

# WALLENIUS SOL AB

## CONDITIONS OF CARRIAGE

### APPLICABILITY

The provisions set out and referred to in these Freight Conditions shall apply to every contract concluded with the Carrier for the performance of the Carriage as undertaken by the Carrier, whether evidenced by the issue of a document or not.

These conditions must be read in conjunction with Wallenius SOL AB:s Standard Terms of Business.

These terms shall come into force on 1<sup>st</sup> January 2020 and replace all previous terms and conditions whatsoever.

### 1 Definitions

- 1.1 "Article of Transport" includes, unless otherwise indicated, any vehicle, container, flat, pallet, trailer, transportable tank and similar items used for the Consolidation of goods as well as mobile plant and timber packages.
- 1.2 "Carriage" means the whole or any part of the operations and services of whatsoever nature undertaken by the Carrier in relation to the Goods, including but not limited to the loading, unloading, storage, warehousing and handling of the goods,
- 1.3 "Carrier" means the party who has undertaken to perform or to procure the performance of the Carriage from the place of receipt or port of loading to the port of discharge or the place of delivery, whichever respectively applies.
- 1.4 "Charges" includes freight and all expenses and monetary obligations, including but not limited to duties, taxes and dues, incurred by the Carrier and payable by the Merchant.
- 1.5 "Consolidation" includes stuffing, packing, loading or securing of goods on or within Articles of Transport.
- 1.6 "Dangerous and Marine Polluting Goods" means all Goods that have been identified as being dangerous or a marine pollutant whether or not identified in the edition of the IMDG Code current at the time of the Carriage.
- 1.7 "Freight Conditions" means the provisions of this contract.
- 1.8 "SDR" means special Drawing Right as defined by the International Monetary Fund.
- 1.9 "Goods" means the whole or any part of the cargo and includes any Article of Transport not supplied by or on behalf of the Carrier.
- 1.10 "Merchant" includes the shipper, receiver, consignor, consignee, and holder of any document evidencing the Contract of Carriage and the owner of the goods and any person having a legitimate interest in the goods and anyone acting on behalf of any or all of the above mentioned persons.
- 1.11 "Accompanied Cargo": Accompanied Cargo means cargo which is driven on board and off the vessel by a driver not provided by the Carrier or any of its subcontractors.
- 1.12 "Port-to-Port" means Carriage where the Carrier has agreed to undertake sea carriage of the Goods on the basis of Hook-on/Hook-off only and the Carrier's liability is limited accordingly.
- 1.13 "Hook-on/Hook-off" means the period in time when the Goods are in the care and custody of the Carrier from the first place of rest in the port/terminal of departure to the first place of rest in the port/terminal of destination and accordingly limits the scope of the Carrier's liability in "Port-to-Port" Carriage. Where none of the codes apply compulsorily a carriage shall be deemed to be "port-to-port" unless specifically agreed otherwise.

## **2 Tariff**

- 2.1 The terms of the Tariff applicable at the date of shipment are incorporated herein. Copies of the relevant provisions of the Tariff are available from the Carrier upon request. In the event of inconsistency between these Freight Conditions and the Tariff, the former shall prevail.

## **3 Law and Jurisdiction**

- 3.1 Disputes arising under / or in relation to the Contract of Carriage and these Conditions shall be determined by the District Court of Gothenburg in accordance with Swedish law and subject to these conditions. No proceedings may be brought before any other court or tribunal unless the parties expressly agree on both the choice of another court or tribunal and the law at the place to be then applicable, save for matters relating to unpaid freight and / or related charges which may be pursued before a court or a tribunal in a jurisdiction at the Carriers sole discretion and the law at that place to be then applicable.

## **4 Paramount Clause**

- 4.1 Notwithstanding anything provided for in these Conditions: if it can be proved where the loss or damage occurred, the Carrier and/or the Merchant shall, as to the liability of the Carrier, be entitled to require such liability to be determined by the provision contained in any convention or national law which provisions:

1) cannot be departed from by private contract to the detriment of the claimant and,

2) would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof a Bill of Lading or any particular document which must be issued if such international convention or national law shall apply except that under no circumstances shall the Carrier's liability extend to live animals and/or Goods that are stated to be carried on deck and are so carried.

