



# TMSI

## TERMS AND CONDITIONS

(Revision 1 – October 18, 2018)

The purpose of these “Terms and Conditions “ is to define the activities and services provided by TMSI Limited relating to the physical movement of goods and / or the management of destinations by means of a freely and mutually agreed price.

## **1. DEFINITIONS**

- 1.1** “**Carriage**” means the whole or any part of the activities and services undertaken by TMSI Limited, its agents, assigns and/or sub-contractors in relation to the movement of Goods by land or sea.
- 1.2** “**Combined Transportation Way Bill**” (or “**CTWB**” or “**Way Bill**”) means the contract of carriage issued by TMSI Limited.
- 1.3** “**Equipment**” includes sea and rail cargo containers, flat racks, platforms, trailers, or any other similar article used to move Goods.
- 1.4** “**Freight**” includes all charges payable to TMSI Limited in accordance with these Terms and Conditions and the General Tariff.
- 1.5** “**General Tariff**” means the General Tariff of TMSI Limited. The CTWB shall be subject to all terms, conditions and charges specified in the General Tariff.
- 1.6** “**Goods**” means the vehicle, unit, container, or any other item described in the CTWB and shall include the contents thereof.
- 1.7** “**Hague-Visby Rules**” means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading (1924) as amended by the Protocols of 23rd February 1968 and 21st December 1979.
- 1.8** “**House to House Shipment**” occurs when the Carriage includes the receipt and/or the delivery of goods at the Merchant’s premises. Multimodal transport will occur in these instances.
- 1.9** “**Merchant**” includes the shipper, consignee, receiver of the Goods, and any person owning or entitled to the possession of the Goods and anyone acting on behalf of such person.
- 1.10** “**Multimodal Transport**” occurs when the place where goods are received and/or are delivered requires Carriage by several different modes of transportation.
- 1.11** “**Person**” includes an individual, corporation, or other legal entity.
- 1.12** “**Port-to-Port Shipment**” occurs when the Carriage is limited to only on board TMSI Limited ships.
- 1.13** “**Vessel**” means any watercraft used by TMSI Limited for the carriage of goods by sea.
- 1.14** “**Subcontractor**” includes the owners, charterers and operators of vessels, agents, stevedores, terminal and other operators, road and rail transport operators, warehousemen and any independent contractors employed by TMSI Limited to perform the carriage and any direct or indirect Subcontractors, servants and agents thereof.
- 1.15** “**Terms**” includes all terms, rights, defenses, provisions, conditions, exceptions, limitations and liberties in the CTWB and General Tariff.
- 1.16** “**Privately Owned Vehicles (POV’s)**” are all vehicles owned by persons other than TMSI Limited and equipped with means of self-propulsion. They include but are not limited to automobiles, trucks, farm and highway tractors, heavy equipment, etc.
- 1.17** “**Verified Gross Mass**” The Verified Gross Mass (VGM) is the weight of the shipment including dunnage and bracing plus the tare weight of the equipment carrying this shipment. SOLAS requires the shipper to provide VGM in a “shipping document,” either as part of the shipping instruction or in a separate communication prior to loading on a vessel.

## **2. CLAUSE PARAMOUNT**

- 2.1** These Terms and Conditions are part of TMSI Limited’s “CTWB” and shall be governed by and subject to the laws of Canada and as applicable the Hague-Visby Rules as so defined and incorporated herein.
- 2.2** The CTWB is neither a document of title nor a bill of lading and no bill of lading will be issued or is intended to be issued. Whenever the Hague-Visby Rules apply, the words "Bill of Lading" they contain shall be read and interpreted as meaning "CTWB".

### **3. GENERAL TARIFF AND COMBINED TRANSPORTATION WAY BILL (CTWB)**

**3.1** The CTWB is a non-negotiable receipt for the Carriage of the Goods and is subject to the terms and conditions outlined herein and in the General Tariff. In the case of inconsistency between these Terms and the General Tariff, the former shall prevail.

