPONSIBILITY

(1) All of the Persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the due fulfilment of all obligations undertaken by the Merchant in this Bill of Lading.

(2) The Merchant warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Merchant on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on behalf of the Merchant, are adequate and correct. The Merchant also warrants that the Goods are lawful Goods and contain no contraband and the Merchant warrants that any Container supplied by him comply with ISO standards and are fit for carriage and stowage.

(3) The Merchant shall indemnify the Carrier against all Claims, loss, damage, fines and expenses arising or resulting from any breach of any of the warranties in Clause 11 (2) hereof or from any other cause in connection with the Goods for which the Carrier is not responsible.

(4) The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses for losses (including, without prejudice to the generality of the foregoing, Freight for any additional Carriage undertaken) incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof.

(5) If Containers supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty Containers, with interiors clean, to the point or place designated by the Carrier, his servants or agents, within the time prescribed. Should a Container not be returned within the time prescribed, in the Tariff, the Merchant shall be liable for any detention, loss or expenses which may arise from such non-return.

(6) Containers released into the care of the Merchant for packing, unpacking or any other purpose whatsoever are at the sole risk of the Merchant whilst in his control. The Merchant shall indemnify the Carrier for all loss and/or damage to such Containers or fines and penalties incurred in relation to such Containers. Merchants are deemed to be aware of the dimensions of any Containers released to them.

12. FREIGHT

(1) Freight shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.

(2) The Merchants' attention is drawn to the stipulations concerning currency in which the Freight is to be paid, rate of exchange, devaluation and other contingencies relative to Freight in the applicable Tariff.

(3) Freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. If the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that liquidated damages shall be payable to the Carrier in accordance with the applicable Tariff.

(4) Freight has been calculated on the basis of the Carrier's costs as known at the time the contract of Carriage is made. Should in an emergency there be any subsequent substantial change in those costs (including, but not limited to, additional war risks premiums), the Carrier may recover additional Freight from the Merchant, whether or not Freight is prepaid or collect and whether or not Carriage has commenced.

(5) All Freight shall be paid without any set-off, counter-claim, deduction or stay of execution before delivery of the Goods.

(6) Any person engaged by the Merchant to perform forwarding services in respect of the Goods shall be considered to be the exclusive agent of the Merchant for all purposes and any payment of Freight to such Person shall not be considered payment to the Carrier in any event. Failure of such Person to pay any part of the Freight to the Carrier shall be considered a default by the Merchant.

13. LIEN

The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract and for general average contributions, salvage and charges to whomsoever due. The Carrier shall also have a lien against the current Holder on the Goods and any documents relating thereto for all sums due from him to the Carrier under any other contract. In any event any lien shall extend to cover the cost of recovering the sums due and for that purpose the Carrier shall have the right to sell the Goods by public auction or private treaty, without notice to the Merchant.

14. OPTIONAL STOWAGE AND DECK CARGO

(1) The Goods may be packed by the Carrier in Containers and consolidated with other goods in Containers.

(2) Goods, whether or not packed in Containers, may be carried on deck or under deck at the sole discretion of the Carrier without notice to the Merchant. All such Goods whether carried on deck or under deck, shall participate in general average and shall be deemed to be within the definition of goods for the purpose of the Hague Rules and shall be carried subject to these Rules.

(3) Notwithstanding Clause 14 (2), in the case of Goods which are stated on the face hereof as being carried on deck the Hague Rules shall not apply and which are so carried the Carrier shall be under no liability whatsoever for loss, damage or delay, howsoever arising whether or not caused by negligence of the Carrier, his servants, agents or sub-contractors.

15. LIVE ANIMALS

The Hague Rules shall not apply to the Carriage of live animals, which are carried at the sole risk of the Merchant. The Carrier shall be under no liability whatsoever for any injury, illness, death, delay or destruction howsoever arising. Should the Master in his sole discretion consider that any live animal is likely to be injurious to any other live animal or any person or property on board, or to cause the vessel to be delayed or impeded in the prosecution of the Carriage, such live animal may be destroyed and thrown overboard without any liability attaching to the Carrier. The Merchant shall indemnify the Carrier against all or any extra costs incurred for any reason whatsoever in connection with the Carriage of any live animal.

16. METHODS AND ROUTES OF CARRIAGE

(1) The Carrier may at any time and without notice to the Merchant:

(a) use any means of carriage whatsoever,

(b) transfer the Goods from one conveyance to another, including but not limited to transhipping or carrying them on another vessel than that named on the face hereof,

(c) unpack and remove the Goods which have been packed into a Container and forward them in a Container or otherwise,

(d) proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route), 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 (whether or not such port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such place or port,

(f) comply with any orders or recommendations given by any government or authority, or any Person 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 employed by the Carrier the right to give orders or directions,

(g) permit the vessel to proceed with or without pilots, to tow or be towed, or to be dry-docked with or without Goods and/or containers on board.

