



STEAMSHIP MUTUAL

## The Carriage of Goods by Sea Conventions

Hague/Hague-Visby Rules  
Hamburg Rules  
Rotterdam Rules  
& Inter-Club Agreement



# STEAMSHIP MUTUAL

UNDERWRITING ASSOCIATION LIMITED

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# Hague Rules

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# Hague Rules

The International Convention for the Unification of Certain Rules  
of Law relating to Bills of Lading of August 1924

## The Hague-Visby Rules

The Hague Rules as amended by the Brussels Protocol of February 1968

## SDR Protocol

Protocol of December 1979

### Article I

In this Convention the following words are employed with the meanings set out below:

- (a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) "Contract of Carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) "Goods" includes goods, wares, merchandise and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) "Ship" means any vessel used for the carriage of goods by sea.
- (e) "Carriage of Goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

## **Article II**

Subject to the provisions of Article VI, under every contract of carriage of goods by sea, the carrier, in relation to the loading, handling, storage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and be entitled to the rights and immunities hereinafter set forth.

## Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:
  - (a) Make the ship seaworthy;
  - (b) Properly man, equip and supply the ship;
  - (c) Make the holds, refrigerating and cooled chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
3. After receiving the goods into his charge, the carrier or the Master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:
  - (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
  - (b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.
  - (c) The apparent order and condition of the goods. Provided that no carrier, Master or agent of the carrier shall be bound to state or show in the bill of lading any mark, number, quantity, or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.
4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c).

### ■ Hague-Visby Amendment

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.
5. The shippers shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.  
  
If the loss or damage is not apparent the notice must be given within three days of the delivery of the goods.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

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

#### ■ Hague-Visby Amendment

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to Paragraph 6 *bis* the carrier and the ship 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 after the cause of action has arisen.

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

- 6 *bis*. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph, if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.
7. After the goods are loaded the bill of lading to be issued by the carrier, Master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, Master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.
8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

## Article IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which the goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
  - (a) Acts, neglect, or default of the Master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
  - (b) Fire, unless caused by the actual fault or privity of the carrier;
  - (c) Perils, dangers and accidents of the sea or other navigable waters;
  - (d) Act of God;
  - (e) Act of war;
  - (f) Act of public enemies;
  - (g) Arrest or restraint of princes, rulers or people, or seizure under legal process;
  - (h) Quarantine restrictions;
  - (i) Act or omission of the shipper or owner of the goods, his agent or representatives;
  - (j) Strikes or lock outs or stoppage or restraint of labour from whatever cause, whether partial or general;
  - (k) Riots and civil commotions;
  - (l) Saving or attempting to save life or property at sea;
  - (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
  - (n) Insufficiency of packing;
  - (o) Insufficiency or inadequacy of marks;
  - (p) Latent defects not discoverable by due diligence;
  - (q) Any other cause arising without the actual fault or privity of the carrier or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.
4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.
5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100.00 sterling per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, Master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

#### ■ Hague Visby Amendment

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged whichever is the higher.

#### ■ SDR protocol

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.
- (b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

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.

- (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.
- (d) A franc means a unit consisting of 65.5 milligrammes of gold of millesimal fineness 900. The date of conversion of the sum awarded into national currencies shall be governed by the law of the Court seized of the case.
- (d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall 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 the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

- (i) in respect of the amount of 666.67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 10,000 monetary units;
- (ii) in respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900'. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in sub-paragraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

- (e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with the knowledge that damage would probably result.
  - (f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.
  - (g) By agreement between the carrier, Master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.
  - (h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature and value thereof has been knowingly mis-stated by the shipper in the bill of lading.
6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, Master, or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

#### ■ Hague-Visby Amendment

### Article IV *bis*

1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

## **Article V**

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities and to increase any of his responsibilities and obligations under this Convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of this Convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party, they shall comply with the terms of this Convention. Nothing in this Convention shall be held to prevent the insertion in a bill of lading of any lawful provisions regarding general average.

## Article VI

Notwithstanding the provisions of the preceding Articles, a carrier, Master or agent of a carrier, and a shipper shall, in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligations as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

## **Article VII**

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent, to the discharge from the ship on which the goods are carried by sea.

## **Article VIII**

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

## **Article IX**

The monetary units mentioned in this Convention are to be taken to be gold value.

Those contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this Convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

### **■ Hague-Visby Amendment**

## **Article IX**

This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

## Article X

The provisions of this Convention shall apply to all bills of lading issued in any of the Contracting States.

## Article X

### ■ Hague-Visby Amendment

The provisions of this Convention shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

- (a) the bill of lading is issued in a Contracting State, or
- (b) the carriage is from a port in a Contracting State, or
- (c) the contract contained in or evidenced by the bill of lading provides that this Convention or legislation of any State giving effect to it is to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the bills of lading mentioned above.

This Article shall not prevent a Contracting State from applying the Rules of this Convention to bills of lading not included in the preceding paragraphs.

# Notes

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# Hamburg Rules

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United Nations Convention on the  
Carriage of Goods by Sea 1978



# Hamburg Rules

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

### **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 assumes 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 paragraph 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 or agreement is valid as against the shipper unless the carrier or 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 the 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 the goods were 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.
8. 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 derogates, 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 contract or document of which it forms a part. A clause assigning benefit of insurance of goods in favour of the carrier, or any similar clause, is null and void.
2. Notwithstanding the provisions of paragraph 1 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 and 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 is either the Paris or the Vienna Convention.
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 (articles 27–34) not included.**

# Notes

## Notes



# Inter-Club New York Produce Exchange Agreement 1996

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# Inter-Club New York Produce Exchange Agreement 1996

(as amended September 2011)

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# Inter-Club New York Produce Exchange Agreements of 1996 and 2011

The Inter-Club New York Produce Exchange Agreement 1970 (the ICA) provides a relatively simple mechanism whereby liability for cargo claims arising under New York Produce Exchange Form (NYPE) or Asbatime charterparties and/or contracts of carriage authorised under such charterparties, can be apportioned between Owners and Charterers.

Following the 1996 amendment, the ICA was renamed the Inter-Club New York Produce Exchange Agreement 1996 (the "1996 Agreement") and, because of concern surrounding the time and costs associated with demands for security between Owners and Charterers, the 1996 Agreement was amended in September 2011 (the "2011 Agreement").