**3.2** Any other shipping form, bill of lading, way bill or other document prepared or used by the Merchant shall be subordinated and superseded by the CTWB. In the event of a conflict, the CTWB shall prevail. Merchant hereby agrees that any such other form or contract shall be deemed to state that it is "*subject to the Terms of the CTWB which shall supersede and prevail over this document*".

### **4. WARRANTY AND SUB-CONTRACTING**

**4.1** The Merchant warrants that in agreeing with these Terms it is, or has the authority to contract on behalf of, the Person owning or entitled to possession of the Goods.

**4.2** The Merchant shall be deemed to have guaranteed to TMSI Limited, at the time of shipment, the accuracy of the marks, number, quantity and weight (VGM), as furnished by him, and the Merchant shall indemnify TMSI Limited against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of TMSI Limited to such indemnity shall in no way limit his responsibility and liability under the CTWB to any person other than the Merchant.

**4.3** TMSI Limited is entitled to subcontract on any terms whatsoever the Carriage. Without prejudice to the foregoing, every such Subcontractor shall have the benefit of all of the Terms herein or otherwise benefiting TMSI Limited.

### **5. LIMITED LIABILITY:**

**5.1** Where the Carriage is Port-to-Port, any liability of TMSI Limited for loss or damage to the Goods shall be determined in accordance with any national law making the Hague-Visby Rules compulsorily applicable to the shipment covered by the CTWB or, in any other case, in accordance with the Hague-Visby Rules.

**5.2** TMSI Limited shall have no liability for any loss or damage whatsoever and howsoever caused to the Goods before their loading or after their discharge from the Vessel, whether the Goods are then in TMSI Limited's actual or constructive possession.

**5.3** TMSI Limited shall be relieved of any liability for any loss or damage to the Goods where it was caused or contributed to by any of those causes listed in Article IV of the Hague-Visby Rules.

**5.4** Subject to the other exonerations, exclusions and applicable limitations of liability provided in this CTWB, the aggregate total compensation payable by TMSI Limited shall, under no circumstances whatsoever and howsoever arising, exceed either the lesser of:

**(a)** the actual value of Goods lost or damaged as proved by the Merchant, or

**(b)** CAD \$2.00 per lb. (\$4.41 per kg) of Goods lost or damaged, or

**(c)** the amount calculated by application of the Hague-Visby Rules which provides that, unless the value of the Goods has been declared, TMSI Limited shall not in any event be or become liable for any loss or damage in an amount exceeding 666.67 units of account (SDRs) per package or unit, or 2 units of account (SDRs) per kilogram of gross weight of the Goods lost or damaged, whichever is the higher; or

**(d)** the minimum liability as set out in the laws of the province of Canada or the laws of the United States of America that are found to be of compulsory application to this CTWB.

**5.5** Where in any of Multimodal Transport, the Hague-Visby Rules shall apply by virtue of and to the

extent of their incorporation by reference into this contract of carriage to the exclusion of Article III (8) which shall not apply. Any liability of TMSI Limited shall be limited to the extent set out below:

**i)** TMSI Limited shall have no liability for any loss or damage whatsoever and howsoever caused to the Goods before their receipt by TMSI Limited at their place of receipt or port of Loading, as the case may be, or after their arrival at the port of discharge or at their place of final delivery, as the case may be.

Furthermore, TMSI Limited shall not be liable for any loss or damage whatsoever and howsoever caused to the Goods during their storage prior to their loading or further to their discharge from the Vessel.

**ii)** TMSI limited shall be relieved of any liability for any loss or damage to the Goods where it was caused or contributed to by either an act of God or from public enemies, riot, strike, a defect or inherent vice in the Goods, an act or default of the Merchant, authority of law, quarantine or by difference in weights caused by natural shrinkage, and/or any of those causes listed in Article IV of the Hague-Visby Rules.

