

# United Nations Convention on the Carriage of Goods by Sea, 1978

## THE HAMBURG RULES

### Preamble

THE STATE!; PARTIES TO THIS CONVENTION,  
HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to the carriage of goods by sea,  
HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

### PART I. GENERAL PROVISIONS

#### Article 1. Definitions

In this Convention:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.
2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.
3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.
4. "Consignee" means the person entitled to take delivery of the goods.
5. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper.
6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however,

a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.

7. "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

8. "Writing" includes, inter *alia*, telegram and telex.

## Article 2. Scope of application

1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:

- (a) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or
- (b) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or
- (c) one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or
- (d) the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or
- (e) the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.

2. The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

3. The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment: However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article apply.

### Article 3. Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

## PART II. LIABILITY OF THE CARRIER

### Article 4. Period of responsibility

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.
2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods
  - (a) from the time he has taken over the goods from:
    - (i) the shipper, or a person acting on his behalf; or
    - (ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;
  - (b) until the time he has delivered the goods:
    - (i) by handing over the goods to the consignee; or
    - (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or
    - (iii) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.
3. In paragraphs 1 and 2 of this article, reference to the carrier or to the consignee

means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.

#### Article 5. Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.

4. (a) The carrier is liable

(i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;

(ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

(b) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.

5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the

carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery not attributable thereto.

#### Article 6. Limits of liability

- 1 (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.
  - (b) The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.
  - (c) In no case shall the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for total loss of the goods with respect to which such liability was incurred.
2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 (a) of this article, the following rules apply:
- (a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading,

if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit.

(b) In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

3. Unit of account means the unit of account mentioned in article 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

#### Article 7. Application to non-contractual claims

1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.

2. If such an action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. Except as provided in article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

#### Article 8. Loss of right to limit responsibility

1. The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in

article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

### **Article 9. Deck cargo**

1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.
2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a **statement** to that effect. In the absence of such a statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.
3. **Where** the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or article 8 of this Convention, as the case may be.
4. Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8.

### **Article 10. Liability of the carrier and actual carrier**

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the

actual carrier and of his servants and agents acting within the scope of their employment.

2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.

3. Any special agreement under which the carrier assumed obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.

5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.

6. Nothing in this article shall prejudice any right of recourse as between the carrier and the actual carrier.

#### Article 11. Through carriage

1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraphs 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

2. The actual carrier is responsible in accordance with the provisions of paragraph



2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

### **PART III. LIABILITY OF THE SHIPPER**

#### Article 12. General rule

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

#### Article 13. Special rules on dangerous goods

1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.
2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:
  - (a) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and
  - (b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.
3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.
4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an

obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.

#### **PART IV. TRANSPORT DOCUMENTS**

##### **Article 14. Issue of bill of lading**

1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.
2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.
3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

##### **Article 15. Contents of bill of lading**

- 1. The** bill of lading must include, inter *alia*, the following particulars:
  - (a) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;
  - (b) the apparent condition of the goods;
  - (c) the name and principal place of business of the carrier;
  - (d) the name of the shipper;
  - (e) the consignee if named by the shipper;
  - (f) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;
  - (g) the port of discharge under the contract of carriage by sea;
  - (h) the number of originals of the bill of lading, if more than one;
  - (i) the place of issuance of the bill of lading;

- (j) the signature of the carrier or a person acting on his behalf;
- (k) the freight to the extent payable by the consignee or other indication that freight is payable by him;
- (l) the statement referred to in paragraph 3 of article 23;
- (m) the statement, if applicable, that the goods shall or may be carried on deck;
- (n) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and
- (o) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.

2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.

3. The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.

#### Article 16. Bills of lading: reservations and **evidentiary** effect

1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. If the carrier or other person issuing the bill of lading on his behalf fails to note

on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

3. Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:

- (a) the bill of lading is prima facie evidence of the taking over or, where a “shipped” bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and
- (b) proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

4. A bill of lading which does not, as provided in paragraph 1, subparagraph(k) of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is *prima* facie evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

#### Article 17. Guarantees by the shipper

1. The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea to any person other than the shipper.

2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee of agreement is valid as against the shipper unless the carrier of the person acting on his behalf, by omitting the reservation referred to in paragraph 2 of this article, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this article.

4. In the case of intended fraud referred to in paragraph 3 of this article the carrier is liable, without, the benefit of limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.

