FREIGHT CHARGES AND EXPENSES TO MERCHANT arising from negligence of Carrier, its subcontractors, servants or agents. The loss, damaged, or delayed delivery of the Goods is not the result of any cause arising without the fault or privity of the Carrier, its subcontractors, servants or agents; (p) any cause arising without the fault or privity of the Merchant, its agents; (q) any cause arising without the fault or privity of any person, corporation, company, or other legal entity having any interest in the Goods, or anyone acting on behalf of any such person or entity.

5. MONO-MODAL TRANSPORTATION means and includes the shipper, consignee, receiver, holder of this document, owner of the Goods, person entitled to the possession of the Goods, and any person, corporation, company or other legal entity having any interest in the Goods, or anyone acting on behalf of any such person or entity.

6. Equipment, containers and packaging means and includes any means and devices used in the transportation of the Goods, including, but not limited to the transportation in or on containers, pallets, truss, skids, drums or any similar article of transport.

7. Terms, Conditions and Definitions of this document, the shipper acts for itself and also each Merchant to bind each Merchant to the terms of this document.

8. The Hague Rules, as amended by the Brussels Protocol 1968 (the "Hague-ville Rules") are incorporated by reference as terms of this contract for Carriage whether the Goods are carried on or under deck. The Hague Rules are applicable to carriage of goods, whether or not a vessel is a party to this Bill of Lading and throughout the entire time the Goods are loaded on and/or after the Goods are discharged from the Vessel, and throughout the entire time the Goods are in the custody or are the responsibility of Carrier in performing the Carriage hereunder, whether acting or carrier as bailees. The Hague Rules are not to be considered as modifying the terms of the contract for Carriage.

9. The Merchant may avoid the agreed values hereunder and the liability limitations hereunder, or any other liability hereunder, if the potential loss or damage to the Goods is, in its sole discretion, of a temporary, insignificant, incidental, consequent or nominal nature, or if such delay, loss or damage to the Goods, whether or not Carrier is notified or knowing that such a claim may be made.

10. Carrier shall not be liable for delay, Carriers liability shall in all circumstances be limited to the lesser of the liability calculated pursuant to Clause 8.1 or the amount of actual loss or damage suffered by the Merchant due to the breach of any conditions contract clause.

11. The Hague Rules address minimum liability of the Carrier are excluded from incorporation by reference and shall only apply when required by force of law.

12. In no event shall the Carrier’s aggregate liability exceed the lesser of any agreed value, the actual value of any damage or loss (such as cost to repair) or the replacement value of affected articles, as may be proven by Merchant in the course of any claim if not in agreement these articles, as may be proven by Merchant in the course of any claim if not in agreement with the provisions of the Hague-ville Rules.

13. Carrier shall not guarantee delivery of the Goods at the port of discharge or place of delivery at any particular time or to meet any particular market or use. Carrier shall have no liability for any direct or consequential damages arising from delay to notify Merchant as to the actual arrival and/or delivery date of the Goods. In the event Carrier is nevertheless for any reason found liable for delay, Carrier liability shall in all circumstances be limited to the lesser of the liability calculated pursuant to Clause 8.1 and the amount of actual loss or damage suffered by the Merchant due to the breach of any conditions contract clause.

14. Carriers liability is limited to the lesser of the amount duly accepted by the Merchant or the actual amount of damage incurred by the Goods.

15. Precautions to be taken: the Carrier shall be entitled to open or search any package or container or to inspect any package or container at any port or place of discharge or delivery of the Goods, or at any point of its journey, for the purpose of determining the condition of the Goods. In the event a claim is nevertheless brought against any Subcontractor, that party is entitled to be indemnified by the Carrier for all losses, damages, or expenses which the Subcontractor, servants, or agents of the Carrier may be liable to suffer in respect of any such claim.
12.1 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 Goods. Earned freight charges are non-refundable.

12.2 Freight charges and all other amounts due Carrier for the Carriage are to be paid in the currency named in this Bill of Lading or, at the Carrier’s option, in the currency of the country of origin or destination.

12.3 The Merchant shall reimburse and indemnify the Carrier for any duties, taxes, demurrage, detention, charges, liabilities or other expenses whatsoever in connection with the Goods or arising from any breach of warranty by Merchant hereunder or from any cause or reason not exclusively attributable to a liability of Carrier, its subcontractors, servants or agents.