3) In so far as no provisions contained in any international convention or mandatory national law apply to the carriage by sea the liability of the Carrier shall be determined by the Hague Rules contained in the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed at Brussels on 25 August 1924 as amended by the Protocol signed at Brussels on 23 February 1968 and the protocol in relation to SDR's signed at Brussels on 21 December 1979 from the time of commencement of loading in the port of loading, Hook-on, to the point in time when the Cargo is first placed on the quay or the terminal of destination, Hook-off, in the port of discharge. Furthermore all such AoT on deck, as described in this clause, shall be carried under the same liability as stated above.

## **5. Freight**

- 5.1 Freight shall be deemed earned on receipt of the Goods by the Carrier and shall be paid in any event and is non-returnable. Pre-payable freight and charges shall be payable at the latest upon receipt of the Goods by the Carrier and freight and charges, if any, payable at destination shall be payable at the latest the date when the Goods are delivered or should have been delivered. Interest at 12 per cent per month compounded shall run from the date when freight and charges are due.

- 5.2 The Merchants attention is drawn to the stipulations concerning currency in which the freight and charges are to be paid, rate of exchange, devaluation and other contingencies relative to freight and charges in the relevant tariff conditions. If no such stipulation exists or is applicable then the following clause shall apply:

If the currency in which freight and charges are quoted is devalued or an alteration in the rate of exchange occurs with the same effect as a devaluation between the date of the Contract of Carriage and the date when the freight and charges are payable, then all freight and charges shall be automatically and immediately increased in proportion to the extent of the devaluation of the said currency.

In case the Carrier has consented to payment in another currency than the above mentioned currency, then all freight and charges shall, subject to the preceding paragraph, be paid at the highest selling rate of exchange for bankers' sight draft current on the day when such freight and charges are paid. If the banks are closed on the day when the freight and charges are paid, the rate to be used will be the one in force on the last day when the banks were open.

- 5.3 In the event of increase in price for bunkers, fuel and/or other hydrocarbon oils, freight rates may be adjusted, without notice to the Merchant, in order to compensate the Carrier for increased fuel and lubricating costs

as from the day of such increase

- 5.4 For the purpose of verifying the freight basis, the Carrier reserves the right to have the contents of Articles of Transport inspected in order to ascertain the weight, measurement value or nature of the Goods.
- 5.5 If the particulars supplied by or on behalf of the Merchant are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged or to double the correct freight less the freight charged, whichever is the smaller, shall be payable as liquidated damages to the Carrier, notwithstanding any other sum having been stated as freight payable.
- 5.6 The Shipper shall be liable for the payment of all freights, charges and demurrage etc payable at destination, which the Carrier cannot obtain from the receiver.
- 5.7 All charges shall be paid without any set-off counter claim, deduction or stay of execution whatsoever.

## **6 Lien**

- 6.1 The Carrier shall have a lien on the Goods and any documents relating thereto for all sums of whatsoever kind and nature due at any time to the Carrier from the Merchant and for General Average contributions to whomsoever due and for the costs of recovering the same and also in respect of any previously unsatisfied amounts of the same nature and for the same costs and expenses of exercising such a lien and the Carrier shall have the right to sell the Goods and documents by public auction or private treaty, without further notice to the Merchant and at the Merchant's expense and without any liability towards the Merchant. Such lien and liability shall remain notwithstanding the Goods have been landed, stored or otherwise dealt with. If on the sale of the Goods the proceeds fail to realise the amount due, the Carrier shall be entitled to recover the difference from any of the parties included in the term Merchant.

