

OCEAN BILL OF LADING – CONTRACT FOR CARRIAGE

Definitions

"Cargo" means the goods, property, freight and or merchandise described on the face hereof, whether packed in Containers or not, and whether carried on or under deck and includes any Container not supplied by or on behalf of the Carrier. "Carriage" means the whole of the operations and services undertaken by the Carrier or a Subcontractor with respect to the Cargo. "Carrier" means **DHX-Dependable Hawaiian Express, Inc.**, on whose behalf this Non-Negotiable Bill of Lading has been issued as indicated on the face hereof. "Container" includes any container, trailer, transportable tank, flat rack or pallet or any similar article used for the transportation of cargo. "Dangerous or Hazardous Goods" includes any Cargo classified or described as dangerous in the Dangerous Goods code issued by the International Maritime Organization (the "IMO CODE") or in the applicable tariff and any Cargo that could present or could be likely to present any hazard to the conveyance in which it is carried or to other Cargo or property or to any person. "Holder" means any person in possession of this Non-Negotiable Bill of Lading to whom the title in the Cargo has passed upon or by reason of the consignment of the Cargo or the endorsement of this Non-Negotiable Bill of Lading or otherwise. "Merchant" includes the consignor, shipper, Holder, consignee, the receiver of the Cargo, any person, including any corporation, company or other legal entity, owning or entitled to the possession of the Cargo or this Non-Negotiable Bill of Lading or anyone acting on behalf of any such person. "Multi-Modal Transportation" means the Carriage of Cargo under this Non-Negotiable Bill of Lading by a Vessel and one or more inland carriers for a single freight charge to the Merchant. "Non-Negotiable" means that this Bill of Lading is not a document of title, unless the words "TO ORDER" appear in the consignee box on the face hereof. "Subcontractor" shall include direct and indirect subcontractors of the Carrier and their respective servants and agents, including, but not limited to, warehousemen, stevedores, container freight stations, and motor truck carriers. "Vessel" includes the vessel set forth on the front page hereof, as well as any vessel, ship, craft, lighter or other means of transport, which is or shall be substituted, in whole or in part, for the vessel set forth on the front face hereof.

1. Applicability

These Terms and Conditions shall apply to all modes of Carriage utilized to transport the Cargo, and the Carrier's responsibility to the Merchant for the Cargo shall terminate at the time of delivery under Clause 12.

2. Issuance of this Non-Negotiable Bill of Lading

2.1. By issuance of this Non-Negotiable Bill of Lading, the Carrier undertakes to perform and/or in its own name to procure the performance of the entire Carriage, from the place at which the Carrier takes charge of the Cargo (place of receipt evidenced in this Non-Negotiable Bill of Lading) to the place of delivery designated in this Non-Negotiable Bill of Lading; 2.2. The information in this Non-Negotiable Bill of Lading shall be prima facie evidence of the taking in charge by the Carrier of the Cargo as described by such information unless a contrary indication, such as "shipper's weight, load and count", "shipper-packed container" or similar expressions, has been made in the printed text or written on this Non-Negotiable Bill of Lading.

3. Agreement to Terms and Conditions

The Merchant warrants that it is authorized to arrange for the Carriage of the Cargo and accepts the Terms and Conditions of this Non-Negotiable Bill of Lading.

4. Dangerous or Hazardous Goods and Indemnity

4.1. The Merchant shall comply with mandatory rules according to the applicable national law or by reason of international convention relating to the Carriage of goods of a dangerous or hazardous nature, and shall in any case inform the Carrier in writing of the exact nature of the danger or hazard, before Cargo of a dangerous or hazardous nature is taken in charge by the Carrier and indicate to it the precautions to be taken.

4.2. If the Merchant fails to provide such information and the Carrier is unaware of the dangerous or hazardous nature of the Cargo and the necessary precautions to be taken, and if, at any time, it is deemed to be a hazard to life or property, the Cargo may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation. The Merchant shall indemnify the Carrier against all loss, damage, liability, or expense arising out of such dangerous or hazardous Cargo being taken in charge, or its Carriage, or of any service incidental thereto. The burden of proving that the Carrier knew the exact nature of the danger constituted by the Carriage of the said Cargo shall be on the Merchant.

