

Transmarine General Terms and conditions (01/2019)

If the Contract is entered into with Transmarine London Limited, the General Conditions of B.I.F.A shall apply. A copy of this Contract can be reviewed and downloaded from www.trans-marine.com or Transmarine shall issue a copy upon request.

If the Contract is entered into with any other Transmarine entity, the following shall apply:

1: DEFINITIONS

“Contract” means these general terms and conditions and the “Pre-Alert” issued by the Freight Forwarder provided it is explicitly identified as a “Pre-Alert”.

“Customer” means the party that has concluded a Contract with the Freight Forwarder.

“Customer Group” means the Customer, his affiliates, agents, shippers, receivers, contractors and sub-contractors of any tier (except the Freight Forwarder), their employees or agents and any other person acting for or on behalf of the aforesaid.

“Freight Forwarder” means Transmarine or any of its subsidiaries.

“Goods” means the cargo for which the Freight Forwarder has agreed to perform freight forwarding services.

“Third Party” or “Third Parties” means any person other than the Freight Forwarder and the Customer Group.

2: GENERAL OBLIGATIONS

The Freight Forwarder acts as an intermediary only and shall forward the Goods on behalf of the Customer. He may forward the Goods in his own name or in the name of the Customer. It is incumbent upon the parties to provide each other with information necessary for the performance of the Contract. The Freight Forwarder undertakes to collect, take care of and procure the transport of the Goods in accordance with the Contract and in a suitable way for the Customer with generally used means and routes of transport.

3: PROTECTION OF CUSTOMER'S INTERESTS

The Freight Forwarder shall protect the Customer's interests in a diligent manner and in accordance with the Contract. Should the Freight Forwarder cause damage, delay or other loss by wilful misconduct he may not invoke the provisions in the Contract which exonerate him from or limit his liability, or alter the burden of proof, unless otherwise provided in Clauses 13 – 16.

4: ARRIVAL TIME

The arrival time stated on the “Pre-Alert” or otherwise provided by the Freight Forwarder is an estimate only and does not constitute a promise or undertaking that the Goods will arrive or be delivered at that time or around / within reasonable time from that time.

The Freight Forwarder shall use reasonable endeavours to ensure that the Goods are shipped in time to meet the estimated arrival/delivery date.

5: RIGHT TO TAKE APPROPRIATE MEASURES

If it becomes necessary for the Freight Forwarder in the performance of the Contract to act before seeking instructions, he does so at the Customer's risk and for the Customer's account. If the risk of depreciation of Goods already taken over arises or, if by reason of the nature of the Goods, there is a danger to persons, property or to the environment, and the Customer cannot be reached, or should he not, upon being requested to remove the Goods, arrange to do so, the Freight Forwarder may take appropriate measures in respect of the Goods, and, if necessary, sell the Goods in an appropriate manner. The Freight Forwarder may, depending on the circumstances and without notice, sell on behalf of the Customer, render harmless or destroy Goods which are in danger of becoming worthless or extensively depreciated, or which give rise to imminent danger. After having made deductions for any reasonable expenses incurred in connection with the sale, and any other amounts which are due to the Freight Forwarder under the Contract, the sum received from the sale shall be paid to the Customer. The Freight Forwarder shall notify the Customer as soon as possible of measures that have been taken, and, upon request, supply evidence of any expenses in connection herewith. For such expenses the Freight Forwarder may debit a special expense charge.

6: CLAIMS AGAINST THIRD PARTIES – FREIGHT FORWARDER'S ASSISTANCE

Where Goods have been damaged, delayed or when some other loss has occurred due to a Third Party's acts or omissions, the Freight Forwarder has a duty to notify a claim against that Third Party on behalf of the Customer. The Freight Forwarder shall inform the Customer and consult with him in order to take such steps as are necessary to secure the Customer's claim for compensation from the Third Party who has caused the damage or loss, or who is responsible therefore, and shall, when requested to do so, assist the Customer in his relation to the Third Party. The Freight Forwarder shall be entitled to reasonable compensation for such assistance. If so requested, the Freight Forwarder shall transfer to the Customer all rights and claims that the Freight Forwarder may have under his contract with a Third Party.