## **7 Inspection of Articles of Transport**

- 7.1 The Carrier is entitled, but not obliged, to open, at any time, any Article of Transport Consolidated and prepared for conveyance by the Merchant in order to inspect such Article of Transport and its contents for the purposes of Clauses 21.1, 22.1 – 22.5 and 24.1. If any Article of Transport, as aforesaid, is opened and/or inspected by any Customs or other Government Authority at any time, the costs and expenses of opening and/or inspection, as aforesaid, shall be for the Merchants account and the Carrier shall not be liable for any loss, damage, delay, costs or expenses incurred or suffered by the Merchant by reason thereof and the Merchant shall indemnify the Carrier for all consequences arising from such openings and/or inspections. The Merchant is obliged to correct at his risk and expense any inadequacy or defect found, failing which the Carrier is entitled to treat the transport as terminated and place the Goods at the Merchant's disposal at any place. In such case the Carrier is entitled to full freight and indemnification as described above in this Clause.

## **8 Seals**

- 8.1 The Carrier will not undertake any checking, recording or reporting with regard to seals on Articles of Transport and the Carrier does not accept any responsibility whatsoever for, or as a consequence of, defective or missing seals on Articles of Transport.

## **9 Methods and routes of Carriage**

- 9.1 The Carrier is entitled, without notice to the Merchant, to perform the Carriage in any reasonable manner and by any reasonable means, methods and routes whatsoever.
- 9.2 In the event of carriage by sea, reasonable means, methods and routes includes, but is not limited to, vessels sailing with or without pilots, undergoing repairs, adjusting equipment, dry-docking and assisting vessels in all situations.

## **10 Sub-contracting**

- 10.1 The Carrier shall be entitled to sub-contract on any terms whatsoever, the whole or any part of the carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by the Carrier in relation to the Goods.
- 10.2 For the purposes of the Contract of Carriage and subject to the provisions in these Freight Conditions, the Carrier shall be responsible for the acts and omissions of any person whose services he makes use of for the performance of the Contract of Carriage.

## **11 Carrier's Consolidation, Carriage of Articles of Transport on or under deck**

11.1 Goods may be consolidated by the carrier in an AoT. If an AoT has not been consolidated and prepared for conveyance by the Carrier, the Carrier shall, without prejudice to the rights available to the Carrier not be liable for damage to or loss of the Goods therein nor for any damage to or loss of the AoT itself and the Merchant shall indemnify the Carrier for any loss, damage or expense incurred by the Carrier, if such loss, damage or expense is attributable to:

- overloading negligent or inadequate consolidation, securing, covering or locking the AoT,
- the goods being unsuitable for carriage in the AoT actually used,
- the unsuitability or defective condition of the AoT, unless the AoT has been supplied by the Carrier and the unsuitability and/or defective condition would have been apparent by reasonable means of checking at the time when the Carrier accepted the AoT for conveyance.

11.2 Articles of Transport, whether Consolidated by the Carrier or received by the Carrier in a Consolidated condition from the Merchant, may be carried on or under deck without notice

## **12 Delivery**

12.1 If the Merchant does not take delivery of the Goods within 7 days after the Carrier calls upon him or his agents so to do, the Carrier shall, without further notice to the Merchant be at liberty to store the Goods on behalf of the Merchant and at the Merchant's sole risk and expense. Subject if requisite to the lien provisions of clause 6.1 hereof. Such storage shall constitute delivery for the purposes of clause 16.1 – 19.5 of these Freight Conditions and the liability of the Carrier in respect of the goods stored shall wholly cease. The costs of such storage, if paid by the Carrier or any agent or sub-contractor of the Carrier, shall be paid, on demand, by the Merchant to the Carrier.

## **13 Matters affecting performance**

13.1 The Carrier shall use reasonable endeavours to complete the Carriage and to deliver the Goods at the place of delivery or the port of discharge.

13.2 If, at any time, the performance of the Contract of Carriage is or will be affected by any hindrance, risk, delay, strike/lockout, difficulty or disadvantage of any kind whatsoever and if by virtue of sub-clause (1) the Carrier has no duty to complete the performance of the Contract of Carriage, whether or not the Carriage has commenced, may elect to:

- a) treat the performance of the Contract of Carriage as terminated and place the Goods at the Merchant's disposal at any place which the Carrier shall deem safe and convenient, or
- b) deliver the Goods at the place of delivery or the port of discharge.  
In any event the Carrier shall be entitled to full Charges for any Goods received for Carriage and additional compensation for extra costs resulting from the circumstances referred to above.