#### Article 18. Documents other than bills of lading

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

### PART V. CLAIMS AND ACTIONS

#### Article 19. Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when goods were the handed over to the consignee.

3. If the state of the goods at the time they were handed over to the consignee has

been the subject of a joint survey or inspection by the parties, **notice** in writing need not be given of loss or damage ascertained during such survey or inspection.

4. In the case of any actual or apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.

7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of article 4, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

3. For the purpose of this article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

#### Article 20. Limitation of actions

1. Any action relating to carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

3. The day on which the limitation period commences is not included in the period.

4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted; within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

#### Article 21. Jurisdiction

1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated is competent and within the jurisdiction of which is situated one of the following places:

- (a) the principal place of business or, in the absence thereof, the habitual residence of the defendant; or
- (b) the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or
- (c) the port of loading or the port of discharge; or
- (d) any additional place designated for that purpose in the contract of carriage by sea.

2. (a) Notwithstanding the preceding provisions of this article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. However, in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in paragraph 1 of this article for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgement that may subsequently be awarded to the claimant in the action.

(b) All questions relating to the sufficiency or otherwise of the security shall be determined by the court of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

4. (a) Where an action has been instituted in a court competent under paragraph 1 or 2 of this article or where judgement has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgement of the court before which the first action was instituted is not enforceable in the country in which the new proceedings are instituted;

(b) for the purpose of this article the institution of measures with a view to obtaining enforcement of a judgement is not to be considered as the starting of a new action;

(c) for the purpose of this article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with paragraph 2

(a) of this article, is not to be considered as the starting of a new action.

5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action, is effective.

## Article 22. Arbitration

1 Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

(a) a place in a State within whose territory is situated:

(i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or



- (ii) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
  - (iii) the port of loading or the port of discharge; or
- (b) any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

5. The provisions of paragraphs 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith is null and void.

6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

## PART VI. SUPPLEMENTARY PROVISIONS

### Article 23. Contractual stipulations

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogate?, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the cntrxt or document of which it forms a part. A clause assigning benefit of insurance of the goods in favour of the carrier, or any similar clause, is null and void.

2. Notwithstanding the provisions of paragraph 7 of this article, a carrier may increase his responsibilities and obligations under this Convention.

3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued. it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.

4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present article, or as a result of the omission of the statement referred to in paragraph 3 of this article, the carrier

must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

#### Article 24. General average

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.
2. With the exception of article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

#### Article 25. Other conventions

1. This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants or agents, provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.
2. The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal place of **business** in States members of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of this Convention.
3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:
  - (a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28

January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

- (b) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.

4. No liability shall arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

5. Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

#### Article 26. Unit of account

1. The unit of account referred to in article 6 of this convention is the Special Drawing Right as defined by the international Monetary Fund. The amounts mentioned in article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as:

12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogramme of gross weight of the goods.

3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

## **PART VII. FINAL CLAUSES**

### **Article 27. Depositary**

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

### **Article 28. Signature, ratification, acceptance, approval, accession**

1. This Convention is open for signature by all States until 30 April 1979 at the Headquarters of the United Nations, New York.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After 30 April 1979, this Convention will be open for accession by all States which are not signatory States.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

#### Article 29. Reservations

No reservations may be made to this Convention.

#### Article 30. Entry into Force

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the 20th instrument of ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the 20th instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply the provisions of this Convention to contracts of carriage by sea concluded on or after the date of the entry into force of this Convention in respect of that State.

#### Article 31. Denunciation of other conventions

1. Upon becoming a Contracting State to this Convention, any State party to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) must notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. Upon the entry into force of this Convention under paragraph 1 of article 30, the depositary of this Convention must notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

3. The provisions of paragraphs 1 and 2 of this article apply correspondingly in respect of States parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

4. Notwithstanding article 2 of this Convention, for the purposes of paragraph 1 of this article, a Contracting State may, if it deems it desirable, defer the denunciation of the 1924 Convention and of the 1924 Convention as modified by the 1968 Protocol for a maximum period of five years from the entry into force of this Convention. It will then notify the Government of Belgium of its intention. During this transitory period, it must apply to the Contracting States this Convention to the exclusion of any other one.