**5.6** Subject always to TMSI Limited's right to limit liability as provided for herein and provided that TMSI Limited is liable for compensation in respect of loss or damage to the Goods, such compensation shall be calculated by reference to the lesser of:

**(a)** the actual value of Goods lost or damaged as proved by the Merchant by reference to the value of such Goods at the place and time they are delivered or should have been delivered to the Merchant (the value of the Goods shall be fixed according to the current market price, by reference to the normal value of goods of the same kind and/or quality); or

**(b)** the invoice cost of the Goods plus Freight and paid premium for the insurance of the Goods.

**5.7** Save as provided in clause 5.9, for the purpose of determining the aforesaid limitation of liability, it is agreed that the following will constitute one single package or unit irrespective of the Merchant's listing or description of the Goods in this CTWB:

**(i)** for full loads shipped, where the Equipment, regardless of ownership, is shipped through TMSI Limited, the total contents of said Equipment;

**(ii)** for shipments of less than full loads, where the Equipment, regardless of ownership, is shipped through TMSI Limited, the aggregate of the contents made up of pallets, boxes, pieces or packages belonging to the Merchant;

**(iii)** the aggregate of a POV, the Equipment attached to it and their total contents if carried on the same voyage;

**(iv)** each separate POV and its contents if not carried on or in Equipment; and

**(v)** the aggregate components of a shipped piece of equipment that must be broken down for shipment purposes.

**5.8** TMSI Limited shall not be held liable for minor damages to POV's unless such minor damages exceed CAD \$1,500.00.

**5.9** The Merchant agrees and acknowledges that TMSI Limited has no knowledge of the value of the Goods and higher compensation than that provided for in these Terms may be claimed only when, with the consent of TMSI Limited, the Declared Value of the Goods by the Merchant to TMSI Limited has been stated in the CTWB and provided that that extra Freight has accordingly been agreed to and paid by the Merchant prior to the loss or damage. In that case, the amount of the Declared Value shall be substituted for the applicable limit of liability provided in these Terms. Any partial loss or damage shall then be adjusted pro rata on the basis of such Declared Value.

## **6. GENERAL:**

**6.1** TMSI Limited will not be liable for any consequential damages arising from the Carriage of the Goods and does not undertake that the Goods shall arrive at any point or place at any stage during the Carriage,

at any particular time, or to meet any particular requirement of any license, permission, sale contract, or credit of the Merchant, or any market, or use of the Goods. TMSI Limited shall under no circumstances whatsoever be liable for any type of loss or damage caused by delay.

**6.2** Once the Goods have been received by TMSI Limited, the Merchant shall not be entitled to interfere, for any reason, with either TMSI Limited's manner of performance, or the exercise of the liberties conferred by this CTWB, nor to instruct, or require delivery of the Goods anywhere other than the location named herein or such other port or place selected by TMSI Limited in the exercise of its liberties. The Merchant shall indemnify TMSI Limited against all claims, legal fees and/or expenses caused to TMSI Limited, its agents or to any other cargo, or to the owner of such cargo, arising from any stoppage (whether temporary or permanent) in the Carriage, whether at the request of the Merchant or in consequence of any breach by the Merchant of this clause, or in consequence of any dispute whatsoever in respect of the Goods.

**6.3** The stipulations of this clause also apply in connection with the supplying of Equipment to the Merchant.

**6.4** The Terms of the CTWB shall apply in any action against TMSI Limited whether the action be founded in contract, bailment, or in tort, and even if the loss or damage arose as a result of unseaworthiness of the Vessel or Equipment, negligence or breach of contract.

**6.5** TMSI Limited shall in any event be discharged from all liability whatsoever in respect of the Goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree in writing after the cause of action has arisen.

## **7. EQUIPMENT:**

**7.1** If the Equipment has not been stuffed, stowed and secured by TMSI Limited, this CTWB shall evidence receipt only of the Equipment.

