

## **BILL OF LADING**

### **Bill of Lading**

1. All the terms & conditions of (a) the Tonga Carriage of Goods by Sea Act, 1927 & the Rules comprising the schedule thereto when the goods are shipped in Tonga are, so far as applicable, to govern the contract contained in this Bill of Lading, the Carrier is entitled to the benefit of all privileges, rights & immunities contained in such Act of Ordinance & in the Schedules thereto as if the same were herein specifically set out. If anything herein contained be inconsistent with the said terms, provisions & conditions it shall to the extent of such inconsistency & no further be null and void, (b) the Australian Sea Carriage of Goods Act, 1924 & the Rules comprising the Schedule thereto when the goods are shipped in Australia, (c) the Fiji Sea Carriage Goods Ordinance, 1926 as amended by Ordinance 5 of 1928 & the Rules comprising the schedule thereto when the goods are shipped in Fiji, (d) the New Zealand Sea Carriage of Goods Act, 1940 and the Rules comprising the schedule thereto when the goods are shipped in New Zealand, (e) the Western Samoan Sea Carriage of Goods Ordinance 1960 & Rules comprising the schedule when the goods are shipped in Western Samoa, (f) the United States Carriage of Goods by Sea Act USC Chapter 1301 when the goods are shipped in the United States.

2. (a) Neither the Carrier, his agents, servants nor the vessel shall be liable for any loss, detention or damage whatsoever of or to the goods while in the custody of the Carrier, his agents or servants prior to loading over the rail or subsequent to discharge over the rail of the vessel named herein or any vessel carrying the goods under a liberty contained in Clause 3 (d) hereof, even though such loss, detention or damage be caused by the negligence of the Carrier, his agents or servants or other persons for whom the Carrier is responsible, or by the unseaworthiness or unfitness of any craft, vessel or conveyance at the time the goods are placed therein or at any time thereafter, & even though the goods are in the custody of the Carrier, his agents or servants as warehousemen or otherwise howsoever, & the goods prior to loading or subsequent to discharge as aforesaid are at the sole risk of the Owner of the goods.

(b) In the case of live animals or of goods in which this Bill of Lading are stated as being carried on deck, & are so carried, neither the carrier, his agents or servants, nor the carrying vessel shall be liable for any loss, detention or damage whatsoever & howsoever caused, even though such loss detention or damage be caused by the negligence of the carrier, his agents or servants or other persons for whom the carrier is responsible, or by the unseaworthiness or unfitness of any craft, vessel or conveyance existing at the time when the same are placed therein, or at any time thereafter and even though they are in the custody of the carrier, his agents or servants as warehousemen or otherwise howsoever, but they shall at all times be at the sole risk of their owner.

3 (a) The vessel has liberty to proceed by any route & change the intended route before the commencement of or at any time during the voyage & to proceed to return or call or stay at any port or ports whatsoever in any order in or out of or beyond or in a contrary direction to the advertised or customary route once or oftener for taking on board bunkers or supplies or loading or discharging cargo or embarking or disembarking passengers whether in connection with the present or a prior or a subsequent voyage or for any other

purpose whatsoever & to carry the within cargo into & then beyond the port of discharge of the vessel & to return to & discharge the said cargo at such port, all as part of the agreed voyage.

(b) The vessel may sail with or without pilot & may adjust compasses & make trial trips with or without cargo on board & may tow & be towed & tow & assist vessels or aircraft in all situations & may put into & remain at or delay sailing from any port or ports for repairing or dry docking with or without cargo on board or for any other purpose whatsoever should circumstances in the opinion of the carrier, Master or Agent render this desirable, all as part of the agreed voyage.