#### **Article 32. Revision and amendment**

1. At the request of not less than one-third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.

#### **Article 33. Revision of the limitation amounts and unit of account or monetary unit**

1. Notwithstanding the provisions of article 32, a conference only for the purpose of altering the amount specified in article 6 and paragraph 2 of article 26, or of substituting either or both of the units defined in paragraphs 1 and 3 of article 26 by other units is to be convened by the depositary in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. A revision conference is to be convened by the depositary when not less than one-fourth of the Contracting States so request.

3. Any decision by the conference must be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the

Contracting States for acceptance and to all the States signatories of the Convention for information.

4. Any amendment adopted enters into force on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. Acceptance is to be effected by the deposit of a formal instrument to that effect, with the depositary.

5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.

#### Article 34. Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Hamburg, this thirty-first day of March one thousand nine hundred and seventy-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

Issued 5/2/1909  
Amended 13/3/1911  
Amended 6/3/1912  
Amended 10/6/1920  
Amended 1/3/1939  
Amended 1/1/1960

THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE  
(Formerly The Baltic and White Sea Conference.)

UNIFORM TIME-CHARTER

Code-Name  
Balttime  
1939.

September 20<sup>th</sup> 1962

Description of Vessel.	It is this Day mutually agreed between <i>Great Eastern S.S. Co. Ltd.</i> Owners 1 of the Vessel called <i>Mary Jane</i> of <i>10339</i> tons gross Register, 2 classified <i>Lloyd's 100 A1</i> of <i>6300</i> indicated horse power, 3 carrying about <i>9131</i> tons deadweight on Board of Trade summer freeboard inclusive 4 of bunkers, stores, provisions and boiler water, having as per builder's plan <i>478,000</i> cubic feet 5 <del>gross</del> capacity, exclusive of permanent bunkers, which contain about <i>950</i> tons, and fully loaded capable 6 of steaming about <i>12 1/2</i> knots in good weather and smooth water on a consumption of <del>about</del> 7 <del>some best Welsh coal</del> or about <i>15 1/2</i> tons oil-fuel, now <i>at London</i> 8
Charterers.	and <i>Central Merchants Ltd.</i> 9 of <i>London</i> Charterers, as follows: 10
Period.	1. The Owners let, and the Charterers hire the Vessel for a period of <i>24 (twenty-four)</i> 11 calendar months from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered 12 and placed at the disposal of the Charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. 13 if on Saturday, at <i>Liverpool</i> 14
Port of Delivery.	in such available berth where she can safely lie always afloat, as the Charterers 15 may direct, she being in every way fitted for ordinary cargo service. 16 The Vessel to be delivered <i>not before November 1st</i> 17
Time for Delivery.	
Trade.	2. The Vessel to be employed in lawful trades for the carriage of lawful merchandise only 18 between good and safe ports or places where she can safely lie always afloat within the following 19 limits: 20 <i>United Kingdom, Continent, Elbe Brest limits (excluding</i> <i>Shetland or Orkneys)</i>
Owners to provide.	No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium 21 carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) to be shipped. 22
Charterers to provide.	3. The Owners to provide and pay for all provisions and wages, for insurance of the Vessel, for all 23 deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery 24 during service. 25 The Owners to provide one winchman per hatch. If further winchmen are required, or if the 26 stevedores refuse of are not permitted to work with the Crew, the Charterers to provide and pay 27 qualified shore-winchmen. 28
Charterers to provide.	4. The Charterers to provide and pay for all coals, including galley coal, oil-fuel, water for boilers, 29 port charges, pilotages (whether compulsory or not), canal steersmen, boatage, lights, tug-assistance, 30 consular charges (except those pertaining to the Master, Officers and Crew) canal, dock and other dues 31 and charges, including any foreign general municipality or state taxes, also all dock, harbour and 32 tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery 33 or after re-delivery) agencies, commissions, also to arrange and pay for loading, trimming, stowing (includ- 34 ing dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and 35 delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all 36 other charges and expenses whatsoever including detention and expenses through quarantine (including 37 cost of fumigation and disinfection). 38