The final paragraphs of the Club's circular of September 2011 (B557) provide in part that:

*The 2011 Agreement will take effect from 1st September 2011.*

*Contractually the 2011 Agreement:*

- (a) Will not, subject to (c) below, apply to charterparties entered into prior to 1/9/11 or to claims arising under such charterparties whether such claims arise before or after 1/9/11.*
- (b) Will apply to charterparties entered into on or after 1/9/11 and to claims arising under such charterparties if the 2011 Agreement is incorporated into such charterparties either by way of:
  - (i) a specific reference to the "ICA 1996 (as amended September 2011)"; or*
  - (ii) if the charterparty contains a reference to the ICA 1996 'or any amendments thereto' or similar wording**
- (c) Can be incorporated into charterparties entered into before 1/9/11 and to claims arising under such charterparties if the parties to such charterparties agree that it should e.g. by way of an addendum to the charterparty.*

The 1996 Agreement is set out below with the amendments to the 2011 Agreement in red type.

## **Inter-Club New York Produce Exchange Agreement 1996 / The 2011 Agreement**

This Agreement replaces the Inter-Club Agreement 1984 in respect of all charterparties specified in clause (1) hereof and shall continue in force until varied or terminated. **This Agreement, the Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011) (the Agreement), made on 1st September 2011 between the P&I Clubs being members of The International Group of P&I Associations listed below (hereafter referred to as "the Clubs") amends the Inter-Club New York Produce Exchange Agreement 1996 in respect of all charterparties specified in clause (1) hereof and shall continue in force until varied or terminated.** Any variation to be effective must be approved in writing by all the Clubs but it is open to any Club to withdraw from the Agreement on giving to all the other Clubs not less than three months' written notice thereof, such withdrawal to take effect at the expiration of that period. After the expiry of such notice the Agreement shall nevertheless continue as between all the Clubs, other than the Club giving such notice who shall remain bound by and be entitled to the benefit of this Agreement in respect of all cargo claims arising out of charterparties commenced prior to the expiration of such notice.

The Clubs will recommend to their Members without qualification that their Members adopt this Agreement for the purpose of apportioning liability for claims in respect of cargo which arise under, out of or in connection with all charterparties on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms), whether or not this Agreement has been incorporated into such charterparties.

### **Scope of Application**

- (1) This Agreement applies to any charterparty which is entered into after the date hereof on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms).
- (2) The terms of this Agreement shall apply notwithstanding anything to the contrary in any other provision of the charterparty; in particular the provisions of clause (6) (time bar) shall apply notwithstanding any provision of the charterparty or rule of law to the contrary.
- (3) For the purposes of this Agreement, cargo claim(s) mean claims for loss, damage, shortage (including slackage, ullage or pilferage), overcarriage of or delay to cargo including customs dues or fines in respect of such loss, damage, shortage, overcarriage or delay and include:
  - (a) any legal costs claimed by the original person making any such claim;
  - (b) any interest claimed by the original person making any such claim;
  - (c) all legal, Club correspondents' and experts' costs reasonably incurred in the defence of or in the settlement of the claim made by the original person, but shall not include any costs of whatsoever nature incurred in making a claim under this Agreement or in seeking an indemnity under the charterparty.
- (4) Apportionment under this Agreement shall only be applied to cargo claims where:

- (a) the claim was made under a contract of carriage, whatever its form,
    - (i) which was authorised under the charterparty; or
    - (ii) which would have been authorised under the charterparty but for the inclusion in that contract of carriage of Through Transport or Combined Transport provisions, provided that
      - 1) in the case of contracts of carriage containing Through Transport or Combined Transport provisions (whether falling within (i) or (ii) above) the loss, damage, shortage, overcarriage or delay occurred after commencement of the loading of the cargo on to the chartered vessel and prior to completion of its discharge from that vessel (the burden of proof being on the charterer to establish that the loss, damage, shortage, overcarriage or delay did or did not so occur); and
      - 2) the contract of carriage (or that part of the transit that comprised carriage on the chartered vessel) incorporated terms no less favourable to the carrier than the Hague or Hague-Visby Rules, or, when compulsorily applicable by operation of law to the contract of carriage, the Hamburg Rules or any national law giving effect thereto; and
  - (b) the cargo responsibility clauses in the charterparty have not been materially amended. A material amendment is one which makes the liability, as between owners and charterers, for cargo claims clear. In particular, it is agreed solely for the purposes of this Agreement:
    - (i) that the addition of the words “and responsibility” in clause 8 of the New York Produce Exchange Form 1946 or 1993 or clause 8 of the Asbatime Form 1981, or any similar amendment of the charterparty making the Master responsible for cargo handling, is not a material amendment; and
    - (ii) that if the words “cargo claims” are added to the second sentence of clause 26 of the New York Produce Exchange Form 1946 or 1993 or clause 25 of the Asbatime Form 1981, apportionment under this Agreement shall not be applied under any circumstances even if the charterparty is made subject to the terms of this Agreement; and
  - (c) the claim has been properly settled or compromised and paid.
- (5) This Agreement applies regardless of legal forum or place of arbitration specified in the charterparty and regardless of any incorporation of the Hague, Hague-Visby Rules or Hamburg Rules therein.

## Time Bar

(6) Recovery under this Agreement by an owner or charterer shall be deemed to be waived and absolutely barred unless written notification of the cargo claim has been given to the other party to the charterparty within 24 months of the date of delivery of the cargo or the date the cargo should have been delivered, save that, where the Hamburg Rules or any national legislation giving effect thereto are compulsorily applicable by operation of law to the contract of carriage or to that part of the transit that comprised carriage on the chartered vessel, the period shall be 36 months. Such notification shall if possible include details of the contract of carriage, the nature of the claim and the amount claimed.

## The Apportionment

(7) The amount of any cargo claim to be apportioned under this Agreement shall be the amount in fact borne by the party to the charterparty seeking apportionment, regardless of whether that claim may be or has been apportioned by application of this Agreement to another charterparty.