(c) The carrier will not be responsible for any loss, damage or delay occasioned by the Act of God, the Queen's enemies, arrest or restraint of princes, Rulers, or Peoples, or by revolutions, civil commotions, riots or emeutes, strikes, lockouts, labour disturbances or stoppages of labour from whatever cause, or by pirates, robbers or thieves on board or onshore, fire on board, collision, unprotected packages, or (in the absence of negligence, fault or failure on the part of the Carrier, his agents or servants in the proper loading, stowage, custody, care. Handling or delivery of the goods, & provided due diligence is exercised by the carrier, at the beginning of the voyage, to make the vessel seaworthy) by straining, want of or defective ventilation, explosion, spontaneous combustion, stains, rust, hook-marks, sweating, fermentation, putrefaction, inherent deterioration or decay., wastage, drainage leakage, chafage, breakage, ullage shrinking, or evaporation, rain, spray, coal or coal dust, the effects of heat, cold, frost, thaw, dew, or contact with or injurious effects of any kind whatsoever from other goods, the entry or admission of water into the vessel or hold from any cause or for any purpose, vermin, insufficiency of strength or size, wear & tear, or breakage of outer or inner packages, cases, or bags, or of cords, bands or hoops, insufficient cooerage, or stack bags, inaccuracy, indistinctness, illegibility, obliteration or absence of marks, numbers, brands, addresses or description of goods, fire on shore, stranding, heeling over, pitching or rolling, upsetting or submerging or sinking of vessel, or accidents to or arising from defects in the vessel, its tackles, engines, boilers, machinery, fittings & appurtenances, or for any loss, damage, or delay occasioned by pilots, perils of the seas, rivers, harbours or canal navigation or by jettison, or accident, or by the enforcement by any Government or Public Authority of the laws or regulations relating to Customs Administration of Harbours, Quarantine or Public Health in any state or country. Vessel not responsible for damage to cargo by fumigation or for loss or damage through carrying out any Quarantine regulations enforced by any Government or Public Authority.

All quarantine expenses & risks & transhipments or other charges imposed by Act of Parliament by law or regulation upon the goods to be borne by the Owners. In the case of quarantine the goods may be discharged into quarantine depots or into lighters or other craft, or landed as required for vessel's despatch entirely at Owner's risk & expense. Should the immediate discharge of cargo at the ports of call be prevented by quarantine, blockade, interdict, or, in the Master's opinion, by bad weather or any other circumstance, or should the Master consider that the entering or discharging in the port, would be unsafe from any cause or that entering of any port where in his belief any infectious disease exists would expose the vessel to the risk of detention there or at any

subsequent port of call, or if the authorities of the port refuse to allow the cargo to be discharged, the master, may, at the Owner's expense & risk, discharge the cargo or such part thereof as he may think fit into lighters outside the port of call, or he may land the cargo at any other port or bring it on to the vessel's destination, & in either case the cargo shall be at the risk of the Owner's thereof. Should such cargo then be taken on to the port of delivery by same or other vessel it shall be liable for all landing, lighterage & storage charges (if any), & for additional freight at the current rate from the port at which it is landed, to the original port of delivery.

(d) The goods may be carried by the named , or other vessels, whether belonging to the Line or others, & should circumstances in the opinion of the Carrier, Master or Agent render transshipment desirable or expedient, may be transhipped at any port or ports, place or places whatsoever, & while in the course of transshipment may be placed or stored in craft or ashore & may be re-shipped or forwarded or returned by land &/or water &/or air at carrier's option & expense, all as part of the contract voyage & all the provisions of the is Bill of Lading shall continue to apply.

(e) In the case of the blockade or interdict of the port of discharge of the goods shipped hereunder or if the entering of such port or discharging or handling (or continuance of discharging or handling) of cargo in such port shall be prohibited or prevented or likely to be delayed by blockades, interdict, quarantine, strikes, lockouts, or labour troubles existing or anticipated (whether the Carrier or his servants are likely to be parties thereto or not), civil commotions, riot, epidemic, fever or other illness or any disturbances, or any cause whatsoever beyond the Carrier's control, or shall be considered by the Carrier, Master or Agents ( whose decision shall be absolute & binding on all parties) to be unsafe or likely to prejudice the interests of the vessel &/or cargo whether by delay or otherwise howsoever, then the goods may be at the Carrier's option landed or put into lighters there or may be retained on board & carried to such convenient port as the carrier, Master or Agent may in his or their absolute discretion select & there discharged all as part of the agreed voyage, & while so retained & until discharged as aforesaid the goods shall be carried subject to all the exceptions, terms & conditions of this Bill of Lading. In any case where discharge is effected under any provision of this clause the Carrier's responsibility shall cease at the ship's rail, the goods being thereafter at the Owner's or Consignee's risk, & such discharge shall, notwithstanding anything contained in this Bill of Lading, constitute due delivery of the goods under this Bill of Lading and the Owner or Consignee of the goods shall bear & pay all charges & expenses incurred in consequence of such discharge. The Carrier will so far as practicable give immediate notice of such discharge to the Consignee of the goods, if known, but shall incur no liability for failure to do so.