7: QUOTATION – ADVANCE PAYMENT

The Freight Forwarder's quotation is based on information relevant to the Contract supplied to the forwarder, or else on circumstances that are deemed by the Freight Forwarder as normal for the intended Contract. If the circumstances do not indicate otherwise, the Freight Forwarder should be able to assume that the Goods which have been handed over for carriage are of such a nature and such a relation between weight and volume as are normal for the type of goods in question. Unless otherwise agreed, the Customer is obliged, upon request, to make advance payment for such expenses as may be incurred in the performance of the Contract.

8: CUSTOMER'S PAYMENT OBLIGATION - INTERESTS

Notwithstanding the Customer's obligations as to payment under any contracts with Third Parties (such as contracts of sale or freight agreements), he has a duty upon request to pay the Freight Forwarder what is due to him under the Contract (whether remuneration, advance payment, refund of outlays or other amounts due) against appropriate documentation. Unless otherwise agreed, when the Goods have not been delivered for transport, and the Contract therefore cannot be wholly or partially executed as agreed or intended, the Freight Forwarder has the right to receive the agreed payment for freight and other remuneration less what the Freight Forwarder has saved, or could reasonably have saved, by not having to execute the Contract. If the Freight Forwarder have given the Customer the right to defer payment until the Goods have arrived at their destination, the Customer has nevertheless a duty, when so requested, to pay freight and any other remuneration to the Freight Forwarder if, due to circumstances beyond the Freight Forwarder's control, the Contract cannot be performed. The Freight Forwarder is entitled to claim interest in the amount of LIBOR (LIBOR rate three months) + 5 % on any amounts outstanding from the time the amount fell due.

9: RIGHT TO SPECIAL COMPENSATION, COMPENSATION FOR OUTLAYS

The Freight Forwarder has the right to special compensation for work which is or has been necessary in addition to what has been explicitly agreed upon or normally follows from the Contract. The compensation is determined in accordance with the same principles as those applying to the compensation for the services under the Contract. The Freight Forwarder has a right to claim compensation for documented outlays (and costs connected therewith) which are incurred in addition to such outlays which have been expressly agreed upon or which normally follows from the Contract.

10 ; COMPENSATION FOR ADDITIONAL AMOUNTS

If the Freight Forwarder has to pay additional amounts for the agreed services, the Customer has a duty upon request to refund these amounts subject to appropriate documentation. It is the Freight Forwarder's duty to check, and if possible, ensure together with the Customer, that the services rendered are within the scope of the Contract, and that the amounts debited are reasonable. The Freight Forwarder shall, if possible, inform the Customer prior to such payment being made.

11: INTERRUPTION OF PERFORMANCE

Should the performance of the Contract be interrupted by reason of hindrances beyond the Freight Forwarder's reasonable control, he may cancel all services and shall receive reimbursement for outlays incurred and for work carried out (such claims to be reasonably documented). The Freight Forwarder shall have no liability whatsoever for any consequences of such interruptions and/or cancellations.

12: LIEN

The Freight Forwarder has a lien on the Goods for his claim for payment of freight, fees and expenses in respect to such Goods (legal fees, remuneration and warehousing charges included) as well as for all other amounts due from the Customer to the Freight Forwarder under this Contract. Should the Goods be lost or destroyed, the Freight Forwarder has a lien in the Customer's claim for compensation from the insurance companies, carriers or others. Should any amounts due to the Freight Forwarder not be paid within reasonable time, the Freight Forwarder has a right to arrange the sale, in a satisfactory manner, of as much of the Goods as is required to cover the total amount due to him, including expenses incurred. The Freight Forwarder shall, if possible, inform the Customer of the intention to carry out a sale.