(8) Cargo claims shall be apportioned as follows:

- (a) Claims in fact arising out of unseaworthiness and/or error or fault in navigation or management of the vessel:

### 100% Owners

save where the owner proves that the unseaworthiness was caused by the loading, stowage, lashing, discharge or other handling of the cargo, in which case the claim shall be apportioned under sub-clause (b).

- (b) Claims in fact arising out of the loading, stowage, lashing, discharge, storage or other handling of cargo:

### 100% Charterers

unless the words “and responsibility” are added in clause 8 or there is a similar amendment making the Master responsible for cargo handling in which case:

### 50% Charterers

### 50% Owners

save where the charterer proves that the failure properly to load, stow, lash, discharge or handle the cargo was caused by the unseaworthiness of the vessel in which case:

### 100% Owners

- (c) Subject to (a) and (b) above, claims for shortage or overcarriage:

**50% Charterers**

**50% Owners**

unless there is clear and irrefutable evidence that the claim arose out of pilferage or act or neglect by one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

- (d) All other cargo claims whatsoever (including claims for delay to cargo):

**50% Charterers**

**50% Owners**

unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

## Security

(9) If a party to the charterparty provides security to a person making a cargo claim, that party shall be entitled upon demand to acceptable security for an equivalent amount in respect of that cargo claim from the other party to the charterparty, regardless of whether a right to apportionment between the parties to the charterparty has arisen under this Agreement provided that:

- (a) written notification of the cargo claim has been given by the party demanding security to the other party to the charterparty within the relevant period specified in clause (6); and
- (b) the party demanding such security reciprocates by providing acceptable security for an equivalent amount to the other party to the charterparty in respect of the cargo claim if requested to do so.

## Governing Law

(9) (10) This Agreement shall be subject to English Law and the exclusive Jurisdiction of the English Courts, unless it is incorporated into the charterparty (or the settlement of claims in respect of cargo under the charterparty is made subject to this Agreement), in which case it shall be subject to the law and jurisdiction provisions governing the charterparty.

# Notes



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# Rotterdam Rules

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United Nations Convention on Contracts  
for the International Carriage of Goods  
Wholly or Partly by Sea 2008



# Rotterdam Rules

## United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

### CHAPTER 1 GENERAL PROVISIONS

#### Article 1

##### Definitions

For the purposes of this Convention:

1. "Contract of carriage" means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.
2. "Volume contract" means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.
3. "Liner transportation" means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.
4. "Non-liner transportation" means any transportation that is not liner transportation.
5. "Carrier" means a person that enters into a contract of carriage with a shipper.
6. (a) "Performing party" means a person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.  
  
(b) "Performing party" does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.
7. "Maritime performing party" means a performing party to the extent that it performs or undertakes to perform any of the carrier's obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.
8. "Shipper" means a person that enters into a contract of carriage with a carrier.
9. "Documentary shipper" means a person, other than the shipper, that accepts to be named as "shipper" in the transport document or electronic transport record.

10. "Holder" means:
- (a) A person that is in possession of a negotiable transport document; and
    - (i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or
    - (ii) if the document is a blank endorsed order document or bearer document, is the bearer thereof; or
  - (b) The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in Article 9, paragraph 1.
11. "Consignee" means a person entitled to delivery of the goods under a contract of carriage or a transport document or electronic transport record.
12. "Right of control" of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with chapter 10.
13. "Controlling party" means the person that pursuant to Article 51 is entitled to exercise the right of control.
14. "Transport document" means a document issued under a contract of carriage by the carrier that:
- (a) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; and
  - (b) Evidences or contains a contract of carriage.
15. "Negotiable transport document" means a transport document that indicates, by wording such as "to order" or "negotiable" or other appropriate wording recognized as having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being "non-negotiable" or "not negotiable".
16. "Non-negotiable transport document" means a transport document that is not a negotiable transport document.
17. "Electronic communication" means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.
18. "Electronic transport record" means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:
- (a) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; and
  - (b) Evidences or contains a contract of carriage.

19. "Negotiable electronic transport record" means an electronic transport record:
- (a) That indicates, by wording such as "to order", or "negotiable", or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being "non-negotiable" or "not negotiable"; and
  - (b) The use of which meets the requirements of Article 9, paragraph 1.
20. "Non-negotiable electronic transport record" means an electronic transport record that is not a negotiable electronic transport record.
21. The "issuance" of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.
22. The "transfer" of a negotiable electronic transport record means the transfer of exclusive control over the record.
23. "Contract particulars" means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.
24. "Goods" means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.
25. "Ship" means any vessel used to carry goods by sea.
26. "Container" means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.
27. "Vehicle" means a road or railroad cargo vehicle.
28. "Freight" means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.
29. "Domicile" means:
- (a) A place where a company or other legal person or association of natural or legal persons has its:
    - (i) statutory seat or place of incorporation or central registered office, whichever is applicable;
    - (ii) central administration or;
    - (iii) principal place of business, and
  - (b) The habitual residence of a natural person.
30. "Competent court" means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over the dispute.

## Article 2

### Interpretation of this Convention

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

## Article 3

### Form requirements

The notices, confirmation, consent, agreement, declaration and other communications referred to in Articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (b), (c) and (d); 40, subparagraph 4 (b); 44; 48, paragraph 3; 51, subparagraph 1 (b); 59, paragraph 1; 63; 66; 67, paragraph 2; 75, paragraph 4; and 80, paragraphs 2 and 5, shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

## Article 4

### Applicability of defences and limits of liability

1. Any provision of this Convention that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Convention against:
  - (a) The carrier or a maritime performing party;
  - (b) The master, crew or any other person that performs services on board the ship; or
  - (c) Employees of the carrier or a maritime performing party.
2. Any provision of this Convention that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.

## CHAPTER 2 SCOPE OF APPLICATION

### Article 5

#### General scope of application

1. Subject to Article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:
  - (a) The place of receipt;
  - (b) The port of loading;
  - (c) The place of delivery; or
  - (d) The port of discharge.
2. This Convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.

### Article 6

#### Specific exclusions

1. This Convention does not apply to the following contracts in liner transportation:
  - (a) Charter parties; and
  - (b) Other contracts for the use of a ship or of any space thereon.
2. This Convention does not apply to contracts of carriage in non-liner transportation except when:
  - (a) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and
  - (b) A transport document or an electronic transport record is issued.