4.3. If any Cargo shall become a danger to life or property, it may in like manner be unloaded or landed at any place or destroyed or rendered harmless. If such danger was not caused by the fault and neglect of the Carrier, it shall have no liability and the Merchant shall indemnify the Carrier against all loss, damage, liability and expense arising therefrom.

5. Description of Cargo and Merchant's Packing and Inspection

5.1. The Merchant shall be deemed to have guaranteed to the Carrier the accuracy, at the time the Cargo was taken into the charge of the Carrier, of all particulars relating to the general nature of the Cargo, including, without limitation, its marks, number, weight, volume and quantity and, if applicable, the dangerous character of the Cargo, as furnished by the Merchant or on its behalf for insertion on the Non-Negotiable Bill of Lading. The Merchant shall indemnify the Carrier against all loss, damage and expense resulting from any inaccuracy or inadequacy of such particulars. The Merchant shall remain liable even if the Non-Negotiable Bill of Lading has been transferred by the Merchant.

5.2. a) The Merchant agrees that it shall inspect the Container before loading the Cargo and shall warrant and certify to the Carrier that the Container is in satisfactory condition and fit for the stowage of the Cargo. b) The Carrier shall not be liable for any damage, delay, expense or loss of the Cargo caused by defective or insufficient packing of Cargo or by inadequate loading or packing within Containers or other transport units when such loading or packing has been performed by the Merchant or on its behalf by a person other than the Carrier. The Carrier shall not be liable for any damage, delay, expense or loss of the Cargo caused by the defect or unsuitability of the Containers or other transport units supplied by the Merchant, or if supplied by the Carrier if a defect or unsuitability of the Container or other transport unit would have been apparent upon reasonable inspection by the Merchant. The Merchant shall indemnify the Carrier against all loss, damage, liability and expense so caused.

6. Carrier's Liability

6.1. Arrival times are not guaranteed by the Carrier.

6.2. If the Cargo has not been delivered within ninety days of the anticipated date of delivery, the Cargo shall be deemed lost, in the absence of evidence to the contrary.

6.3. When the Carrier establishes that damage, delay, expense or loss of the Cargo could be attributed to one or more causes or events specified in a - e of the present clause, it shall be presumed that it was so caused, always provided, however, that the claimant shall be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of such causes or events: a) an act or omission of the Merchant, or person other than the Carrier acting on behalf of the Merchant or from which the Carrier took the Cargo in its charge; b) insufficiency or defective condition of the packaging or marks and/or numbers; c) handling, loading, stowage or unloading of the Cargo by the Merchant or any person acting on behalf of the Merchant; d) inherent vice of the Cargo; e) strike, lockout, stoppage or restraint of labor.

6.4. Notwithstanding Clauses 6.2 and 6.3 the Carrier shall not be liable for damage, delay, expense or loss of the Cargo with respect to Cargo carried by sea, inland waterways, motor carrier or rail when such damage, delay, expense or loss of the Cargo has been caused by: a) act, neglect, or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship; b) fire, unless caused by the actual fault or privity of the carrier, however, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, the Carrier can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage.

7. Paramount Clauses

7.1. These Terms and Conditions shall only take effect to the extent that they are not contrary to international conventions or national law compulsorily applicable to the contract evidenced by this Non-Negotiable Bill of Lading.

7.2. The Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated Brussels 25th August 1924, or in those countries where they are already in force the Hague-Visby Rules contained in the Protocol of Brussels, dated 23rd February 1968, as enacted in the country of shipment, shall apply to all Carriage of Cargo by sea and also to the Carriage of Cargo by inland waterways, and such provisions shall apply to all Cargo whether carried on deck or under deck.

7.3. The United States of America Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. section 1300 *et seq.*, shall apply to the carriage of the Cargo by sea in foreign trade, whether on deck or under deck, if compulsorily applicable to this Non-Negotiable Bill of Lading or would be applicable but for the goods being carried on deck in accordance with a statement on this Non-Negotiable Bill of Lading.