**7.2** TMSI Limited shall not be liable for loss or damage to the contents of the Equipment and the Merchant shall indemnify TMSI Limited against any liability or expense incurred by TMSI Limited if such loss of, or damage to, the contents and/or such liability or expense arise out of matters beyond its control including, without limiting the generality of the foregoing:

- (a)** The manner in which the Container has been stuffed, stowed and secured;
- (b)** The unsuitability of the Goods for Carriage in the Equipment; or
- (c)** The unsuitability or defective condition of the Equipment or the incorrect setting of any thermostat, ventilator, valve, switch, manifold or other special controls thereof, provided that, if the Equipment has been supplied by TMSI Limited, this unsuitability or defective condition could have been apparent upon inspection by the Merchant prior to, at the time of, or upon completion of its stuffing.

**7.3** The Merchant is responsible for the stuffing, securing, packing and sealing of all Equipment and, if the Equipment is delivered by TMSI Limited with its original seal intact, TMSI Limited shall not be liable for:

- (i)** Any shortage of Goods ascertained at delivery; or
- (ii)** for any damage to Goods ascertained at delivery, where such damage is determined to be caused by the Merchant's stuffing, securing, packing or sealing of the Equipment.

**7.4** The Merchant shall inspect all Equipment before packing/stuffing them and the use of the Equipment shall be prima facie evidence of said Equipment being sound and suitable for use.

**7.5** It is the responsibility of the Merchant as Shipper under the Canadian Procedure for Obtaining the Verified Gross Mass of Containers as required by SOLAS VI/2 – TP 15330 (hereinafter referred to as the

“regulatory requirement”) to provide TMSI Limited with the VGM of each Container to be shipped before it is loaded on the Vessel.

**7.6** TMSI Limited in compliance with the regulatory requirement, shall cause the VGM of the Container as determined and advised by the Merchant as Shipper to be entered in the box marked “Verified gross mass” in this CTWB.

**7.7** Where the Merchant as Shipper does not determine and provide TMSI Limited with the VGM of a Container before TMSI Limited takes delivery of that Container, the Merchant as Shipper agrees that TMSI Limited may act as the Merchant as Shipper’s agent for the purpose of so determining the VGM of that Container, and in such case, the Merchant as Shipper accepts that TMSI Limited shall be entitled to charge such additional costs as it may determine. In such a case, TMSI Limited shall weigh the Container and determine the VGM of the Container in accordance with the regulatory requirement before it is loaded on the Vessel. TMSI Limited, on the Merchant’s behalf as Shipper, shall cause the VGM of the Container so determined to be entered in the box marked “Verified gross mass” in this CTWB.

## **8. PERISHABLE CARGO:**

**8.1** Goods, including Goods of a perishable nature, shall be carried in ordinary Equipment without special protection, services or other measures unless there is noted on this CTWB that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specifically purposed Equipment or are to receive special attention in any way. The Merchant undertakes not to tender for Carriage any Goods which require refrigeration, ventilation or any other specialized attention without giving advance written notice of their nature and the required temperature or other setting of the thermostatic, ventilation or other special controls to TMSI Limited. If the above requirements are not complied with by the Merchant, TMSI Limited shall not be liable for any loss of or damage to the Goods howsoever arising.

**8.2** It is hereby expressly understood that temperature controlled Equipment are not designed to:  
**(a)** warm or cool cargo which has not been presented for stuffing at its designated carrying temperature. TMSI Limited shall not be responsible for the consequences of cargo being presented at a different temperature than that required for the Carriage;

**(b)** monitor and control humidity levels, albeit a setting facility exists, in that humidity is influenced by external factors beyond the control of TMSI Limited such that the maintenance of any intended level of humidity inside the Container cannot be warranted.

**8.3** The term “apparent good order and condition” when used with reference to Goods which require temperature control, ventilation or other specialized attention does not mean that the Goods, when received were verified by TMSI Limited as being at the stated temperature, humidity level or other condition declared by the Merchant.

**8.4** TMSI Limited shall not be liable for any loss or damage to the Goods arising from latent defects, derangement, breakdown, defrosting, stoppage of the refrigerating, ventilating or any other specialized machinery, plant, insulation and/or apparatus of the Equipment, Vessel, conveyance and any other facilities, provided that TMSI Limited shall before and at the beginning of the Carriage exercise due diligence to maintain the Equipment supplied by it in an efficient state.