13: NO LIABILITY AS A CARRIER

The Freight Forwarder acts as an intermediary only and shall not in any event be held liable as a carrier. This applies even if the Freight Forwarder issues or signs transportation documents in his own name. If mandatory laws, statutes or regulations nevertheless impose such liability upon the Freight Forwarder, his liability shall be capped, excluded and/or limited to the maximum extent permitted under such mandatory laws, statutes or regulations, and the Freight Forwarder shall benefit from all defences and limitations offered to the carrier under such mandatory laws, statutes or regulations. Any liability imposed by mandatory laws, statutes or regulations shall in any event be limited and excluded as provided for in Clause 16 below (to the extent permissible under such mandatory laws, statutes or regulations). In the event that the Freight Forwarder is held liable as a carrier under mandatory laws, statutes or regulations, the liability ceases 15 days after the Freight Forwarder has informed the party who has the right to receive the Goods that the Goods have arrived, or has forwarded a written notice in this respect to the address stated by the Customer. Thereafter, the Freight Forwarder is only liable for taking duly care of the Goods in accordance with the Contract.

14: LIABILITY FOR DELAY

The Freight Forwarder has no responsibility or liability for delays and any consequences thereof whatsoever (except where delays are caused by the Freight Forwarder's own wilful misconduct). If mandatory laws, statutes or regulations nevertheless impose such liability upon the Freight Forwarder, his liability shall be capped, excluded and/or limited to the maximum extent permitted under such mandatory laws, statutes or regulations, and the Freight Forwarder shall benefit from all defences and limitations offered to the carrier under such mandatory laws, statutes or regulations.

The Freight Forwarder's liability for delay and any consequences thereof (irrespective of whether such delay was caused by negligence, gross negligence, and wilful misconduct or otherwise) shall not in any event exceed the total compensation payable by the Customer to the Freight Forwarder under this Contract.

15: FREIGHT FORWARDER'S LIABILITY FOR LOSS, DEPRECIATION OR DAMAGE TO GOODS

The Freight Forwarder is liable for loss of, depreciation or damage to Goods only if the Customer can show that such loss, depreciation or damage was caused by the Freight Forwarder's lack of due diligence in the performance of his duties under the Contract. The Freight Forwarder is not liable for acts or omissions of Third Parties (such as any carriers) or Customer Group in their performance of services such as (but not limited to) carriage, transport, loading, unloading, delivery, clearance, storage or collection, unless the Customer can prove that the Freight Forwarder failed to act with due diligence in choosing any Third Parties. Unless specifically agreed, the Freight Forwarder is not in any event liable for money, securities and other valuables.

16: LIMITATIONS TO LIABILITY

In the event that the Freight Forwarder is liable pursuant to Clause 14 and 15 and/or pursuant to mandatory laws, statutes or regulations, the following limitations shall in any event apply. Liability shall be excluded to the extent that loss, depreciation, damage or delay is caused by:

- a) Fault or neglect of the Customer Group
- b) handling, loading, stowage or unloading of the Goods by the Customer Group
- c) the inherent nature of the Goods to be easily damaged, e.g. by breakage, leakage, spontaneous combustion, rotting, rust, fermentation evaporation or being susceptible to cold, heat or moisture
- d) lack of or insufficient packing
- e) faulty or insufficient address or marking of the Goods
- f) faulty or insufficient information about the Goods
- g) circumstances which the Freight Forwarder could not reasonably avoid and the consequences of which he was unable to prevent by reasonable means.

The Freight Forwarder's liability for loss, depreciation or damage to Goods, including any consequences thereof, is limited to 2 SDR (Special Drawing Rights) per kilo of the gross weight of the Goods lost, depreciated or damaged (or to the lowest amount permitted under mandatory laws, statutes or regulations). The Freight Forwarder shall not in any event be liable for the Customer Group's indirect or consequential loss (such as but not limited to loss of profits, loss of use, loss of production, loss or revenue) (whether direct or indirect, whether foreseeable or not) arising out of or in connection with delay, loss, depreciation or damage to Goods. Nothing in this Contract shall operate to limit or deprive the Freight Forwarder of any statutory protection, defence, exception or limitation of liability authorized by any applicable laws, statutes or regulations of any country. The Freight Forwarder shall have the benefits of the said laws, statutes or regulations as if it were the owner or operator of a carrying vessel/truck/airplane/train.