## **14 Heavy Lifts**

14.1 All expenses relating to tendering, loading and discharging of Goods that require equipment, gear or appliances not permanently fitted to or available at the quayside or on the Vessel to be for the Merchant's account.

## **15 Time bar and Notice of loss**

15.1 All liability whatsoever of the Carrier shall cease unless suit is brought within twelve months after delivery of the Goods or the date when the Goods should have been delivered. Unless notice of loss or of damage to the Goods and the general nature of it be given in writing to the Carrier at the place of delivery before or at time of the removal of the Goods into the custody of the person entitled to delivery thereof, or, if the loss or damage be not apparent, within six consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Carrier of the Goods as described on the receipt.

## **16 Carrier's Liability for Loss of or Damage to the Goods**

- 16.1 The Carrier shall be liable for loss or damage to cargo occurring between the commencement of loading operations, Hook-on, and the point in time when the cargo is first placed on the quay or the terminal of destination, at its first place of rest, Hook-off.  
For Accompanied Cargo the Carrier's liability shall commence at the time the driver leaves the Cargo on board the vessel in the allocated stowage position and end at the moment the driver removes the Cargo from the allocated stowage position.
- 16.2 The Carrier shall, however be relieved of liability for any loss or damage if such loss or damage arose or resulted from:
- a) The wrongful act or neglect of the Merchant.
  - b) Compliance with the instructions of the person entitled to give them.
  - c) The lack or insufficiency of or defective condition of packing in the case of Goods, which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed.
  - d) Handling, loading stowage or unloading of the Goods by or on behalf of the Merchant.
  - e) Inherent vice of the Goods.
  - f) Insufficiency or inadequacy of marks or numbers on the Goods.
  - g) Strikes or lock-outs or stoppages or restraints of labour from whatever cause whether partial or general.
  - h) Fire, unless caused by the actual fault or privity of the Carrier.
  - i) Any damage caused by third parties, including stowaways/migrants.
  - j) Any cause or event which the Carrier could not avoid the consequence whereof he could not prevent by the exercise of reasonable diligence.
- 16.3 Where under sub-clause (2) the Carrier is not under any liability in respect of some of the factors causing the loss or damage, he shall only be able to the extent that those factors for which he is liable under this Clause have contributed to the loss or damage.
- 16.4 The burden of proving that the loss or damage was due to one or more of the causes, or events, specified in (a), (b) and (h) of sub-clause (2) shall rest upon the Carrier. When the Carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one more of the causes, or events, specified in (c) to (j) of sub-clause (2), it shall be presumed that it was so caused. The Merchant shall, however, be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of the causes or events.

## **17. Carriers' Liability for Delay, Consequential Loss etc.**

- 17.1 Times shown in timetables, sailing plans or elsewhere are approximate and not guaranteed. They are not considered to be part of this contract of carriage and the Carrier reserves its right to change these without notice to the Merchant.
- 17.2 The Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct, indirect or consequential loss or damage caused by delay. Without prejudice to the foregoing, if the Carrier should nevertheless be held legally liable for any such direct, indirect or consequential loss or damage caused by delay, then the Carrier's liability shall be limited to the freight for the Carriage or the value of the Goods as determined in clause 19, whichever is the lower.
- 17.3 Save as is otherwise provided herein, the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage arising from any other cause whatsoever or for loss of profits including but not limited to any such losses arising from a delay in delivery.

