

## CONDITIONS OF CARRIAGE

### **1. DEFINITIONS**

The word "Company" is defined to be Marine Link Transportation Ltd. and shall be deemed to include every Vessel used in carriage or towage, as well as her owner, operator, officers and crew and all officers, crew, employees, agents and sub-contractors of the Company. For the purposes of these Conditions, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all who are or might be owners, operators, officers, crew or our servants, agents or sub-contractors and all such shall to this extent be deemed parties to all carriage and towage contracts.

The word "Vessel" shall include open self-propelled barges, landing craft, tug and barge or scow, log booms and towed objects, whether or not owned, chartered, or operated by the Company used to perform this Agreement.

The word "Customer" is defined to be the person, persons or corporate entities to whom services are provided and shall be deemed to include the Shipper, Consignee, Owner of goods or Holder of this Agreement and the Owner, Manager and Charterer of vessels and objects towed, their servants or agents.

The Company shall be entitled to be paid by the Customer, on demand, any sum recovered or recoverable by the Customer from any servant, agent or independent contractors of the Company, for any loss, damage, expense, delay or otherwise.

### **2. EXCLUSION OF LIABILITY**

The Company is not liable to our Customers, or any party, for loss, damage or delay to goods, expense, injury, death, delay or non-performance of any contract or services, or any loss or damage of any nature, sustained or incurred by our Customer or any party howsoever arising or howsoever caused, including, by our negligence, gross negligence, and/or the un-seaworthiness of any towing, carrying or other vessel involved or defect in any other equipment used or involved in the performance of the contract or services. These terms shall govern not only during transportation but also while goods are awaiting loading, during loading, during and after discharge and while in storage.

The Company shall be deemed to be the servant of our Customer and our Customer shall indemnify the Company for any claims or actions brought against the Company by any third party arising from the performance of this contract or services by the Company.

### **3. GENERAL AVERAGE**

General average shall be adjusted at Vancouver according to York/Antwerp Rules, 1974, excluding Rule 22 and in accordance with the usages and customs of the Port of Vancouver. Notwithstanding Rule 10(b) of the York/Antwerp Rules, the cost of handling, discharging and re-stowing cargo shall be admitted as general average when reasonably necessary for the safe prosecution of the voyage, as well as under the circumstances set forth in the Rules.

Where applicable and in the event of accident, danger, damage or disaster, before or after commencement of the voyage, resulting from any cause whatsoever, due to negligence, or not, the customer shall contribute in general average to the payment of any sacrifice, loss or expense of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving Vessel is owned or operated by the Company, salvage shall be paid as fully as if the salving vessel or vessels belonged to strangers.

### **4. VOYAGE**

The Company may sail with or without assist tugs or pilots, engage in trials, adjust compasses and drydock its Vessels at any place for any purpose with or without cargo aboard, tow or be towed and may assist vessels in all situations the Company may proceed to or return to or stay at any port or place whatsoever, including proceeding in a contrary direction or out of or beyond the usual route to the port of delivery, in any order, backwards or forwards, to load or discharge cargo or stores or for any purpose whatsoever: any such liberty or deviation, shall be deemed not to be a breach of this Agreement.

The Company may substitute or change Vessels at any state of the voyage and may tow Vessels with any other tows on a multiple tow basis.

### **5. FREIGHT**

Freight and towage charges shall be considered completely earned on shipment or departure of tow and shall be payable goods and/or Vessel lost or not lost. Freight shall be paid on damaged or unsound goods, together with any cost incurred by the Company in re-stowing, repairing, repacking, or re-coopering goods or any Vessels, supplied by the Customer.

The Company shall have a general lien on the goods or any part thereof, whether or not the services under this Agreement have been completed and a right to sell such goods privately or by auction for all freight, dead freight, demurrage, detention, salvage, average, duties, fines or penalties and for all other charges and expenses whatsoever, which are for the account of the goods or the Customer, for the cost and expense of exercising such lien and sale and for all previously unsatisfied debts due to the Company by the Customer. This lien may be exercised by the Company notwithstanding that it may have parted with possession and the Company shall at all times stand authorized by the Customer to give all such notice to any person or persons for the time being in possession of the goods as may be required for the purpose of giving effect to this Clause. Nothing in this Clause shall prevent the Company from recovering from the Customer the difference between the amount due and the amount realized by the exercise of the rights given under this Clause.

### **6. RESPONSIBILITY**

The Company is not and does not accept the responsibility of a common carrier, nor does it bind itself to dispatch any Vessel at advertised times or to guarantee the sailing or arrival of any Vessel.

Custody of the goods by the Company shall be deemed not to commence until after completion of loading, when the goods are safely aboard the vessel and custody by the Company shall terminate before unloading commences, upon arrival at the port of destination, or so near thereto as the Company's Vessels may safely get, in the opinion of the Company's Master, always lying safely afloat.

Custody by the Company of towed vessels supplied by the Customer and for goods aboard such vessels, shall be deemed not to commence until the Company's vessel puts a line aboard the tow and the tow's mooring lines are released and such custody shall be deemed to terminate on arrival at the port of destination, or so near thereto as the Company's Vessel may safely get, in the opinion of the Company's Master, always lying safely afloat; when the tow has out a mooring line or lines and the Company's vessel has removed its lines.