**9. INSPECTION OF GOODS:**

**9.1** TMSI Limited shall be entitled to inspect the Goods, the Equipment or contents therein at any time. If it appears that the Goods cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measures in relation to the Equipment or the Goods, TMSI Limited may, without notice, as the Merchant's agent only, take any measures to interrupt, carry or to continue the Carriage thereof, and/or to sell or dispose of the Goods, and/or to abandon the Carriage, and/or to store the Goods ashore or afloat, under cover or in the open, at any place, whichever TMSI Limited, in its absolute discretion, considers most appropriate. In which case, any such sale, disposal, abandonment, or storage, shall be deemed to constitute due delivery by TMSI Limited to the Merchant under this CTWB.

**9.2** The Merchant shall indemnify TMSI Limited against any additional expense so incurred. TMSI Limited in exercising the liberties contained herein shall not be under any obligation to take any particular measures and shall not be liable for any loss or damage howsoever arising from any action or lack of action under this clause.

**10. DESCRIPTION OF GOODS:**

**10.1** No representation is made by TMSI Limited as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods and it shall be under no responsibility whatsoever in respect of such description or particulars, except where under section 7.7 of this CTWB causes the verified gross mass of a Container on the Merchant as Shipper's behalf to be entered in the box marked "Verified gross mass" in this CTWB. In such a case, such entry shall be regarded as a representation made by TMSI Limited on the Merchant as Shipper's behalf in compliance with the regulatory requirement.

**10.2** The Merchant warrants to TMSI Limited that the particulars relating to the Goods as set out on this CTWB have been checked by the Merchant and that such particulars, and any other particulars furnished by or on behalf of the Merchant, are adequate and correct. The Merchant also warrants that the Goods are lawful goods, and contain no contraband, drugs, other illegal substances or stowaways, and that the Goods will not cause loss, damage or expense to TMSI Limited, or to any other cargo during the Carriage.

**10.3** If any particulars of any letter of credit and/or import license and/or sales contract and/or invoice or order number and/or details of any contract to which TMSI Limited is not a party are shown on the face of this CTWB, such particulars are included at the sole risk of the Merchant and for its convenience. The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way increases TMSI Limited's liability under these Terms.

**11. MERCHANT'S RESPONSIBILITY:**

**11.1** All Persons coming within the definition of Merchant in clause 1 shall be jointly and severally liable for the Merchant's obligations under this CTWB, and those Persons must take delivery of the Goods in accordance with clause 15 and pay Freight earned to TMSI Limited in accordance with clause 12. If an issue exists about the Goods the Merchant is obliged to accept them, to mitigate the damage or loss and to file a formal claim. Freight is payable when earned under these terms and without holdbacks or setoff.

**11.2** The Merchant shall be liable for, and shall indemnify TMSI Limited against, all loss or damage arising from any cause whatsoever in connection with the Goods for which it is not responsible.

**11.3** The Merchant shall comply with all regulations or requirements of the competent authorities and shall bear and pay all duties, taxes, fines, expenses, loss or damage (including, without limiting the generality of the foregoing, Freight for any additional Carriage undertaken), incurred by reason thereof, or by reason of any illegal, incorrect, or insufficient declaration, marking, numbering or particulars of the Goods, and shall indemnify TMSI Limited in respect thereof.

**11.4** The Merchant is responsible for returning the empty Equipment, with interiors clean, odor free and in the same condition as received, to the point or place designated by TMSI Limited and within the prescribed time. Should the Equipment not be returned as required, the Merchant shall be liable for any detention, loss or damage or expense incurred as a result thereof. Demurrage will be charged in accordance with the General Tariff.

**11.5** Equipment released into the care of the Merchant are at the sole risks of the Merchant until redelivered to TMSI Limited. The Merchant shall indemnify the Carrier for all loss of and/or damage and/or delay to such Equipment.