### Article 7

#### Application to certain parties

Notwithstanding Article 6, this Convention applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to Article 6.

## CHAPTER 3 ELECTRONIC TRANSPORT RECORDS

### Article 8

#### Use and effect of electronic transport records

Subject to the requirements set out in this Convention:

- (a) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and
- (b) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

### Article 9

#### Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record shall be subject to procedures that provide for:
  - (a) The method for the issuance and the transfer of that record to an intended holder;
  - (b) An assurance that the negotiable electronic transport record retains its integrity;
  - (c) The manner in which the holder is able to demonstrate that it is the holder; and
  - (d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to Articles 10, paragraph 2, or 47, subparagraphs 1 (a) (ii) and (c), the electronic transport record has ceased to have any effect or validity.
2. The procedures in paragraph 1 of this Article shall be referred to in the contract particulars and be readily ascertainable.

### Article 10

#### Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:
  - (a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;
  - (b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and
  - (c) The negotiable transport document ceases thereafter to have any effect or validity.
2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:
  - (a) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and
  - (b) The electronic transport record ceases thereafter to have any effect or validity.

## CHAPTER 4 OBLIGATIONS OF THE CARRIER

### Article 11

#### Carriage and delivery of the goods

The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

### Article 12

#### Period of responsibility of the carrier

1. The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.
2. (a) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.  
  
(b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.
3. For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that:
  - (a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or
  - (b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

## Article 13

### Specific obligations

1. The carrier shall during the period of its responsibility as defined in Article 12, and subject to Article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.
2. Notwithstanding paragraph 1 of this Article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.

## Article 14

### Specific obligations applicable to the voyage by sea

The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:

- (a) Make and keep the ship seaworthy;
- (b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and
- (c) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

## Article 15

### Goods that may become a danger

Notwithstanding Articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment.

## Article 16

### Sacrifice of the goods during the voyage by sea

Notwithstanding Articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

## CHAPTER 5 LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY

### Article 17

#### Basis of liability

1. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.
2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this Article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in Article 18.
3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this Article if, alternatively to proving the absence of fault as provided in paragraph 2 of this Article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:
  - (a) Act of God;
  - (b) Perils, dangers, and accidents of the sea or other navigable waters;
  - (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
  - (d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in Article 18;
  - (e) Strikes, lockouts, stoppages, or restraints of labour;
  - (f) Fire on the ship;
  - (g) Latent defects not discoverable by due diligence;
  - (h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to Article 33 or 34;
  - (i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with Article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;
  - (j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
  - (k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;
  - (l) Saving or attempting to save life at sea;
  - (m) Reasonable measures to save or attempt to save property at sea;

- (n) Reasonable measures to avoid or attempt to avoid damage to the environment; or
  - (o) Acts of the carrier in pursuance of the powers conferred by Articles 15 and 16.
4. Notwithstanding paragraph 3 of this Article, the carrier is liable for all or part of the loss, damage, or delay:
- (a) If the claimant proves that the fault of the carrier or of a person referred to in Article 18 caused or contributed to the event or circumstance on which the carrier relies; or
  - (b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this Article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in Article 18.
5. The carrier is also liable, notwithstanding paragraph 3 of this Article, for all or part of the loss, damage, or delay if:
- (a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by:
    - (i) The unseaworthiness of the ship;
    - (ii) The improper crewing, equipping, and supplying of the ship; or
    - (iii) The fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and
  - (b) The carrier is unable to prove either that:
    - (i) None of the events or circumstances referred to in subparagraph 5 (a) of this Article caused the loss, damage, or delay; or
    - (ii) It complied with its obligation to exercise due diligence pursuant to Article 14.
6. When the carrier is relieved of part of its liability pursuant to this Article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this Article.

## **Article 18**

### **Liability of the carrier for other persons**

The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of:

- (a) Any performing party;
- (b) The master or crew of the ship;
- (c) Employees of the carrier or a performing party; or
- (d) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

## Article 19

### Liability of maritime performing parties

1. A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's defences and limits of liability as provided for in this Convention if:
  - (a) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and
  - (b) The occurrence that caused the loss, damage or delay took place:
    - (i) During the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship;
    - (ii) While the maritime performing party had custody of the goods; or
    - (iii) At any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.
2. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that the limits of its liability are higher than the limits specified under this Convention, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits.
3. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this Article.
4. Nothing in this Convention imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party.

## Article 20

### Joint and several liability

1. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several but only up to the limits provided for under this Convention.
2. Without prejudice to Article 61, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Convention.

## Article 21

### Delay

Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

## Article 22

### Calculation of compensation

1. Subject to Article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with Article 43.
2. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.
3. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this Article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16.

## Article 23

### Notice in case of loss, damage or delay

1. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.
2. Failure to provide the notice referred to in this Article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Convention, nor shall it affect the allocation of the burden of proof set out in Article 17.
3. The notice referred to in this Article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.
4. No compensation in respect of delay is payable unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods.
5. When the notice referred to in this Article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.
6. In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

## CHAPTER 6 ADDITIONAL PROVISIONS RELATING TO PARTICULAR STAGES OF CARRIAGE

### Article 24

#### Deviation

When pursuant to applicable law a deviation constitutes a breach of the carrier's obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention, except to the extent provided in Article 61.

### Article 25

#### Deck cargo on ships

1. Goods may be carried on the deck of a ship only if:
  - (a) Such carriage is required by law;
  - (b) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or
  - (c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.
2. The provisions of this Convention relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this Article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1 (a) or (c) of this Article.
3. If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this Article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in Article 17.
4. The carrier is not entitled to invoke subparagraph 1 (c) of this Article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.
5. If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck.

## Article 26

### Carriage preceding or subsequent to sea carriage

When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:

- (a) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;
- (b) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and
- (c) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

## **CHAPTER 7 OBLIGATIONS OF THE SHIPPER TO THE CARRIER**

### **Article 27**

#### **Delivery for carriage**

1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.
2. The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to Article 13, paragraph 2.
3. When a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a way that they will not cause harm to persons or property.