7.4. Merchant expressly agrees to a waiver of the United States of America Carmack Amendment, ("Carmack") 49 U.S.C. sections 14706 and/or 11706 liability scheme if Carmack is compulsorily applicable to any stage of the Multi-Modal Transportation.

8. Limitation of Carrier's Liability

8.1. The value of Cargo lost, damaged, or delayed shall be determined by the commercial invoice value of the Cargo at the port of exportation or the entered value declared to the Customs officials at the port of importation, whichever is less.

8.2. The Carrier does not undertake the Cargo shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market. The Carrier shall in no circumstances be liable for any indirect or consequential loss caused by delay or any other cause.

8.3. When an ocean container or trailer or similar conveyance is loaded with more than one package or unit, such ocean container or trailer or similar conveyance shall be deemed the package or unit.

8.4. In the event of damage or loss occurring during ocean transportation moving between ports of the United States, COGSA shall not apply but rather the U.S. Harter Act shall apply, 46 U.S.C. section 190 *et seq.*, and the liability of the Carrier shall not exceed \$50 per shipment unless the nature and value of the Cargo have been declared by the Merchant and inserted in this Non-Negotiable Bill of Lading and the ad valorem freight rate paid.

8.5. In the event of damage or loss occurring during ocean transportation moving to or from the United States in foreign trade, the liability of Carrier shall not exceed U.S. \$500 per package or unit unless the nature and value of the Cargo have been declared by the Merchant and inserted in this Non-Negotiable Bill of Lading and the ad valorem freight rate paid. In the case of Personal Effects, Household Goods and/or Used Merchandise, the liability of the Carrier shall not exceed \$ 10 per pound.

8.6. When it cannot be ascertained at what stage of the Multi-Modal Transportation the damage or loss of the Cargo occurred the damage shall be presumed to have occurred before loading on the vessel or after discharge from the vessel and unless the nature and value of the Cargo have been declared by the Merchant and inserted in this Non-Negotiable Bill of Lading, and the ad valorem freight rate paid, the liability of the Carrier shall not exceed U.S. \$500 per package or unit or U.S. \$0.50 per lbs. of gross weight of the Cargo lost, damaged or delayed, whichever is less.

8.7. When the damage, delay, expense, or loss of the Cargo occurred during a particular stage of the Multi-Modal Transportation, in respect of which an applicable international convention or mandatory national law governs, liability for such loss or damage shall be determined by reference to the provisions of such international convention or mandatory national law.

8.8. If the Carrier selects a motor or rail carrier to perform any portion of the Multi-Modal Transportation in the United States of America, the Merchant agrees to a waiver of Carmack liability and any time-for-suit provisions to the extent Carmack may apply. Unless the nature and value of the Cargo have been declared by the Merchant and inserted in this Non-Negotiable Bill of Lading, and the ad valorem freight rate paid, the liability of the Carrier shall not exceed U.S.\$500 per package or unit or U.S.\$0.50 per lbs. of gross weight of the Cargo lost, damaged or delayed, whichever is less.

8.9. Subject to the provisions 8.1 through 8.8 the Carrier shall in no event be or become liable for any loss of damage to the goods in an amount exceeding the equivalent of 666.67 SDR per package or unit or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is the higher, unless the nature and value of the goods shall have been declared by the Merchant and accepted by the Carrier before the goods have been taken in his charge, or the ad valorem freight rate paid, and such value is stated in the Non-Negotiable Bill of Lading by the Merchant, then such declared value shall be the limit.

8.9.1. Subject to the provisions 8.1 through 8.9 herein, if the Multi-Modal Transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the liability of the Carrier shall be limited to an amount not exceeding 8.33 SDR per kilogram of gross weight of the goods lost or damaged.

8.9.2. The aggregate liability of Carrier shall not exceed the limits of liability for total loss of the goods.

9. Applicability to All Actions

These Terms and Conditions apply to all claims against the Carrier relating to the performance of the contract evidenced by this Non-Negotiable Bill of Lading, whether the claim is founded in contract or in tort, including, but not limited to, claims for indemnity and contribution.