	All ropes, slings and special runners actually used for loading and discharging and any special gear, including special ropes, hawsers and chains required by the custom of the port for mooring to be for the Charterers' account. The Vessel to be fitted with winches, derricks, wheels and ordinary runners capable of handling lifts up to 2 tons.	39 40 41 42
Bunkers	5. The Charterers at port of delivery and the Owners at port of re-delivery to take over and pay for all coal or oil-fuel remaining in the Vessel's bunkers at current price at the respective ports. The Vessel to be re-delivered with not less than 400 tons and not exceeding 500 tons of coal or oil fuel in the Vessel's bunkers.	43 44 45 46
Hire.	6. The Charterers to pay as hire <i>47/- (British Sterling Forty - Seven Shillings) per deadweight ton</i>	47
Payment.	per 30 days, commencing in accordance with clause 1 until her re-delivery to the Owners. Payment of hire to be made in cash, in <i>London</i> without discount, every 30 days, in advance.	48 49 50
	In default of payment the Owners to have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have against the Charterers under the Charter	51 52 53 54
Re-delivery.	7. The Vessel to be re-delivered on the expiration of the Charter in the same port order as when delivered to the Charterers (fair wear and tear excepted) at an ice free port in the Charterers option in <i>the United Kingdom</i>	55 56
	between 4 a.m. and 6 p.m. and 9 a.m. and 2 p.m. on Saturday-, but the day of re-delivery shall not be a Sunday or legal Holiday.	57 58
Notice.	The Charterers to give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered. Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers to have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow re-delivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers to pay the market rate if higher than the rate stipulated herein	59 60 61 62 63 64 65
Cargo Space.	8. The whole reach and burthen of the Vessel, including lawful deck-capacity to be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.	66 67 68
Master.	9. The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise. If the Charterers have reason to be dissatisfied with the conduct of the Master, Officers, or Engineers, the Owners, on receiving particulars of the complaint, promptly to investigate the matter, and, if necessary and practicable, to make a change in the appointments.	69 70 71 72 73 74 75 76 77 78
Directions and Logs.	10. The Charterers to furnish the Master with all instructions and sailing directions and the Master and Engineer to keep full and correct logs accessible to the Charterers or their Agents	79 80
Suspension of Hire, etc.	11. (A) In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the vessel and continuing for more than twenty-four consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly. (B) In the event of the Vessel being driven into port or to anchorage through strew of weather, trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention to be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants.	81 82 83 84 85 86 87 88 89 90 91

Cleaning Boilers.	12. Cleaning of boilers whenever possible to be done during service, but if impossible the Charterers to give the Owners necessary time for cleaning. Should the Vessel be detained beyond 48 hours hire to cease until again ready.	92 93 94
Responsibility and Exemption.	13. The Owners only to be responsible for delay in delivery of the Vessel or for delay during the currency of the Charter and for loss or damage to goods on board, if such delay or loss has been caused by want of due diligence on the part of the Owners or their Manager in making the Vessel seaworthy and fitted for the voyage or any other personal act or omission or default of the Owners or their Manager. The Owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The Owners not to be liable for loss or damage arising or resulting from strikes, lock-outs or stoppage or restraint of labour (including the Master, Officers or Crew) whether partial or general. The Charterers to be responsible for loss or damage caused to the Vessel or to the Owners by goods being loaded contrary to the terms of the Charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants.	95 96 97 98 99 100 101 102 103 104 105 106
Advances.	14. The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only interest at 6 per cent. p.a., such advances to be deducted from hire.	107 108 109
Excluded Ports. Ice.	15. The Vessel not to be ordered to nor bound to enter : (a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel (b) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice. If on account of ice the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and or damaged, he has liberty to sail to a convenient open place and await the Charterers' fresh instructions. Unforeseen detention through any of above causes to be for the Charterers' account.	110 111 112 113 114 115 116 117 118
Loss of Vessel.	16. Should the Vessel be lost or missing, hire to cease from the date when she was lost. If the date of loss cannot be ascertained half hire to be paid from the date the Vessel was last reported until the calculated date of arrival at the destination. Any hire paid in advance to be adjusted accordingly.	119 120 121 122
Overtime	17. The Vessel to work day and night if required. The Charterers to refund the Owners their outlays for all overtime paid to Officers and Crew according to the hours and rates stated in the Vessel's articles.	123 124 126
Lien.	18. The Owners to have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.	126 127 128
Salvage.	19. All salvage and assistance to other vessels to be for the Owners' and the Charterers' equal benefit after deducting the Master's and Crew's proportion and all legal and other expenses including hire paid under the charter for time lost in the salvage, also repairs of damage and coal or oil-fuel consumed. The Charterers to be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount	129 130 131 132 133
Sublet.	20. The Charterers to have the option of subletting the Vessel, giving due notice to the Owners, but the original Charterers always to remain responsible to the Owners for due performance of the Charter.	134 136
War.	21. (A) The Vessel unless the consent of the Owners be first obtained not to be ordered nor continue to any place or on any voyage nor be used on any service which will bring her within a zone which is dangerous as the result of any actual or threatened act of war, war, hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other vessel or its cargo by any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of Sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any Government or Ruler. (B) Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks, (1) the Owners to be entitled from time to time to insure their interests in the Vessel and/or hire against any of the risks likely to be involved thereby on such terms as they shall think fit, the Charterers to make a refund to the Owners of the premium on demand; and (2) notwithstanding the terms of clause 11 hire to be paid for all time lost including	136 137 138 139 140 141 142 143 144 145 146 147 148 149