### **Article 28**

#### **Cooperation of the shipper and the carrier in providing information and instructions**

The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

### **Article 29**

#### **Shipper's obligation to provide information, instructions and documents**

1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:
  - (a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and
  - (b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.
2. Nothing in this Article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

### **Article 30**

#### **Basis of shipper's liability to the carrier**

1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Convention.

2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to Articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in Article 34.
3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in Article 34.

## Article 31

### Information for compilation of contract particulars

1. The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in Article 36, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.
2. The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to paragraph 1 of this Article. The shipper shall indemnify the carrier against loss or damage resulting from the inaccuracy of such information.

## Article 32

### Special rules on dangerous goods

When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:

- (a) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform; and
- (b) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

## Article 33

### Assumption of shipper's rights and obligations by the documentary shipper

1. A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to Article 55, and is entitled to the shipper's rights and defences provided by this chapter and by chapter 13.

2. Paragraph 1 of this Article does not affect the obligations, liabilities, rights or defences of the shipper.

## **Article 34**

### **Liability of the shipper for other persons**

The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

## CHAPTER 8 TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS

### Article 35

#### Issuance of the transport document or the electronic transport record

Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option:

- (a) A non-negotiable transport document or, subject to Article 8, subparagraph (a), a non-negotiable electronic transport record; or
- (b) An appropriate negotiable transport document or, subject to Article 8, subparagraph (a), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.

### Article 36

#### Contract particulars

1. The contract particulars in the transport document or electronic transport record referred to in Article 35 shall include the following information, as furnished by the shipper:
  - (a) A description of the goods as appropriate for the transport;
  - (b) The leading marks necessary for identification of the goods;
  - (c) The number of packages or pieces, or the quantity of goods; and
  - (d) The weight of the goods, if furnished by the shipper.
2. The contract particulars in the transport document or electronic transport record referred to in Article 35 shall also include:
  - (a) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
  - (b) The name and address of the carrier;
  - (c) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and
  - (d) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.
3. The contract particulars in the transport document or electronic transport record referred to in Article 35 shall further include:
  - (a) The name and address of the consignee, if named by the shipper;

- (b) The name of a ship, if specified in the contract of carriage;
  - (c) The place of receipt and, if known to the carrier, the place of delivery; and
  - (d) The port of loading and the port of discharge, if specified in the contract of carriage.
4. For the purposes of this Article, the phrase “apparent order and condition of the goods” in subparagraph 2 (a) of this Article refers to the order and condition of the goods based on:
- (a) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and
  - (b) Any additional inspection that the carrier or a performing party actually performs before issuing the transport document or electronic transport record.

## **Article 37**

### **Identity of the carrier**

1. If a carrier is identified by name in the contract particulars, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification.
2. If no person is identified in the contract particulars as the carrier as required pursuant to Article 36, subparagraph 2 (b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.
3. Nothing in this Article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this Article is the carrier.

## **Article 38**

### **Signature**

1. A transport document shall be signed by the carrier or a person acting on its behalf.
2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier’s authorization of the electronic transport record.

## **Article 39**

### **Deficiencies in the contract particulars**

1. The absence or inaccuracy of one or more of the contract particulars referred to in Article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record.

2. If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:
  - (a) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been loaded on board a ship; or
  - (b) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.
3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them.

## **Article 40**

### **Qualifying the information relating to the goods in the contract particulars**

1. The carrier shall qualify the information referred to in Article 36, paragraph 1, to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if:
  - (a) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or
  - (b) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.
2. Without prejudice to paragraph 1 of this Article, the carrier may qualify the information referred to in Article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this Article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.
3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in Article 36, paragraph 1, if:
  - (a) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or
  - (b) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.
4. When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in:
  - (a) Article 36, subparagraphs 1 (a), (b), or (c), if:

- (i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and
  - (ii) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and
- (b) Article 36, subparagraph 1 (d), if:
- (i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or
  - (ii) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.

## Article 41

### Evidentiary effect of the contract particulars

Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in Article 40:

- (a) A transport document or an electronic transport record is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars;
- (b) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when such contract particulars are included in:
  - (i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or
  - (ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith;
- (c) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record:
  - (i) The contract particulars referred to in Article 36, paragraph 1, when such contract particulars are furnished by the carrier;
  - (ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and
  - (iii) The contract particulars referred to in Article 36, paragraph 2.

## Article 42

### "Freight prepaid"

If the contract particulars contain the statement "freight prepaid" or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This Article does not apply if the holder or the consignee is also the shipper.

## CHAPTER 9 DELIVERY OF THE GOODS

### Article 43

#### Obligation to accept delivery

When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

### Article 44

#### Obligation to acknowledge receipt

On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

### Article 45

#### Delivery when no negotiable transport document or negotiable electronic transport record is issued

When neither a negotiable transport document nor a negotiable electronic transport record has been issued:

- (a) The carrier shall deliver the goods to the consignee at the time and location referred to in Article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;
- (b) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address;
- (c) Without prejudice to Article 48, paragraph 1, if the goods are not deliverable because:
  - (i) The consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in Article 43, claim delivery of the goods from the carrier after their arrival at the place of destination;
  - (ii) The carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee; or
  - (iii) The carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

- (d) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to subparagraph (c) of this Article is discharged from its obligations to deliver the goods under the contract of carriage.

## **Article 46**

### **Delivery when a non-negotiable transport document that requires surrender is issued**

When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

- (a) The carrier shall deliver the goods at the time and location referred to in Article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;
- (b) Without prejudice to Article 48, paragraph 1, if the goods are not deliverable because:
- (i) The consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in Article 43, claim delivery of the goods from the carrier after their arrival at the place of destination;
  - (ii) The carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document; or
  - (iii) The carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;
- (c) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (b) of this Article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

## **Article 47**

### **Delivery when a negotiable transport document or negotiable electronic transport record is issued**

1. When a negotiable transport document or a negotiable electronic transport record has been issued:
- (a) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in Article 43 to the holder:

- (i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in Article 1, subparagraph 10 (a) (i), upon the holder properly identifying itself; or
  - (ii) Upon demonstration by the holder, in accordance with the procedures referred to in Article 9, paragraph 1, that it is the holder of the negotiable electronic transport record;
- (b) The carrier shall refuse delivery if the requirements of subparagraph (a) (i) or (a) (ii) of this paragraph are not met;
- (c) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by Article 9, paragraph 1.
2. Without prejudice to Article 48, paragraph 1, if the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply:
- (a) If the goods are not deliverable because:
    - (i) The holder, after having received a notice of arrival, does not, at the time or within the time period referred to in Article 43, claim delivery of the goods from the carrier after their arrival at the place of destination;
    - (ii) The carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in Article 1, subparagraph 10 (a) (i); or
    - (iii) The carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;
  - (b) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (a) of this Article is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in Article 9, paragraph 1, that it is the holder;
  - (c) The person giving instructions under subparagraph 2 (a) of this Article shall indemnify the carrier against loss arising from its being held liable to the holder under subparagraph 2 (e) of this Article. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request;

- (d) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph 2 (b) of this Article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods;
- (e) Notwithstanding subparagraphs 2 (b) and 2 (d) of this Article, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.