(2) The liberties set out in Clause 16 (1) may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of the Goods, including loading or unloading other goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing any persons, including but not limited to persons involved with the operation or maintenance of the vessel and assisting vessels in all situations. Anything done in accordance with Clause 16 (1) or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation.
(3) By tendering the Goods for Carriage without any written request for Carriage in a specialised Container, or within a specific temperature range, or subject to any particular attention, or for Carriage otherwise than in a Container, the Merchant accepts that the Carriage may properly be undertaken in a general purpose container in the customary manner carried on or under deck at the Carrier's sole discretion.

17. MATTERS AFFECTING PERFORMANCE

If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Goods safely or properly to be carried or carried further) and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time this contract was entered into or the Goods were received for Carriage), the Carrier (whether or not the Carriage is commenced) may, without prior notice to the Merchant and at the sole discretion of the Carrier, either:
(a) Carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, by an alternative route to that indicated in this Bill of Lading or that which is usual for Goods consigned to that Port of Discharge or Place of Delivery. If the Carrier elects to invoke the terms of this Clause 17 (a) then, notwithstanding the provisions of Clause 16 hereof, he shall be entitled to charge such additional Freight as the Carrier may determine; or

(b) Suspend the Carriage of the Goods and store them ashore or afloat upon the terms of this Bill of Lading and endeavour to forward them as soon as possible, but the Carrier makes no representations as to the maximum period of suspension. If the Carrier elects to invoke the terms of this Clause 17 (b) then, notwithstanding the provisions of Clause 16 hereof, he shall be entitled to charge such additional Freight as the Carrier may determine; or

(c) Abandon the Carriage of the Goods and place them at Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full Freight on the Goods received for Carriage, and the Merchant shall pay any additional costs of the Carriage to, and delivery and storage at, such place or port.

If the Carrier elects to use an alternative route under Clause 17 (a) or to suspend the Carriage under Clause 17 (b) this shall not prejudice his right subsequently to abandon the Carriage.

18. DANGEROUS GOODS

(1) No Goods which are or may become dangerous, inflammable or damaging (including radio-active materials), or which are or may become liable to damage any property whatsoever, shall be tendered to the Carrier for Carriage without his express consent in writing, and without the Container as well as the Goods themselves being distinctly marked on the outside so as to indicate the nature and character of any such Goods and so as to comply with any applicable laws, regulations or requirements. If any such Goods are delivered to the Carrier without such written consent and/or marking, or if in the opinion of the Carrier the Goods are or are liable to become of a dangerous, inflammable or damaging nature, they may at any time be destroyed, disposed of, abandoned, or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Freight.

(2) The Merchant undertakes that such Goods are packed in a manner adequate to withstand the risks of Carriage having regard to their nature and in compliance with all laws or regulations which may be applicable during the Carriage.

(3) Whether or not the Merchant was aware of the nature of the Goods, the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of the Carriage of such Goods.

(4) Nothing contained in this Clause shall deprive the Carrier of any of his rights provided for elsewhere.

19. NOTIFICATION AND DELIVERY

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

(2) The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff (see Clause 2). If the Merchant fails to do so the Carrier shall be entitled, without notice, to unpack the Goods if packed in Containers and/or to store the Goods ashore, afloat, in the open or under cover, at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods stored as aforesaid shall wholly cease, and the costs of such storage (if paid or payable by the Carrier or any agent or Subcontractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.

(3) If the Merchant fails to take delivery of the Goods within thirty days of delivery becoming due under Clause 19 (2), or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, without prejudice to any other rights which he may have against the Merchant, without notice and without any responsibility whatsoever attaching to him, sell, destroy or dispose of the Goods and apply any proceeds of the sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.

(4) If at the place where the Carrier is entitled to call upon the Merchant to take delivery of the Goods under Clause 19 (2), the Carrier is obliged to hand over the Goods into the custody of any customs, port or any other authority, such hand-over shall constitute due delivery to the Merchant under this Bill of Lading.

(5) Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this Clause and/or to mitigate any loss or damage thereto shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.

(6) If the consignee/receiver requires the Carrier to deliver the Goods at a port or place beyond the Port of Discharge or, as the case may be, beyond the Place of Delivery originally designated in this Bill of Lading, and the Carrier in his absolute discretion agrees to such further Carriage, such further Carriage will be undertaken on the basis that the terms and conditions of this Bill of Lading are to apply to such Carriage as if the ultimate destination as agreed with the consignee/receiver had been included in the description of the transport on the front side of this Bill of Lading.