10. Liability of Subcontractors, Servants, Agents, or Other Persons

10.1. These Terms and Conditions apply whenever claims relating to the performance of this Non-Negotiable Bill of Lading are made against any Subcontractor, servant, agent or other person (including any independent contractor) whose services have been used in order to perform the contract of carriage, whether such claims are founded in contract or in tort, including, but not limited to, claims for indemnity and contribution and the aggregate liability of the Carrier and of such Subcontractors, servants, agents or other persons shall not exceed the limits set forth in Clause 8.

10.2. In entering into this contract as evidenced by this Non-Negotiable Bill of Lading, the Carrier, to the extent of these provisions, does not only act on its own behalf, but also as agent for the class of persons identified in Clause 10.1, and such persons shall to that extent be or be deemed to be parties to this contract.

10.3. If the loss of or damage to the Cargo resulted from an intentional act or omission of the class of persons identified in Clause 10.1, done with intent to cause damage, or recklessly and with knowledge that damage would probably result, such Subcontractor, servant, agent or other person shall not be entitled to the benefit of the limitation of liability set forth in Clause 8.

10.4. The aggregate of the amounts recoverable from the Carrier and the class of persons identified in Clause 10.1 shall not exceed the limits provided for in these Terms and Conditions.

11. Method and Route of Transportation

Without notice to the Merchant, the Carrier has the liberty to carry the Cargo on or under deck and to choose or substitute the means, route, and procedure to be followed in the handling, stowage, storage, and transportation of the Cargo.

12. Delivery

12.1. The Cargo shall be deemed to be delivered when it has been delivered to or placed at the disposal of the Merchant or its agent in accordance with this Non-Negotiable Bill of Lading, or when the Cargo has been delivered to any authority or other party to which, pursuant to the law or regulation applicable at the place of delivery, the Cargo must be delivered, or such other place at which the Carrier is entitled to call upon the Merchant to take delivery.

12.2. The Carrier shall also be entitled to store the Cargo at the sole risk of the Merchant, and the Carrier's liability shall cease upon the Carrier's tender/delivery of the Cargo to the appointed warehouse or storage facility. The cost of such storage shall be paid, upon demand, by the Merchant to the Carrier.

12.3. If at any time the Carriage under this Non-Negotiable Bill of Lading is or is likely to be affected by any hindrance or risk of any kind (including the condition of the Cargo) not arising from any fault or neglect of the Carrier or a Subcontractor that cannot be avoided by the exercise of reasonable diligence, the Carrier may: abandon the Carriage of the Cargo under this Non-Negotiable Bill of Lading and, where reasonably practicable, place the Cargo or any part of it at the Merchant's disposal at any place that the Carrier may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Carrier in respect of such Cargo shall cease. In any event, the Carrier shall be entitled to full freight under this Non-Negotiable Bill of Lading and the Merchant shall pay any additional costs arising out of the aforementioned circumstances.

12.4 If this document constitutes a negotiable bill of lading, all original bills of lading, properly endorsed, must be surrendered when the cargo is delivered. If the person receiving the Goods from the Carrier wishes to surrender fewer than all the original bills of lading that were issued, and if the Carrier agrees to deliver against fewer than all the originals, the person receiving the Goods hereby agrees to indemnify the Carrier against all damages which the Carrier may be liable to pay as a result of delivering the Goods without surrender of all original bills of lading.

13. Freight Charges and Expenses

13.1. Freight charges shall be paid without any reduction or deferment on account of any claim, counterclaim, or set-off, whether prepaid or payable at destination. Freight charges shall be deemed earned by the Carrier upon its receipt of the Cargo. Earned freight charges are non-refundable.

13.2. Freight charges and all other amounts set forth in this Non-Negotiable Bill of Lading are to be paid in the currency named in this Non-Negotiable Bill of Lading or, at the Carrier's option, in the currency of the country of origin or destination.