## **Article 48**

### **Goods remaining undelivered**

1. For the purposes of this Article, goods shall be deemed to have remained undelivered only if, after their arrival at the place of destination:
  - (a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in Article 43;
  - (b) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to Articles 45, 46 and 47;
  - (c) The carrier is entitled or required to refuse delivery pursuant to Articles 44, 45, 46 and 47;
  - (d) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or
  - (e) The goods are otherwise undeliverable by the carrier.
2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:
  - (a) To store the goods at any suitable place;
  - (b) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and
  - (c) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.
3. The carrier may exercise the rights under paragraph 2 of this Article only after it has given reasonable notice of the intended action under paragraph 2 of this Article to the person stated in the contract particulars as the person, if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to

the carrier: the consignee, the controlling party or the shipper.

4. If the goods are sold pursuant to subparagraph 2 (c) of this Article, the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.
5. The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this Article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

## **Article 49**

### **Retention of goods**

Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

## CHAPTER 10 RIGHTS OF THE CONTROLLING PARTY

### Article 50

#### Exercise and extent of right of control

1. The right of control may be exercised only by the controlling party and is limited to:
  - (a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;
  - (b) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and
  - (c) The right to replace the consignee by any other person including the controlling party.
2. The right of control exists during the entire period of responsibility of the carrier, as provided in Article 12, and ceases when that period expires.

### Article 51

#### Identity of the controlling party and transfer of the right of control

1. Except in the cases referred to in paragraphs 2, 3 and 4 of this Article:
  - (a) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;
  - (b) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and
  - (c) The controlling party shall properly identify itself when it exercises the right of control.
2. When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:
  - (a) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document by transferring the document to that person without endorsement. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and
  - (b) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.
3. When a negotiable transport document is issued:
  - (a) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;
  - (b) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with Article 57. If more than one original of

that document was issued, all originals shall be transferred to that person in order to effect a transfer of the right of control; and

(c) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in Article 1, subparagraph 10 (a) (i), the holder shall properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

4. When a negotiable electronic transport record is issued:

(a) The holder is the controlling party;

(b) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in Article 9, paragraph 1; and

(c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in Article 9, paragraph 1, that it is the holder.

## Article 52

### Carrier's execution of instructions

1. Subject to paragraphs 2 and 3 of this Article, the carrier shall execute the instructions referred to in Article 50 if:

(a) The person giving such instructions is entitled to exercise the right of control;

(b) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier; and

(c) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.

2. In any event, the controlling party shall reimburse the carrier for any reasonable additional expense that the carrier may incur and shall indemnify the carrier against loss or damage that the carrier may suffer as a result of diligently executing any instruction pursuant to this Article, including compensation that the carrier may become liable to pay for loss of or damage to other goods being carried.

3. The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this Article. The carrier may refuse to carry out the instructions if no such security is provided.

4. The carrier's liability for loss of or damage to the goods or for delay in delivery resulting from its failure to comply with the instructions of the controlling party in breach of its obligation pursuant to paragraph 1 of this Article shall be subject to Articles 17 to 23, and the amount of the compensation payable by the carrier shall be subject to Articles 59 to 61.

## **Article 53**

### **Deemed delivery**

Goods that are delivered pursuant to an instruction in accordance with Article 52, paragraph 1, are deemed to be delivered at the place of destination, and the provisions of chapter 9 relating to such delivery apply to such goods.

## **Article 54**

### **Variations to the contract of carriage**

1. The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in Article 50, subparagraphs 1 (b) and (c).
2. Variations to the contract of carriage, including those referred to in Article 50, subparagraphs 1 (b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender, or incorporated in a negotiable electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If so stated or incorporated, such variations shall be signed in accordance with Article 38.

## **Article 55**

### **Providing additional information, instructions or documents to carrier**

1. The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage.
2. If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions or documents to the carrier, the shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide such information, instructions or documents.

## **Article 56**

### **Variation by agreement**

The parties to the contract of carriage may vary the effect of Articles 50, subparagraphs 1 (b) and (c), 50, paragraph 2, and 52. The parties may also restrict or exclude the transferability of the right of control referred to in Article 51, subparagraph 1 (b).

## CHAPTER 11 TRANSFER OF RIGHTS

### Article 57

#### When a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:
  - (a) Duly endorsed either to such other person or in blank, if an order document; or
  - (b) Without endorsement, if:
    - (i) A bearer document or a blank endorsed document; or
    - (ii) A document made out to the order of a named person and the transfer is between the first holder and the named person.
2. When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in Article 9, paragraph 1.

### Article 58

#### Liability of holder

1. Without prejudice to Article 55, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.
2. A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.
3. For the purposes of paragraphs 1 and 2 of this Article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:
  - (a) It agrees with the carrier, pursuant to Article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or
  - (b) It transfers its rights pursuant to Article 57.

## CHAPTER 12 LIMITS OF LIABILITY

### Article 59

#### Limits of liability

1. Subject to Articles 60 and 61, paragraph 1, the carrier's liability for breaches of its obligations under this Convention is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this Article has been agreed upon between the carrier and the shipper.
2. When goods are carried in or on a container, pallet or similar Article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such Article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such Article of transport or vehicle are deemed one shipping unit.
3. The unit of account referred to in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this Article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award 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 that 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 that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

### Article 60

#### Limits of liability for loss caused by delay

Subject to Article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with Article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this Article and Article 59, paragraph 1, may not exceed the limit that would be established pursuant to Article 59, paragraph 1, in respect of the total loss of the goods concerned.