4. The Bill of Lading must be presented for endorsement & freight & charges, if any, paid before delivery of goods can be granted, & if required by the carriers or his Agents must be given up, duly endorsed, in exchange for the goods, freight to be due, & is to be considered as earned on shipment, vessel or vessels, goods or treasure, lost or not lost. The Carrier or the Master or the Agents shall have a lien upon all goods for unpaid freight or charges, or for payments made or to be made, or for liabilities incurred for any

expenses herein stipulated to be borne by the owner. The Carrier Master, or Agent, & the Master or Agent of any vessel in which the goods may have been transhipped, may, at his discretion, & without being liable for any loss or damage thereby sustained, sell at the expiration of twenty four hrs after arrival at port of consignment any perishable goods on which the freight is unpaid, & he may likewise (without any further notice than is herein contained,) at the expiration of thirty days from the time of delivery of the goods should have been taken, sell such goods as are not of a perishable nature, or so much thereof as may be necessary to satisfy the said lien, & retain from the proceeds of sale the freight &/or charges due the Carrier or Owner of other vessel in respect of such goods. Any such sale shall not prejudice or effect the right of the Carrier or Master or of the Owner of such other vessel to recover from the person or persons liable to pay the same, any freight &/or charges due in respect of such goods. Any surplus shall be payable to the Owner of such goods.

5. Every piece or package must be distinctly, correctly & permanently marked by the Shipper before shipment with a mark or number or address & (in letter not less than 2 inches long) with the name of the port or place of discharge. Every piece or package of a gross weight of 2205 pounds or over must have the weight permanently marked on such piece or package in characters not less than one inch in height in order to comply with the Government Regulations, & written notification of such piece or package must be sent before shipment by the Shipper to the Carrier or his Agent. If the Carrier suffer or incur any loss, damage or liability whatsoever owing directly or indirectly to the failure of the Shipper to mark the goods or make the notification as aforesaid or to the incorrect or insufficient description of any piece or package not being in accordance with local requirements at the port of loading or discharge, the Shipper, Consignee &/or owner shall be responsible therefore, & shall indemnify the Carrier in respect thereof. In no case can the carrier accept responsibility for delivery to marks other than the leading marks.

6. The freight payable hereon has been calculated & based upon description & particulars of the goods declared by the Shipper to the Carrier. The carrier shall be entitled to inspect, re-weigh or re-measure any goods, & additional freight shall be paid on any additional weight, measurement or (in cases where the value has been stated) value so ascertained. All expenses incidental to inspection, re-weighing or re-measuring shall be borne by the Carrier if the description & particulars as furnished by the Shipper are found to be correct, but otherwise such expenses shall be borne & paid by the owner or Consignee of the goods. If the description or particulars have been misquoted by the Shipper, in addition to the payment the full correct freight, double the amount of such freight shall be paid as liquidated damages by the Shipper, Consignee &/or Owner of the goods, & a certificate signed by the Carrier or his Agents shall be conclusive evidence of the full correct freight.

7. The Shipper, Consignee &/or Owner of the goods shall bear & pay the cost of labour & material for mending, baling, bagging, packing, cooperage & repairs to & renewals of packages, boxes & crates, wrappers, bales, bags, or barrels resulting from insufficiency of packing or from excepted perils.

8. The Carriers are at liberty to tranship & carry the said goods to their port of destination by the above or other vessel or vessels, whether belonging to the same or other persons, subject to all conditions which may be exacted by the carrier or other persons who may complete the transit, & proceeding by any route, whether directly or indirectly to such port, & in doing so to carry the goods beyond the port of destination, & to land & store the goods at any port or place, either on shore or afloat, & reship & forward the same, either by land or water at the carrier's expense, but at the risk of the Owner's of the goods. This right is not effected by abandonment of the vessel by her crew or to the underwriter.