13.3. The Merchant shall reimburse the Carrier for any duties, taxes, demurrage, detention, charges or other expenses in connection with the Cargo.

13.4. The Merchant shall reimburse the Carrier for any costs for deviation or delay or any other increase of costs of whatever nature caused by war, military or warlike actions, epidemics, riots, strikes, government directions or force majeure.

13.5. The Merchant warrants the accuracy of the declaration of contents, weight, measurements or value of the Cargo, but the Carrier has the liberty to have the contents inspected and the weight, measurements or value verified. If on such inspection it is found that the declaration is not correct, it is agreed that a sum equal either to five times the difference between the correct figure and the freight charges, or to double the correct freight charges less the freight charged, whichever sum is less, shall be payable as liquidated damages to the Carrier for its inspection costs and losses of freight charges on other Cargo notwithstanding any other sum having been stated on this Non-Negotiable Bill of Lading as freight charges payable.

13.6. Despite the acceptance by the Carrier of instructions to collect freight charges or other expenses from any other person in respect of the transport under this Non-Negotiable Bill of Lading, the Merchant shall remain responsible for such monies on receipt of evidence of demand and the absence of payment for whatever reason. Shipper, consignee, and bill-to party are jointly and severally liable for all charges related to this shipment. Charges may be reversed to the responsible parties if shipment is refused or payment is not made by the original bill-to party.

14. Lien

14.1. The Carrier shall have a lien on any and all of the Merchant's property for all advances, claims, costs, freight charges, duties, taxes, demurrage, money due and payable to the Carrier, including any lien and collection related costs. The lien on the Cargo shall survive delivery to the Merchant. Carrier may sell the Cargo privately or by public auction without notice to the Merchant. If on sale of the Cargo the proceeds fail to satisfy the amount due, and the cost and expenses incurred, the Carrier shall be entitled to recover any difference from the Merchant.

14.2. If the Cargo is unclaimed after 30 days from date the Cargo is placed at the disposal of the Merchant, or whenever in the Carrier's judgment the Cargo will become deteriorated, decayed or worthless, the Carrier may, at its discretion and subject to its lien and without any responsibility attaching to it, sell, abandon, or otherwise dispose of such Cargo solely at the risk and expense of the Merchant.

15. General Average

The Merchant shall indemnify the Carrier in respect of any claims of a General Average nature that may be made on it and shall provide such security as may be required by the Carrier in that connection.

16. Notice

16.1. Unless the Merchant provides written notice to the Carrier of the general nature of any loss or damage to the Cargo at the time that the Carrier delivers the Cargo to the Merchant in accordance with Clause 12, such delivery by the Carrier is prima facie evidence of the Carrier's delivery of the Cargo in good order and condition.

16.2. Where the loss or damage is not apparent and/or latent, the same prima facie presumption shall apply if notice in writing is not given within 3 days after the day when the Cargo was delivered to the Merchant in accordance with Clause 12.

17. Time bar

The Carrier shall be discharged of all liability unless suit is brought against the Carrier within one year from the date of delivery or the date on which the Cargo should have been delivered.

18. Partial Invalidity

If any clause or a part thereof is held to be invalid, the validity of this Non-Negotiable Bill of Lading and the remaining clauses or a part thereof shall not be affected.

19. Mandatory Venue, Jurisdiction, and Applicable Law

Merchant agrees that all claims or disputes hereunder or questions arising out of the Carriage of Cargo shall be determined solely in the United States District Court for the Central District of California in Los Angeles, California, to the exclusion of all other courts, and the Merchant and Carrier each agree to submit to the personal jurisdiction of that court; *provided*, however, where the Vessel operator issues a bill of lading for the transportation of the Cargo that includes a mandatory venue clause for a mandatory venue other than the United States District Court for the Central District of California in Los Angeles, the Merchant expressly agrees to be bound by the mandatory venue clause of the Vessel operator's bill of lading for any claims, disputes, or questions that the Merchant has against the Carrier and any Subcontractor. Merchant agrees that equity and judicial efficiency require that a single action shall resolve all claims, disputes, or questions arising out of the Carriage of Cargo.