12.4 In the event Merchant breaches its warranty as to the accuracy and completeness of the description and the marks, numbers, quantities and weight of the Goods, resulting in a lower freight charge than should be due and owing carrier based upon actual correct and complete description, marks, numbers, quantities and weight of the Goods, less the freight previously calculated or charged, shall be payable as liquidated damages to the Carrier. Such liquidated damages shall only relate to freight charges; Carrier reserves all rights to recover from Merchant other damages caused by Merchant’s breach of its warranty as to the accuracy and completeness of the description and the marks, numbers, quantities and weight of the Goods.

12.5 Notwithstanding acceptance by the Carrier of instructions to collect freight charges or other expenses relating to the Carriage from any specific person, 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 parties are jointly and severally liable for all charges and expenses related to the Carriage. Charges may be reversed to responsible parties if Goods are refused delivery or in the event payment is not made by the original bill-to party.

13. LIEN, UNCLAIMED GOODS

13.1 The Carrier shall have a lien on any and all of the Merchant’s property for all advances, claims, costs, freight charges, duties, storage charges, surcharges, general average expenses, salvage expenses, taxes, demurrage, money due and payable to the Carrier by Merchant, including any lien and collection-related costs, whether or not related to the Carriage of Goods under this document, a prior transaction / an unrelated claim and/or any combination of the foregoing. The lien on the Goods shall survive delivery to the Merchant. Carrier may sell the Goods privately or by public auction with or without notice to the Merchant. If upon sale of the Goods the proceeds fail to satisfy the amount due Carrier, together with the cost and expenses incurred, Carrier shall be entitled to recover any difference from Merchant.

13.2 If the Goods are unclaimed after 15 days from date the Goods are placed at the disposal of the Merchant or are otherwise deemed undeliverable by the Carrier, the Carrier may, at its discretion and subject to its lien and without any responsibility attaching to it, sell, abandon, or otherwise dispose of the Goods solely at the risk and expense of the Merchant.

13.3 The proceeds of any sale shall be applied toward payment of lawful charges applicable to shipment and toward expenses of notice, advertising and sale, and of storing, caring for and maintaining the Goods prior to sale, and the balance, if any, may be claimed by Merchant.

14. GENERAL AVERAGE

14.1 In the event of accident, danger, damage or disaster before or after the commencement of the Carriage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier and its subcontractors, servants and agents are not responsible by statute, contract or otherwise, the Goods and the Merchant shall contribute in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods. If a salvaging ship is owned or operated by the Carrier, its subcontractors, servants or agents, salvage shall be paid for as fully as if the said salvaging ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the Goods and/or the Merchant prior to delivery.

14.2 Merchant shall defend, indemnify and hold harmless the Carrier, its subcontractors, servants or agents in respect of any claim (and any expense arising therefrom) of a General Average which may be made against the Carrier and/or any of its subcontractors, servants or agents. Merchant agrees to pay any and all sums or securities assessed by the General Average Adjuster for payments on account.

14.3 Neither the Carrier nor its subcontractors, servants or agents shall be under any obligation to take any steps whatsoever to post security for General Average or to collect security for General Average contributions due from the Merchant. Notwithstanding the foregoing, Carrier is authorized at its discretion to act on behalf of the Goods in any salvage proceeding at the sole expense of Merchant, unless Merchant arranges for separate representation.

15. NOTICE OF CLAIM AND TIME FOR SUIT

15.1 Merchant shall inspect the Goods comprehensively and immediately upon delivery and/or unpacking by Carrier. Unless Merchant provides written notice to Carrier of the nature of any loss or damage to the Goods at the time Carrier delivers the Goods and/or unpacks the Goods at destination, such delivery by Carrier is prima facie evidence of Carrier’s delivery of the Goods in good order and condition.

15.2 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 to Carrier within 3 days after the day when the Goods were delivered to the Merchant by Carrier or unpacked at destination by Carrier. Therefore, Goods not unpacked by Carrier should be immediately unpacked and inspected by Merchant upon delivery by Carrier.

15.3 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 Goods should have been delivered.

16. MANDATORY VENUE, JURISDICTION, AND APPLICABLE LAW FOR DISPUTE RESOLUTION

Merchant agrees that all claims or disputes hereunder shall be determined under United States law solely in the United States District Court for the Central District of California, and the Merchant and Carrier each agree to submit to the personal jurisdiction of that Court.

Ref: D28 Rev June 21, 2016