**11.6** No claim for concealed damage or shortage of Goods is receivable after the expiration of 2 business days from the date of delivery of the Goods.

## **12. FREIGHT, EXPENSES AND FEES:**

**12.1** Freight shall be payable based on the particulars furnished by or on behalf of the Merchant. TMSI Limited may at any time open the Goods and, if the Merchant's particulars are incorrect the Merchant and the Goods shall be liable for 150% of the correct Freight and any expenses incurred in assessing the Goods.

**12.2** Freight shall be considered irrevocably and completely earned on receipt of the Goods by TMSI Limited and shall be paid in any event, whether the Vessel and/or the Goods are thereafter lost or damaged, in whole or in part.

**12.3** All sums payable to TMSI Limited are due on demand and shall be paid in full in Canadian currency.

**12.4** In the event of any discrepancy between Freight in the CTWB and TMSI Limited's invoices, the former shall prevail.

**12.5** All Freight shall be paid without any deduction, at the latest, before delivery of the Goods unless credit terms have been expressly agreed to by TMSI Limited and provided that no amount is outstanding in relation to prior shipments.

**12.6** If the Merchant fails to pay the Freight, he shall be also liable for payment of a service fee and interest due on any outstanding and/or overdue amount. Payment of Freight to a freight forwarder, broker or anyone other than TMSI Limited or its authorized agent, shall not be deemed payment to TMSI Limited. The Merchant agrees to pay, on a full indemnification basis, any and all legal fees of TMSI Limited incurred in legal proceedings for the recovery of all sums under these Terms.

**12.7** The acceptance by TMSI Limited of instructions to collect Freight, duties, fees, demurrage/detention and/or costs and expenses from a designated Person shall not relieve the Merchant from its responsibility to acquit same and TMSI Limited shall not be held liable for being unable to collect same.

**12.7** TMSI Limited may, at its sole discretion, grant credit. Such credit terms will not apply to subsequent carriages unless expressly agreed in writing.

**12.8** TMSI Limited shall have a maritime and/or possessory lien over the Goods and any document relating thereto for all Freight and sums due to the Carrier under this CTWB or any other contract. TMSI Limited may exercise its lien at any time in its sole discretion. TMSI Limited has the right to sell the Goods by private sale without notice.



### **13. CARRIAGE**

**13.1** TMSI Limited may at any time and without notice to the Merchant:

- (i)** Use any means of transport or storage whatsoever;
- (ii)** Transfer the Goods from one conveyance to another including transshipping or carrying the same on a Vessel other than the Vessel named on this CTWB or by any other means of transport whatsoever and even though transshipment or forwarding of the Goods may not have been contemplated or provided for herein;
- (iii)** De-stuff, unpack or remove the Goods which have been stuffed or stowed into Equipment and forward them otherwise;
- (iv)** Sail without pilots, proceed via any route, (whether or not the nearest or most direct or customary or advertised route) at any speed and proceed to, return to and stay at any port or place whatsoever (including the Port of Loading herein provided) once or more often, and in any order in or out of the route or in a contrary direction to or beyond the Port of Discharge once or more often;
- (v)** Load and unload the Goods at any place or port (whether or not any such port is named herein as the Port of Loading or Port of Discharge) and store the Goods at any such port or place;
- (vi)** Comply with any orders or recommendations given by any government or authority or any Person or body or purporting to act as or on behalf of such government or authority or having, under the terms of insurance for any conveyance employed by the Carrier or a Subcontractor, the right to give orders or directions.

**13.2** The liberties set out in clause 13.1 may be invoked by TMSI Limited for any purpose whatsoever whether or not connected with the Carriage of the Goods, including but not limited to loading or unloading other goods, bunkering or embarking or disembarking any Person(s), undergoing repairs and/or dry-docking, towing or being towed, assisting other Vessels, sea trials and adjusting instruments. Anything done or not done in accordance with clause 13.1 or any delay arising there from shall be deemed to be within the contractual Carriage and shall not be a deviation.