9. If this Bill of Lading on the face thereof provides for transshipment & forwarding the carrier shall be under no obligation himself to deliver the goods at the named port or place of delivery, but on arrival of the vessel named in this Bill of Lading (or any other vessel carrying the goods under any liberty in this Bill of Lading) at the named port of transshipment or at such other port or place which the Carrier may elect as the port or place of transshipment, the carrier shall at his own expense (unless otherwise herein provided for) discharge & tranship or land or store the goods (either ashore or afloat) at such port or place & within all reasonable despatch them forward by sea or inland waterways or by land or by air by any route to the port or place of destination for delivery to the person entitled to delivery of such port or place. The Carrier has the right to forward in lots or parts. On discharge from the vessel at such port or place of transshipment the Carrier's responsibility shall cease & neither he nor the vessel shall be liable in any circumstances for the loss or detention of or damage to the goods howsoever caused during such discharge. In respect of the carriage of goods from such port or place of transshipment to the port or place of destination, & of the storage, transport & transshipment of the goods while not on board the vessel named in this Bill of Lading or carrying the goods under a liberty mentioned in Clause 3 (d) hereof, the carrier acts as forwarding agent only, making a contract for such storage, transport, transshipment & on-carriage on the terms & subject to the provisions of the contract in use by the person or on-carrier with whom such a contract is made & not making any declaration of value unless expressly instructed by the Shipper, & paying expenses of such operations but incurring no responsibility as carrier or custodian of the goods or otherwise for any loss, damage or detention howsoever caused, in respect of such on-carriage the goods shall be subject to all the liberties (including the liberty to carry the goods on deck), conditions & exceptions of the on-carrier conveying them beyond the port or place of transshipment, & the Shipper will have the benefit of any obligations of any such on-carrier (by sea and/or inland waterways &/or by land or air), or of any warehouseman, lighterman, or others under their respective contracts with the Carrier. If for any cause whatsoever the goods shall be delayed at the port or place of transshipment beyond the period which would elapse before transshipment in normal circumstances, the storage & other charges upon the goods after the expiration of the normal period shall be borne by the Consignee or Owner of the goods. If the carrier selects another port of transshipment than that named herein he shall have the right to collect from the Consignee or Owner of the goods all expenses of whatever nature which exceed those which would have been incurred if the goods had been transhipped at the named port, but he shall have such right only when in

the opinion of the Carrier (whose opinion shall be conclusive) conditions on the route to or from the named port or that port relating to the on-carriage there from are such to be likely to prejudice the interests of the carrier whether by delay to the vessel or otherwise howsoever if the vessel proceeds to or remains at or proceeds from the named port, or to prevent the on-carriage of the goods.

10. The Carrier & his Agents shall have the right of nominating the berth or berths for loading & discharging at all ports & places whatsoever, any custom to the contrary notwithstanding.

11. The Carrier reserves the right to decline to carry the goods or any of them included in the Bill of Lading should the same in his opinion, or that of the Master or the Agent, be likely to become offensive or injurious to health or to damage other cargo or the vessel, & at risk to the Owner to discharge same at any port or otherwise deal with such goods as may be considered advisable.

12. Perishable or other goods landed without marks, with marks obliterated, or with other marks shall be accepted in lieu of otherwise unsatisfied requirements if of similar description.

13. The Carrier is not accountable for gold, silver, bullion, specie, watches, clocks, jewellery, precious stones, silk goods, quinine, precious metals, opium, bank notes, bonds or securities for money, paintings, sculptures or other works of art beyond the sum of \$40 nor beyond that amount for each package or parcel of any other kind of property (no matter what may be the contents thereof) unless such article or articles or such package or parcel shall have been previously booked with a declaration of the nature & value thereof, & the Bill of Lading signed in accordance therewith & extra freight paid prior to receipt of such article or package for shipment & then only for such declared value subject to the other terms & conditions hereof. An untrue & incorrect declaration of the contents & value of such goods shall release the Carrier from all responsibility. Specie will be delivered on presentation of Bill of Lading on board & if not claimed & delivered during the vessels stay in port, the carrier is at liberty to carry it on, or land & store it at the owner's risk & expense.