20. FCL MULTIPLE BILLS OF LADING

(1) Goods will only be delivered in a Container to the Merchant if all Bills of Lading in respect of the contents of the Container have been surrendered authorising delivery to a single Merchant at a single Place of Delivery. In the event that this requirement is not fulfilled the Carrier may unpack the Container and, in respect of Goods for which Bills of Lading have been surrendered, deliver them to the Merchant on an LCL basis. Such delivery shall constitute due delivery hereunder, but will only be effected against payment by the Merchant of LCL Service Charges and any charges appropriate to LCL Goods (as laid down in the Tariff) together with the actual costs incurred for any additional services rendered.

(2) If this is an FCL Multiple Bill of Lading (as evidenced by the qualification of the tally acknowledged overleaf to the effect that it is „One of ..... part cargoes in the Container"), then the Goods detailed overleaf are said to comprise part of the contents of the Container indicated. If the Carrier is required to deliver the Goods to more than one Merchant and if all or part of the total Goods within the Container consists of bulk Goods or unapproprietated Goods, or is or becomes mixed or unmarked or unidentifiable, the Holders of Bills of Lading relating to Goods within the Container shall take delivery thereof (including any damaged portion) and bear any shortage in such proportions as the Carrier shall in his absolute discretion determine, and such delivery shall constitute due delivery hereunder.

21. OPTION FOR PORT OF DISCHARGE

If the merchant is given an option to select the port of discharge, such option must be declared to the vessel's agents at the first of the optional ports not later than 72 hours before the vessel's arrival there. In the absence of such declaration the carrier may elect to discharge at the first port or any other optional port and the contract of carriage will then be considered as having been fulfilled. Any option can be exercised only for the total quantity under this bill of lading.

22. GENERAL AVERAGE & SALVAGE

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

(2) Any general average on a vessel operated by the Carrier shall be adjusted according to the York/ Antwerp Rules of 1994 or any subsequent amendment thereto at any port or place and in any currency at the option of and by an adjuster appointed by the Carrier. Any general average on a vessel not operated by the Carrier (whether a seagoing or inland waterways vessel) shall be adjusted according to the requirements of the operator of that vessel. In either case the Merchant shall give such cash deposit or other security as the Carrier may deem sufficient to cover the estimated general average contribution of the Goods. Any security, other than cash deposits, must be given by a party acceptable to and with assets in a jurisdiction nominated by the Carrier. Such security must be provided before delivery if the Carrier requires, or, if the Carrier does not so require, within three months of the delivery of the Goods, whether or not at the time of delivery the Merchant had notice of the Carrier's lien. The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.

(3) Conversion into the currency of the adjustment shall be calculated at the rate prevailing on the date of payment, for disbursements and on the date of completion of discharge of the vessel for allowances, contributory values, etc.

(4) If a salving vessel is owned or operated by the Carrier salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers.

(5) In the event of any general average credit balances due to Merchants still being unclaimed 5 years after the date of issue of the adjustment, these shall be paid to the owner or disponent owner of the vessel, who will hold such credit balances pending application by the Merchants entitled thereto.

(6) In the event of the Master considering that salvage services are needed, the Merchant agrees that the Master may act as his agent to procure such services to Goods and that the Carrier may act as his agent to settle salvage remuneration.

23. VARIATION OF THE CONTRACT

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

24. LAW AND JURISDICTION

Any claim and/or any dispute arising under this Bill of Lading or connected with this Bill of Lading or the Carriage shall be governed by the laws of GERMANY and shall be determined by the courts in HAMBURG to the exclusion of the jurisdiction of any other courts of any other place. Notwithstanding the foregoing, in case the Carrier does intend to sue the Merchant, solely the Carrier in his exclusive discretion has the option to institute proceedings also before such other courts which as per the local law applicable before such courts have jurisdiction for a law suit against the Merchant and in such case the law applicable before such courts shall apply on the suit once and if filed by the Carrier against the Merchant.

25. VALIDITY

In the event that anything herein contained 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 no further be null and void.

26. BOTH-TO-BLAME COLLISION

The Both-to-Blame collision clause published by the Baltic and International Maritime Council is hereby incorporated into this Bill of Lading.

27. ISPS Code

The Merchant has to comply with the requirements of the ISPS Code. If the Carrier is held liable by any state authority or any other third party, the Merchant will indemnify and hold the Carrier harmless from any damage resulting from the violation of the Code by the Merchant.

The Merchant undertakes to pay to the Carrier any costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code in relation to the Merchant's cargo.

The Carrier is entitled to deviate the vessel to a different port and to unload the goods there if the authorities in the port of destination have increased its level of security according to the ISPS Code after the goods have been loaded.

The Merchant undertakes to compensate any costs and expenses suffered by the carrier because of a delay of the vessel resulting from a violation of the ISPS Code by the Merchant.