Section (U) optional and should be deleted unless agreed.

any loss owing to loss of or injury to the Master, Officers, or Crew or to the action of the Crew in refusing to proceed to such zone or to be exposed to such risks. 150  
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(C) In the event of the wages of the Master, Officers and/or Crew or the cost of provisions and/or stores for deck and/or engine room and/or insurance premiums being increased by reason of or during the existence of any of the matters mentioned in section (A) the amount of any increase to be added to the hire and paid by the Charterers on production of the Owners' account therefor, such account being rendered monthly. 152  
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(D) The Vessel to have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or in any other wise whatsoever given by the Government of the nation under whose flag the Vessel sails or any other Government or any person (or body) acting or purporting to act with the authority of such Government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions. 157  
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(E) In the event of the nation under whose flag the Vessel sails becoming involved in war, hostilities, warlike operations, revolution, or civil commotion, both the Owners and the Charterers may cancel the Charter and, unless otherwise agreed, the Vessel to be re-delivered to the Owners at the port of destination or, if prevented through the provisions of section (A) from reaching or entering it, then at a near open and safe port at the Owners' option, after discharge of any cargo on board. 163  
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(F) If in compliance with the provisions of this clause anything is done or is not done, such not to be deemed a deviation. 168  
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22. Should the Vessel not be delivered by the *twentieth day of November 1962*, the Charterers to have the option of cancelling the Charter. 170  
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If the Vessel cannot be delivered by the *cancelling date*, the Charterers, if required, to declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel. 172  
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23. Any dispute arising under the Charter to be referred to arbitration in London (or such other place as may be agreed) one Arbitrator to be nominated by the Owners and the other by the Charterers and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them. the award of the Arbitrators or the Umpire to be final and binding upon both parties. 174  
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24. General Average to be settled according to York-Antwerp Rules, 1050. Hire not to contribute to General Average. 179  
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25. The Owners to pay a commission of *5%* to *Messrs. Thomas Brown & Son* on any hire paid under the Charter, but in no case less than is necessary to cover the actual expenses of the Broker, and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor to indemnify the Brokers against their loss of commission. 181  
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Should the parties agree to cancel the Charter, the Owners to indemnify the Brokers against any loss of commission, but in such case the commission not to exceed the brokerage on one year's hire. 186  
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Witness to signature of }  
Great Eastern S.S. Co. Ltd. } *F. Black*

For Great Eastern S.S. Co. Ltd.  
*D. Morris*  
Managing Director

Witness to signature of }  
Central Merchants Ltd. } *R. White*

For Central Merchants Ltd.  
*B. Lewis*  
Chairman

## THE YORK-ANTWERP RULES, 1950

**Rule: of Interpretation.**-In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

**Rule A.**-There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

**Rule B.**-General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

**Rule C.**-Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

**Loss** or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

**Rule D.**-Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies which may be open against that party for such fault.

**Rule E.**--The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

**Rule F.**--Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

**Rule G.**--General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not effect the determination of the place at which the average statement is to be made up.

## *The York-Antwerp Rules, 1950*

### Rule I.-Jettison of Cargo.

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the **recognised** custom of the trade.

### Rule II.-Damage by Jettison and Sacrifice for the Common Safety.

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

### Rule III.- Extinguishing Fire on Shipboard.

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by breaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

### Rule IV.-Cutting away Wreck.

Loss or damage caused by cutting away the wreck or remains of spars or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

### Rule V.-Voluntary Stranding.

**When** a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average, but loss or damage incurred in refloating such a ship shall be allowed as general average.