### **7. LOADING AND UNLOADING**

All goods shall be loaded and unloaded free of risk and expense to the Company. The Company does not accept any responsibility for loss, damage or delay suffered by the goods during loading or unloading howsoever caused, nor shall the goods be deemed to be in the care, custody or control of the Company during loading or unloading. In the event that employees of the Company participate in loading or unloading they do so as servants of the Customer, whether or not the Customer exercises any direction or control, or is in attendance.

### **8. DELIVERY**

The Company may make delivery at any time. When goods are carried or a Vessel is towed to a port of delivery, where there is not wharfinger, or other responsible person to receive the goods or Vessels on behalf of the Customer, the Customer shall be on hand to receive the goods or Vessel and if not on hand, the Company may deliver the goods by unloading them as servant of the Customer and deposit the goods on any float, wharf, bulkhead, or on the shore, or other place deemed by the Company's Master to be suitable and may deliver any Vessel owned or supplied by the Customer, as servant of the Customer, by tying it to any landing, dolphin, buoy, stiffeg, booming ground or other place deemed by the Company's Master to be suitable. The Company may lighter, trans-ship, land or store afloat or ashore at its discretion. Delivery to any other carrier terminates the Company's responsibility however such onward carrier shall have the benefit of these Conditions.

### **9. DECK CARRIAGE**

It is understood and agreed that the goods may be carried on deck on an open landing craft, scow or barge and that the Customer accepts all risks inherent in this method of carriage. The Company shall not be responsible for loss or damage to live animals (including fish) or live plants, of any kind whatsoever, including deterioration, delay or loss of market, howsoever caused, whether by un-seaworthiness or unfitness of the vessel or of any other mode of conveyance whatsoever, or by faults, errors, or negligence or otherwise howsoever caused.

### **10. SURRENDER OF TOWED VESSELS**

When the Company surrenders any Vessel to the Customer, or any other person for towing, loading, unloading, storing, or any other purpose, the Vessel and its contents shall be deemed to be in the care, custody and control of the Customer and the Customer accepts all risk and liability for damage howsoever caused to the Vessel, to its contents or to third parties from the time the Vessel is let go from the Company's Vessel, until the time it is re-accepted by the Company's Master and made fast to the Company's Vessel.

### **11. POLLUTION AND INDEMNITY**

A pollutant shall include oil or any other substance designated under The Canada Shipping Act or Pollution Regulations or any other legislation, as or which in fact is a pollutant or is hazardous or which may damage the environment. The Customer undertakes to hold harmless and indemnify the Company from and against all claims, actions, causes of actions, fines, penalties, forfeitures and assessments brought or prosecuted by any person, including the Crown, arising out of the discharge of goods that are a pollutant, to the extent that such discharge is caused by a peril of the sea or other navigable waters, inherent quality or defect of the goods, defective, or insufficient packaging, default, neglect or willful act or omission of the Customer, un-seaworthiness of the Customer's Vessel, or act of God or inevitable accident. The Customer shall properly label and bring to the Company's attention the nature of all pollutants, hazardous or dangerous substances or substances which may cause environmental damage and on a failure to label or to warn shall hold harmless and indemnify the Company from all loss, damage and expense.

### **12. EXPLOSIVES**

Every party, whether principal or agent, shipping explosives without previous full written disclosure to the Company or its agents, of their nature, shall be liable for all loss or damage caused thereby, and such cargo may be warehoused at the risk and expense of the Customer, or destroyed without compensation. The Customer warrants that it has properly packaged, palletized, wrapped and assembled all explosive product for shipment as may be required by the Company or by any regulation and that this responsibility of the Customer will continue through and until delivery of the goods has been completed notwithstanding that the Company has accepted the goods for shipment.

### **13. HIGH RISK INDEMNITY**

The Customer warrants and represents that it has: a) properly packed, labeled and marked the cargo; and b) brought to the attention of the Company in writing the nature of all pollutants, hazardous or dangerous substances and substances which may cause damage to the environment; as may be required to prevent danger to health, safety or welfare of persons, to prevent danger to the health of animal life, and to prevent damage to plant life, property or the environment and also as may be required by law, or by regulation, or by Government requirement, including the Canadian Environmental Protection Act, Canada Shipping Act, the Transportation of Dangerous Goods Act (Canada) and any regulations passed pursuant to such legislations and any Government requirements thereunder.

If the Customer is in breach of the foregoing requirements, the Customer shall indemnify the Company and hold it harmless from all loss, damage, delay, claims, actions, demands, expense, fines, penalties, forfeitures, assessments and proceedings of every nature in kind made, brought or prosecuted by any person, including the Crown, arising out of such breach or caused by goods which are pollutants, hazardous or dangerous to the environment, unless the loss, damage or delay or the claims arise solely as a result of the fault, privity or neglect of the Company.

Notwithstanding the foregoing, if the Customer fails to comply with the warranty set out in this Section, in addition to any remedy available at law, the Company may sell, destroy, store ashore or afloat, abandon or otherwise dispose of any cargo in respect of which the Customer is in breach of the warranty herein contained, all without liability to compensate the Customer.

### **14. PERSONAL BELONGINGS**

The Company does not acknowledge receipt of personal belongings or equipment left in any unit, and the Company is not responsible for loss or damage to such, however caused, including by negligence.