14. The carrier will not be accountable for any goods of any description beyond \$200 (or \$500 if the goods are shipped the United States) in respect of any one package or unit unless the value thereof shall have been stated in writing both on the Broker's Order, which must be obtained before shipment, & on the Shipping Note presented on shipment, & extra freight agreed upon & paid, & Bills of Lading signed with a declaration of the nature & value of goods appearing thereon. When the value is declared & extra freight agreed as aforesaid, the carrier's liability shall not exceed such value or pro rata on that basis in the event of partial loss or damage.

15. In the event of the Carrier being liable for damage to or loss of any goods carried by the vessel all claims in respect of such loss or damage shall be deemed to be waived unless notice of the claim is made in writing to the Carrier or his Agents at the final port

of discharge of the goods in respect of which the claim is made within 14 days after such goods were or should have been discharged from the vessel.

16. In the event of accident, danger damage or disaster, before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, the Carrier is not responsible, by statute, contract, or otherwise, the goods, Shipper, Consignee, or Owner of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, loss, or expenses of a general nature that may be made or incurred & shall pay salvage & special charges incurred in respect of the goods.

General average shall be adjusted according to York-Antwerp Rules 1974. Adjustments shall be prepared at such port as shall be selected by the Carrier. Such deposit as the Carrier or his Agents may deem sufficient to cover the estimated contribution of the goods & any special charges thereon shall, if required, be paid to the Carrier or his Agents previously to the delivery of the goods. Should salvage services be rendered to the cargo by any vessel or vessels belonging wholly or in part to or chartered by the same ownership or Line, such salvage services shall be paid for as fully as if they had been rendered by a vessel or vessels entirely the property of different ownership or Lines.

17. If the vessel comes into collision with another ship as the result of negligence of the other ship & any act, neglect or default of the Master, mariner, pilot, or the servants of the Carrier in the navigation or in the management of the vessel, the Owner of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her Owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the Owner of the said goods, paid or payable by the other or non carrying ship or her Owners to the Owner of the said goods & set off recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying vessels 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 addition to, the colliding ships or objects are at fault in respect to a collision or contact.

18. If the vessel is not owned or chartered by demise to the company or Line by whom this Bill of Lading is issued (as may be the case notwithstanding anything that appears to the contrary), this Bill of Lading shall take effect only as a contract with the Owner or Demise Charterer as the case may be Principal made through the agency of the said Company or Line who act as Agents only & shall be under no personal liability whatsoever in respect thereof.

19. The Carrier may charge freight by weight, measurement or value & may at any time re-weigh, re-measure, or re-value or require the goods to be re-weighed, re-measured, or re-valued, & charge amended freight accordingly.

20. The carrier is not responsible for the vessel starting before or after the advertised hour & date of sailing, either through the performance of any postal or other contract or any other cause whatsoever.

21. The vessel may carry cargo of all kinds, dangerous or otherwise.

22. If at a port or place of discharge no one presents himself duly authorised by the owners of the goods to give the master a receipt for such goods, when discharged, the usual record of discharge as kept by the ship's officers shall be held to be a sufficient delivery in good order.

#### LIGHTERAGE ISLANDS

23. (a) Inward cargo to the islands is subject to delivery ex ship's slings outward cargo is received in ship's slings as customary. On the round trip the Company's vessel takes with her temporary lighterage gear, but the Company reserves the exclusive right of deciding whether the conditions of weather, time, duration of stay etc allow or do not allow of lighterage between the ship & the shore being effected by the ship's gear.

(b) Lighterage will be charged & shall be payable on all goods lightered by the company

(c.) All inward cargo not taken delivery of will be left with one of the traders having his boat alongside, to be taken ashore & stored at Consignee's risk & expense.

(d) The absence of the Shipper's signature does not prejudice the value of the preceding Clauses.

24. All conditions limiting Owner's liabilities in the Bill of Lading are to give such benefits of limitations to Master, Officers & crew.

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SUBJECT TO Paramount Clause incorporating Hague Rules Legislation. Amended Jason Clause. Both to Blame Collision Clause. War Risk Clause.

THE COMPANY IS NOT LIABLE FOR ANY CONSEQUENCES WHATEVER THAT MAY ARISE THROUGH STRIKES OR LOCKOUT NOR THE FADING OR DECAY OF MARKS.

THE COMPANY IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE BY FIRE OR OTHER CAUSE WHILE GOODS ARE IN STORE AWAITING SHIPMENT.