**13.3** If at any time Carriage is or is likely to be affected by any danger, or difficulty which cannot be avoided by the exercise of reasonable endeavors, TMSI Limited may at its sole discretion and without notice to the Merchant and whether or not the Carriage is commenced either:

- (a)** Carry the Goods to the contracted location by an alternative route. If the Carrier elects to invoke the terms of this clause then, notwithstanding the provisions of clause 13 hereof, it shall be entitled to charge such additional Freight as the Carrier may determine; or
- (b)** Suspend the Carriage of the Goods and store them ashore or afloat upon the Terms of this CTWB and endeavor to forward them as soon as possible, but TMSI Limited makes no representations as to the maximum period of suspension. If TMSI Limited elects to invoke the terms of this clause then, notwithstanding the provisions of clause 13 hereof, it shall be entitled to charge such additional Freight and costs as the Carrier may determine; or
- (c)** Abandon the Carriage of the Goods and place them at the Merchant's disposal at any place or port which TMSI Limited may deem convenient, whereupon its responsibility in respect of such Goods shall cease. TMSI Limited shall nevertheless be entitled to full Freight on the Goods received for Carriage, and the Merchant shall pay any additional costs incurred by reason of the abandonment of the Goods. If TMSI Limited elects to use an alternative route under clause 13.3(a) or to suspend the Carriage under clause 13.3(b) this shall not prejudice its right subsequently to abandon the Carriage.

**14. DANGEROUS GOODS:**

**14.1** The Merchant warrants that the Carriage of all dangerous goods will be fully declared in accordance with the Canadian Transport of Dangerous Goods Act (TDG) and /or the International Marine Dangerous Goods Code (IMDG) prior to their shipment as part of the Goods to be carried and that those are stuffed, packed and stowed in a manner adequate to withstand the risks of Carriage having regard to their nature.

**14.2** The Merchant shall indemnify TMSI Limited against all claims, liabilities, losses, damages, delays, costs, fines and/or expenses arising in consequence of the Carriage of such goods, including any steps taken by TMSI Limited to mitigate risks whether or not the Merchant was aware of the dangerous nature of the Goods.

**15. NOTIFICATION AND DELIVERY:**

**15.1** The Merchant has the duty to monitor and inform itself as to the arrival of the Goods. Any reference in this CTWB to Persons to be notified of the arrival of the Goods is solely for information of TMSI Limited. Failure to give such notification shall not involve TMSI Limited in any liability nor relieve the Merchant of any obligation hereunder.

**15.2** The Merchant shall take delivery of the Goods within the time provided for in the applicable General Tariff. If the Merchant fails to do so, TMSI Limited may without notice unpack or de-stuff the Goods, if stowed in Equipment, and/or store the Goods ashore, afloat, in the open or under cover, at the sole risks of the Merchant. Such storage shall constitute due delivery hereunder and, thereupon, all liability whatsoever of TMSI Limited in respect of the Goods shall cease and the costs of such storage shall forthwith, upon demand, be paid by the Merchant to TMSI Limited.

**15.3** If the Goods remain unclaimed within a reasonable time or whenever, in TMSI Limited's opinion, the Goods are likely to deteriorate, decay or become worthless, or incur charges, whether for storage or otherwise, in excess of their value, TMSI Limited may at its discretion and without prejudice to any other rights which it may have against the Merchant, without notice and without any responsibility attaching to it, sell, abandon or otherwise dispose of the Goods at the sole risks and expenses of the Merchant and apply any proceeds of sale in reduction of the sums due from the Merchant in respect of this CTWB.

**15.4** Refusal by the Merchant to take delivery of the Goods in accordance with the Terms of this clause and/or to mitigate any loss or damage thereto shall constitute a waiver by the Merchant to TMSI Limited of any claim whatsoever relating to the Goods or the Carriage thereof and the Merchant, including all Persons within the definition of that term, shall be jointly and severally liable for all costs, losses and/or damages, or delays, resulting there from including demurrage over Equipment.