## **18 Defences and Limits for the Carrier and the Carrier's Sub-Contractors, Agents and Servants**

- 18.1 The defences and limits of liability provided for in these Freight Conditions shall apply in any action against the Carrier for loss of or damage to the Goods whether the action be founded in contract, bailment, tort or otherwise.
- 18.2 Himalaya Clause and Circular Indemnity: the Merchant undertakes that no claim or allegation arising in contract, bailment, tort or otherwise can be made against any servant, agent, or sub-contractor of the Carrier which imposes or attempts to impose upon any of them or any vessel owned or chartered by them any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of such person, and, if any such claim or allegation shall nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent, and sub-contractor shall have the benefit of all the terms in the Freight Conditions of whatsoever nature herein contained or otherwise benefiting the Carrier including Clause 3 hereof, the Law & Jurisdiction clause, as if such Freight Conditions (including Clause 3 hereof) were expressly for their benefit.

and in entering into this contract the Carrier, to the extent of such Freight Conditions, does so not only on its own part, but also as agent and trustee for such servants, agents and sub-contractors.

- 18.3 In any case the aggregate of all amounts recoverable from the Carrier and his servants, agents or sub-contractors, including stevedores and any of those referred to in sub-clause (2) of Clause 10, shall in no case exceed the limits provided for in these Freight Conditions

## **19 The Amount of Compensation**

- 19.1 When the Carrier is liable for compensation in respect of loss of or damage to the Goods, such compensation shall be calculated by reference to the value of such Goods at the place and time they are delivered to the Merchant in accordance with the Contract of Carriage or should have been so delivered.
- 19.2 The value of the Goods shall be fixed according to the commodity exchange price or, if there be no such price, according to the current market price or, if there be no commodity exchange price or current market price, by reference to the normal value of Goods of the same kind and quality.
- 19.3 In multimodal transport, where the stage of carriage where loss or damage occurred is not known, compensation shall not exceed 2 SDR's per kilogramme or gross weight of the Goods lost or damaged.
- 19.4 The Carrier shall be entitled to limit his liability in respect of loss, damage or delay of the Goods carried in an Article of Transport (AoT) to 667 SDR per unit or 2 SDR per kg, whichever is the highest. In the event of loss, damage or delay to an AoT the AoT shall constitute one unit for purposes of limitation of liability and the Carrier shall be entitled to limit his liability to 667 SDR per AoT.
- 19.5 Higher compensation may be claimed only when the value of the Goods declared by the Consignor is exceeding the limits laid down in this Clause and, with the consent of the Carrier, has been stated in the Document evidencing the Contract of Carriage for the purpose of extending his liability. In this case the value declared shall be substituted for the aforementioned limits.

## **20 Carrier's Responsibility**

- 20.1 Where the Carrier issues a document evidencing the Contract of Carriage it shall be prima facie evidence of the receipt by the Carrier of the Goods as therein described in respect of the particulars which the Carrier had reasonable means of checking. In respect of such particulars proof to the contrary shall not be admissible when such document is a negotiable document that has been transferred to a third party acting in good faith

## **21 Merchants Responsibility**

- 21.1 The Merchant shall be deemed to have guaranteed to the Carrier the accuracy, at the time the Goods were taken in charge by the Carrier, of the description and particulars of the Goods, including but not limited to marks, numbers, quantity and weight, as furnished by the Merchant and the Merchant shall indemnify the Carrier against any liabilities, losses, damage, costs and expenses arising or resulting from any inaccuracies in, or inadequacy of, such description and particulars. The Merchant shall defend indemnify and hold harmless the Carrier against any loss, damage, claim, liability or expense whatsoever arising from any breach of the provisions of this clause or from any cause in connection with the Goods for which the Carrier is not responsible.

## **22 Dangerous & Marine Polluting Goods**

- 22.1 The Merchant is responsible for all regulations, statutory or otherwise, including the latest edition of the International Maritime Dangerous Goods (IMDG) Code, and/or the Memorandum of Understanding for the Transport of Packaged Dangerous Goods in the Baltic Sea (depending on Route/Departure), including packaging and labeling of the Goods and labeling of the Article of Transport.
- 22.2 Enlarged labels (placards) corresponding to the primary, and if appropriate, subsidiary risk of the Dangerous Goods contained in a cargo unit must be displayed / affixed. These placards must be removed (or hidden by masking) as soon as the cargo unit is empty and free of residue from its previous cargo that presented a risk.
- 22.3 Where combined transport is involved the European Agreement for the International Carriage of Dangerous Goods by Road (ADR) and Annex 1 (RID) to the contract for International Carriage of Goods by Rail (CIM) or special arrangements made between the contracting parties in respect hereof apply to the appropriate leg.