### Article 61

#### Loss of the benefit of limitation of liability

1. Neither the carrier nor any of the persons referred to in Article 18 is entitled to the benefit of the limitation of liability as provided in Article 59, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier's obligation under this

Convention was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

2. Neither the carrier nor any of the persons mentioned in Article 18 is entitled to the benefit of the limitation of liability as provided in Article 60 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

## CHAPTER 13 TIME FOR SUIT

### Article 62

#### Period of time for suit

1. No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention may be instituted after the expiration of a period of two years.
2. The period referred to in paragraph 1 of this Article commences on the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.
3. Notwithstanding the expiration of the period set out in paragraph 1 of this Article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

### Article 63

#### Extension of time for suit

The period provided in Article 62 shall not be subject to suspension or interruption, but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations.

### Article 64

#### Action for indemnity

An action for indemnity by a person held liable may be instituted after the expiration of the period provided in Article 62 if the indemnity action is instituted within the later of:

- (a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or
- (b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

### Article 65

#### Actions against the person identified as the carrier

An action against the bareboat charterer or the person identified as the carrier pursuant to Article 37, paragraph 2, may be instituted after the expiration of the period provided in Article 62 if the action is instituted within the later of:

- (a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or
- (b) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to Article 37, paragraph 2.

## CHAPTER 14 JURISDICTION

### Article 66

#### Actions against the carrier

Unless the contract of carriage contains an exclusive choice of court agreement that complies with Article 67 or 72, the plaintiff has the right to institute judicial proceedings under this Convention against the carrier:

- (a) In a competent court within the jurisdiction of which is situated one of the following places:
  - (i) The domicile of the carrier;
  - (ii) The place of receipt agreed in the contract of carriage;
  - (iii) The place of delivery agreed in the contract of carriage; or
  - (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or
- (b) In a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Convention.

### Article 67

#### Choice of court agreements

1. The jurisdiction of a court chosen in accordance with Article 66, subparagraph (b), is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:
  - (a) Is contained in a volume contract that clearly states the names and addresses of the parties and either:
    - (i) Is individually negotiated; or
    - (ii) Contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and
  - (b) Clearly designates the courts of one Contracting State or one or more specific courts of one Contracting State.
2. A person that is not a party to the volume contract is bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this Article only if:
  - (a) The court is in one of the places designated in Article 66, subparagraph (a);
  - (b) That agreement is contained in the transport document or electronic transport record;
  - (c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and
  - (d) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

## Article 68

### Actions against the maritime performing party

The plaintiff has the right to institute judicial proceedings under this Convention against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

- (a) The domicile of the maritime performing party; or
- (b) The port where the goods are received by the maritime performing party, the port where the goods are delivered by the maritime performing party or the port in which the maritime performing party performs its activities with respect to the goods.

## Article 69

### No additional bases of jurisdiction

Subject to Articles 71 and 72, no judicial proceedings under this Convention against the carrier or a maritime performing party may be instituted in a court not designated pursuant to Article 66 or 68.

## Article 70

### Arrest and provisional or protective measures

Nothing in this Convention affects jurisdiction with regard to provisional or protective measures, including arrest. A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

- (a) The requirements of this chapter are fulfilled; or
- (b) An international convention that applies in that State so provides.

## Article 71

### Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is binding pursuant to Article 67 or 72, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to both Article 66 and Article 68. If there is no such court, such action may be instituted in a court designated pursuant to Article 68, subparagraph (b), if there is such a court.
2. Except when there is an exclusive choice of court agreement that is binding pursuant to Article 67 or 72, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to Article 66 or 68 shall, at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to Article 66 or 68, whichever is applicable, where the action may be recommenced.

## **Article 72**

### **Agreement after a dispute has arisen and jurisdiction when the defendant has entered an appearance**

1. After a dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.
2. A competent court before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

## **Article 73**

### **Recognition and enforcement**

1. A decision made in one Contracting State by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with the law of such latter Contracting State when both States have made a declaration in accordance with Article 74.
2. A court may refuse recognition and enforcement based on the grounds for the refusal of recognition and enforcement available pursuant to its law.
3. This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Convention, as concerns the recognition or enforcement of judgements as between member States of the regional economic integration organization, whether adopted before or after this Convention.

## **Article 74**

### **Application of chapter 14**

The provisions of this chapter shall bind only Contracting States that declare in accordance with Article 91 that they will be bound by them.

## CHAPTER 15 ARBITRATION

### Article 75

#### Arbitration agreements

1. Subject to this chapter, parties may agree that any dispute that may arise relating to the carriage of goods under this Convention shall be referred to arbitration.
2. The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at:
  - (a) Any place designated for that purpose in the arbitration agreement; or
  - (b) Any other place situated in a State where any of the following places is located:
    - (i) The domicile of the carrier;
    - (ii) The place of receipt agreed in the contract of carriage;
    - (iii) The place of delivery agreed in the contract of carriage; or
    - (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.
3. The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if the agreement is contained in a volume contract that clearly states the names and addresses of the parties and either:
  - (a) Is individually negotiated; or
  - (b) Contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.
4. When an arbitration agreement has been concluded in accordance with paragraph 3 of this Article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:
  - (a) The place of arbitration designated in the agreement is situated in one of the places referred to in subparagraph 2 (b) of this Article;
  - (b) The agreement is contained in the transport document or electronic transport record;
  - (c) The person to be bound is given timely and adequate notice of the place of arbitration; and
  - (d) Applicable law permits that person to be bound by the arbitration agreement.
5. The provisions of paragraphs 1, 2, 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 to the extent that it is inconsistent therewith is void.

## **Article 76**

### **Arbitration agreement in non-liner transportation**

1. Nothing in this Convention affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Convention or the provisions of this Convention apply by reason of:
  - (a) The application of Article 7; or
  - (b) The parties' voluntary incorporation of this Convention in a contract of carriage that would not otherwise be subject to this Convention.
2. Notwithstanding paragraph 1 of this Article, an arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of Article 7 is subject to this chapter unless such a transport document or electronic transport record:
  - (a) Identifies the parties to and the date of the charter party or other contract excluded from the application of this Convention by reason of the application of Article 6; and
  - (b) Incorporates by specific reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

## **Article 77**

### **Agreement to arbitrate after a dispute has arisen**

Notwithstanding the provisions of this chapter and chapter 14, after a dispute has arisen the parties to the dispute may agree to resolve it by arbitration in any place.