17: STORAGE

When the Freight Forwarder arranges storage of Goods, his liability for such storage shall be governed by Clauses 15 and 16. The Freight Forwarder may issue receipts upon receiving the Goods; however the issuance of receipts shall not mean that the Freight Forwarder has confirmed or accepted the condition of the Goods or assumed further liability than what follows from this Contract. At the request of the Customer the Freight Forwarder shall make an inventory of the stock. The Freight Forwarder shall, upon opening the packages, immediately notify the Customer of any defect or damage which he observes. If the Customer has not provided any special instructions with regard to the storage of the Goods, the Freight Forwarder may freely choose between various means of storage provided that he exercises due diligence in so doing. Unless otherwise instructed in writing by the Customer, the Freight Forwarder shall sign insurance for the risks of fire, water and burglary in his own name and for the account of the Customer based upon the invoice value at the time of storage + 10 %. If Goods in store, by reason of their nature, are deemed to be a danger to property or persons, the Customer has a duty to remove the Goods immediately. The Customer shall inform the Freight Forwarder at the latest at the time of delivery of the address to which notices concerning the Goods shall be sent to and to which instructions shall be received, and inform the Freight Forwarder immediately of any changes thereof.

18: THE CUSTOMER'S LIABILITY

The Customer shall indemnify and hold the Freight Forwarder harmless from and against any damage, claims, costs (including legal costs) or losses incurred or suffered by the Freight Forwarder as a consequence of, or arising out of:

- a) the particulars of the Goods are incorrect, unclear or incomplete,
- b) the Goods are incorrectly packed, marked or declared, or incorrectly loaded or stowed by the Customer Group,
- c) the Goods have harmful properties,
- d) the Freight Forwarder having to provide security or pay taxes or duties in respect of the Goods,
- e) the Customer Group's negligence, gross negligence or wilful misconduct.

Should the Freight Forwarder, when (externally) acting in the capacity as charterer or shipper, become liable in connection with carriage of the Customer's Goods by sea to pay general average contribution to the ship owner or the carrier, or become exposed to claims from Third Parties as a consequence of (externally) acting in the capacity as charterer or shipper, the Customer shall hold the Freight Forwarder harmless from and against any such claims and related costs (including legal costs).

19: NOTICE OF CLAIM

Notice of claim shall be given to the Freight Forwarder without undue delay. In case of apparent loss, depreciation or damage, notice should be given immediately upon the receipt of the Goods. If notice of claim is given later than within seven days from the day when the Goods were received, it is up to the party who gave notice of claim against the Freight Forwarder to prove that the damage or depreciation of the Goods had occurred before the Goods were received. If the claimant fails to prove this, the Goods will be considered to have been delivered in perfect condition. Notice of claim concerning matters other than damage to, or depreciation or loss of the Goods shall be given within fourteen days from the day on which the Customer knew or ought to have known about the circumstances forming the basis of the Freight Forwarder's liability. If such notice of claim has not been given, the Customer has lost his right of claim. When a particular mode of transport has been agreed upon with the Freight Forwarder, the mandatory statutory provisions applicable to such mode of transport shall apply instead, however only to the extent that such provisions deviate from what is stated in first and second paragraph above.

20: LAW AND ARBITRATION

This Contract, and any dispute arising out of or in connection with this Contract, shall be governed by the laws of England and Wales. Any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act of 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give provision of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. In cases where neither claim or counterclaim exceeds the sum of USD 100 000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced. In all other cases the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.

21: ENTIRE AGREEMENT CLAUSE

The written terms of this Contract comprise the entire agreement between the Freight Forwarder and Customer in relation to the transport of Goods and related services and supersede all previous agreements whether oral or written between the parties in relation thereto. Each of the parties acknowledges that in entering into this Contract it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as is expressly set out in this Contract. Any terms implied into this Contract by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this Clause shall limit or exclude any liability for fraud.