- 22.4 Dangerous Goods must be removed from the port of discharge as soon as is practicable unless specific permission has been obtained for the Goods to remain in the port.
- 22.5 The Merchant undertakes that no Dangerous Goods shall be tendered to the Carrier without his express consent in writing and without appropriate labeling of the goods and the Article of Transport. If any Dangerous Goods are delivered to the Carrier without such written consent and/or labeling or in the opinion of the Carrier are liable to become a risk to the method of transport, other cargoes, or the environment the may at any time be discharged, destroyed or rendered harmless and be disposed of by the Carrier. Such undertaking shall be at the Merchant's risk and expense, except when General Average is declared.
- 22.6 The Merchant shall be liable for any damage, loss and expense, howsoever caused, if the foregoing provisions, as applicable, are not complied with.

### **23 Merchant's Consolidation, reefer and heating machines**

- 23.1 If an Article of Transport has not been Consolidated and prepared for conveyance by the Carrier, the Carrier shall without prejudice to the rights available to the Carrier, not be liable for damage to or loss of the Goods therein nor for damage to or loss of the Article of Transport itself and the Merchant shall indemnify the Carrier for any loss damage or expense incurred by the Carrier, if such loss, damage or expense is attributable to
- a) overloading, negligent or inadequate Consolidation, securing, covering or locking of the Article of Transport;
  - b) the Goods being unsuitable for carriage in the Article of Transport actually used;
  - c) the unsuitability or defective condition of the Article of Transport, unless the Article of Transport has been supplied by the Carrier and the unsuitability and/or defective condition would have been apparent by reasonable means of checking at the time when the Carrier accepted the Article of Transport for conveyance.
- 23.2 The Carrier does not accept liability for the consequences of malfunctioning of refrigeration, heating, atmospheric control or other equipment of whatsoever nature attached to or forming part of the Article of Transport.

### **24 General Average**

- 24.1 General Average shall be adjusted according to York-Antwerp rules 1974 as amended in 1994 and shall be prepared at Gothenburg, Sweden, or any other port at the Carrier's option by an established adjuster to be appointed by the Carrier. This provision shall cover all Goods whether carried on or under deck as well as deck cargo and live animals. The Merchant shall deliver such cash deposit and/or other security as the Carrier may deem sufficient to cover the estimated general average contribution of the Goods before delivery if the Carrier requires, or, if the Carrier does not require, within three months of the delivery of the Goods, whether or not at the time of the delivery the Merchant had notice of the Carrier's lien, if a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel belonged to strangers.
- 24.2 If the Carrier delivers the Goods to the Merchant without claiming any average bond or other security for contribution to General Average the Merchant – by receiving the Goods – becomes personally liable for the contribution up to the CIF value of the Goods provided the Carrier notifies the Merchant within three months after receipt by the Merchant of the Goods of his intention to declare General Average.
- 24.3 The Merchant undertakes, if so requested by the Carrier, to disclose the CIF value of the Goods and the name and address of the Underwriter. Unless the Merchant provides the Carrier with an undertaking from such Underwriter to pay General Average contribution the Merchant shall give the Carrier such other security as he may approve.
- 24.4 Any disputes howsoever and/or whatsoever arising under or in relation to General Average, including but not limited to, the adjustment thereof, cash deposits, General Average bonds, General Average Guarantees and the collection and/or payment of contributions to General Average shall be subject to Swedish law and shall be subject to the exclusive jurisdiction of the District Court of Gothenburg, provided that nothing contained in this clause shall prevent the Carrier from invoking such other law as may be necessary for the enforcement of the Carrier's rights.

### **25 Both-to-Blame Collision Clause and New Jason Clause**

- 25.1 The Both-to-Blame Collision Clause and New Jason Clause as adopted by BIMCO are incorporated herein.