In all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

### Rule VI.-Carrying Press of Sail-Damage to or Loss of Sails.

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average; but where a ship is afloat, no loss or damage caused to the ship, cargo and freight, or any of them, by carrying a press of sail, shall be made good as general average.

### Rule VII.-Damage to Machinery and Boilers.

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but

where a ship is afloat no loss or damage caused by working the machinery and boilers, including loss or damage due to compounding of engines or such measures, shall in any circumstances be made good as general average.

Rule VIII.—Expenses Lightening a Ship when Ashore, and Consequent Damage.

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

Rule IX.—**Ship's** Materials and Stores Burnt for Fuel.

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

Rule X.—Expenses at Port of Refuge, etc.

(a). When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b). The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(c). Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost or reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including insurance, if reasonably incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses

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incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to the date of completion of discharge.

(d). If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expense, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

Rule XI.-Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc.

(a). Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a).

(b). When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the extra period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge.

*Fuel* and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(c). For the purpose of this and the other Rules wages shall include all payments made to *or* for the benefit of the master, officers and crew.

whether such payments be imposed by law upon the shipowners or be made under the terms or articles of employment.

(d). When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred.

**Rule XII.-Damage to Cargo in Discharging, etc.**

Damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

**Rule XIII.-Deductions from Cost of Repairs.**

In adjusting claims for general average, repairs to be allowed in general average shall be subject to deductions in respect of "new for old" according to the following rules, where old material or parts are replaced by new.

The deductions to be regulated by the age of the ship from date of original register to the date of accident, except for provisions and stores, insulation, life- and similar boats, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

No deduction to be made in respect of provisions, stores and gear which have not been in use.

The deductions shall be made from the cost of new material or parts, including labour and establishment charges, but excluding cost of opening up.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

No cleaning and painting of bottom to be allowed, if the bottom has not been painted within six months previous to the date of the accident.

A.-Up to 1 year old.-All repairs to be allowed in full, except scaling and cleaning and painting or coating of bottom, from which one-third is to be deducted.

FL-Between 1 and 3 years old.-Deduction off scaling, cleaning and painting bottom as above under Clause A.

One-third to be deducted off sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers, provisions and stores and painting.

One sixth to be deducted off woodwork of hull, including hold ceiling, wooden masts, spars and boats, furniture, upholstery, crockery, metal- and glass-ware, wire rigging, wire ropes and wire hawsers, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, chain cables and chains, insulation, auxiliary mach-



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inery, steering gear and connections, winches and cranes and connections and electrical machinery and connections other than electric propelling machinery; other repairs to be allowed in full.

Metal sheathing for wooden or composite ships shall be dealt with by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt and labour metalling are subject to a deduction of one-third.

C.-Between 3 and 6 years.-Deductions as above under Clause B, except that one-third be deducted off wood work of hull including hold ceiling, wooden masts, spars and boats, furniture, upholstery, and one-sixth be deducted off iron work of masts and spars and all machinery (inclusive of boilers and their mountings).

D.-Between 6 and 10 years.-Deductions as above under Clause C, except that one-third be deducted off all rigging, ropes, sheets, and hawsers, iron work of masts and spars, gyro compass equipment, wireless, direction finding echo sounding and similar apparatus, insulation, auxiliary machinery, steering gear, winches, cranes and connections and all other machinery (inclusive of boilers and their mountings).

E.-Between 10 and 15 years.-One-third to be deducted off all renewals, except iron work of hull and cementing and chain cables, from which one-sixth **to** be deducted, and anchors, which are allowed in full.

F.-Over 15 years.-One-third **to** be deducted off all renewals, except chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

#### Rule XIV.-Temporary repairs.

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving, in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

#### Rule XV.-Loss of Freight.

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

Rule XVI.-Amount to be made good for Cargo Lost or Damaged by Sacrifice.

The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Where goods so damaged are sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Rule XVII.-Contributory Values.

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, to which values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight had: the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Passenger's luggage and personal effects not shipped under bill of lading shall not contribute in general average.

Rule XVIII.-Damage to Ship.

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, subject to deduction in accordance with Rule XIII. When not repaired, the reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by a general average act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.

**Rule XIX.—Undeclared or Wrongfully Declared Cargo.**

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

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Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

Rule X.X.-Provision of Funds.

A commission of 2 per cent on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

Rule XXI.-Interest on Losses made good in general average.

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5 per cent per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

Rule XXII.-Treatment of Cash Deposits.

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.