**15.5** TMSI Limited may, in its absolute discretion, deliver the Goods de-stuffed from the Equipment as break bulk cargo and/or deliver the Goods to more than one receiver as per the Merchant's request. In such event, TMSI Limited shall not be liable for any shortage, loss, damage or discrepancies of the Goods, which are found upon de-stuffing the Equipment or delivery.

**16. BOTH-TO-BLAME COLLISION CLAUSE (BIMCO):**

**16.1** If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, Mariner, Pilot or the servants in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify TMSI Limited

against all loss or liability to the other or non-carrying ship or her Owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying ship or her Owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying Vessel. The foregoing provisions shall also apply where the Owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact.

**17. GENERAL AVERAGE AND SALVAGE:**

**17.1** In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, due to negligence or not, for which, or for the consequences of which, TMSI Limited is not responsible, by statute, contract, or otherwise, the Merchant shall contribute with TMSI Limited in general average to the payment of any sacrifices, loss or damages or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the Goods. General average is to be adjusted at any port or place at TMSI Limited's option and to be settled according to the York-Antwerp Rules 1994.

**17.2** Such security as a cash deposit, insurer's letter of undertaking, or bank letter of credit, as TMSI Limited may accept, to cover the estimate of the total contribution of the Goods, in general average, for salvage and/or as special charges thereon shall, if required by TMSI Limited, be submitted prior to delivery of the Goods. TMSI Limited shall be under no obligation to exercise any lien for general average contribution due to the Merchant.

**17.3** If a salvaging ship is owned or operated by TMSI Limited, salvage shall be paid for as fully as if the said salvaging ship belonged to a third party.

**17.4** In the event of TMSI Limited considering that salvage services are needed, the Merchant agrees that the TMSI Limited may act as its agent to procure such services to the Goods and that it may act as its agent to settle salvage remuneration.

**18. STORED GOODS**

**18.1** TMSI Limited shall not be regarded as a warehouseman of Goods for the Merchant or any other person unless it entered into a further written agreement with the Merchant providing for the warehousing of such Goods. Unless TMSI Limited has entered into such an agreement, its liability for loss or damage to Goods stored on its premises (before loading on a ship or following unloading from a ship), shall not exceed the applicable amounts determined and calculated in accordance with the Terms.

**18.2** TMSI Limited, subject to the law of the place where the Goods are stored, shall not be liable for any loss or damage to Goods tendered, stored or handled while being warehoused, unless such loss or damage results from its failure to exercise such care in respect of such Goods as a reasonably careful person would exercise in like circumstances. TMSI Limited is not liable for damages which could not have been avoided by the exercise of such care.

**18.3** TMSI Limited, subject to the law of the place where the Goods are stored, shall be entitled to claim and maintain a warehouseman's lien and to exercise such rights and remedies in relation thereto as the law of the place where the Goods are being stored permits.

**18.4** TMSI Limited may charge the Shipper or the Consignee for storage of goods in accordance with its tariff, but such charge for storage shall not increase its liability.

**19. ENFORCEABILITY AND SEVERABILITY:**

**19.1** No servant or agent of TMSI Limited shall have the power to waive or vary any Terms in this CTWB, or the General Tariff, unless such variation is in writing and is approved and ratified in writing by the TMSI Limited.

**19.2** This Way Bill shall be governed by *Canadian maritime law* as this expression is defined at section 2 of the *Federal Courts Act*. Any dispute in connection with the Carriage of the Goods or this CTWB shall be referred to the exclusive jurisdiction of the Federal Court of Canada.

**19.3** In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this CTWB, and this CTWB shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited or eliminated only to the extent necessary to remove the invalidity, illegality or unenforceability.

**20. OFFICIAL LANGUAGE:**

**20.1** This CTWB as well as any other document incorporated by reference into it, notices, schedules and authorizations may be drafted or completed in any one of both official languages in Canada. However, by using or accepting to use the English version form of this CTWB, the parties are deemed to have agreed that their agreement be drawn in the English language. In case of any inconsistency between the English and French version of same, the English version shall prevail.