## **Article 78**

### **Application of chapter 15**

The provisions of this chapter shall bind only Contracting States that declare in accordance with Article 91 that they will be bound by them.

## CHAPTER 16 VALIDITY OF CONTRACTUAL TERMS

### Article 79

#### General provisions

1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:
  - (a) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention;
  - (b) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention; or
  - (c) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in Article 18.
2. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:
  - (a) Directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or documentary shipper; or
  - (b) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach of any of its obligations under this Convention.

### Article 80

#### Special rules for volume contracts

1. Notwithstanding Article 79, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Convention.
2. A derogation pursuant to paragraph 1 of this Article is binding only when:
  - (a) The volume contract contains a prominent statement that it derogates from this Convention;
  - (b) The volume contract is:
    - (i) Individually negotiated; or
    - (ii) Prominently specifies the sections of the volume contract containing the derogations;
  - (c) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Convention without any derogation under this Article; and
  - (d) The derogation is neither:
    - (i) Incorporated by reference from another document; nor

- (ii) Included in a contract of adhesion that is not subject to negotiation.
- 3. A carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of this Article, but a volume contract may incorporate such documents by reference as terms of the contract.
- 4. Paragraph 1 of this Article does not apply to rights and obligations provided in Articles 14, subparagraphs (a) and (b), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in Article 61.
- 5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 2 of this Article, apply between the carrier and any person other than the shipper provided that:
  - (a) Such person received information that prominently states that the volume contract derogates from this Convention and gave its express consent to be bound by such derogations; and
  - (b) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record.
- 6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

## **Article 81**

### **Special rules for live animals and certain other goods**

Notwithstanding Article 79 and without prejudice to Article 80, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

- (a) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in Article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or
- (b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

## **CHAPTER 17 MATTERS NOT GOVERNED BY THIS CONVENTION**

### **Article 82**

#### **International conventions governing the carriage of goods by other modes of transport**

Nothing in this Convention affects the application of any of the following international conventions in force at the time this Convention enters into force, including any future amendment to such conventions, that regulate the liability of the carrier for loss of or damage to the goods:

- (a) Any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;
- (b) Any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;
- (c) Any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail; or
- (d) Any convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.

### **Article 83**

#### **Global limitation of liability**

Nothing in this Convention affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.

### **Article 84**

#### **General average**

Nothing in this Convention affects the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average.

### **Article 85**

#### **Passengers and luggage**

This Convention does not apply to a contract of carriage for passengers and their luggage.

### **Article 86**

#### **Damage caused by nuclear incident**

No liability arises under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

- (a) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocols of 16 November 1982 and 12 February 2004, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or
- (b) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

**Chapter 18: Final Clauses (Articles 87–96) not included.**

## Notes

# Notes



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# Package and Weight Limitation

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# Package and Weight Limitation

Whilst every care has been taken in the preparation of the table below it is intended as guidance only and should not be used as a substitute for legal advice.

Jurisdiction	Cargo Convention	Package Limitation	Notes
<b>Argentina</b>	Hague Rules (Law 15.787) or Navigation Act (see Notes)	Hague: £100 gold value per package or unit. Otherwise: generally, 400 gold pesos per package or unit.	Hague Rules apply where b/l issued in a signatory country; in all other cases, the Hague Rules with most of the Visby Protocol apply (Navigation Act).
<b>Brazil</b>	Domestic Law		In all circumstances local advice required.
<b>Canada</b>	Hague-Visby Rules (Marine Liability Act 2001)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	
<b>Chile</b>	Hamburg Rules (Code of Commerce)	835 SDR per package or 2.5 SDR per kg whichever is the higher (for delay: 2.5 × freight).	
<b>China</b>	Hague-Visby/Hamburg Rules (PRC Maritime Code 1992)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	
<b>Cyprus</b>	Hague Rules (Carriage of Goods by Sea Law, CAP 263)	£100 value per package or unit.	
<b>Egypt</b>	Hamburg Rules	835 units of account per package or 2.5 units of account per kg of gross weight whichever is the higher (for delay: 2.5 × freight).	

Jurisdiction	Cargo Convention	Package Limitation	Notes
<b>France</b>	Hague-Visby Rules (French Commercial Code)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	
<b>Germany</b>	Hague and Hague-Visby Rules (German Commercial Code)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	Ratified the Hague Rules and incorporated Hague-Visby Rules into German Commercial Code. Limitation may be calculated by reference to packages only in certain circumstances.
<b>Greece</b>	Hague-Visby Rules (Greek Code of Private Maritime Law)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	
<b>Hong Kong</b>	Hague-Visby Rules (Carriage of Goods by Sea Ordinance 1994)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	
<b>India</b>	Indian Carriage of Goods by Sea Act 1925 (as amended in 1993)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	Indian COGSA 1925 mirrors Hague Rules. Amendments in 1993 incorporate Hague-Visby package limitation.
<b>Japan</b>	Hague-Visby Rules (Japanese International Carriage of Goods by Sea Act 1992)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	
<b>Korea</b>	Korean Commercial Code (KCC)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	Not a contracting state to the Hague-Visby Rules but adopted most of the Hague-Visby Rules in the KCC.
<b>Norway</b>	Hague-Visby Rules (Norwegian Maritime Code)	667 SDR per package or 2 SDR per kg whichever is the higher.	Hamburg Rules for Scandinavian shipments.

Jurisdiction	Cargo Convention	Package Limitation	Notes
<b>Pakistan</b>	Hague Rules (The Carriage of Goods by Sea Act, 1925 (Pakistan) ACT No. XXVI of 1925)	£100 gold value per package or unit.	
<b>Singapore</b>	Hague-Visby Rules (Carriage of Goods by Sea Act, Cap. 33, Rev. Ed. 1998)	S\$1,563.65 per package or S\$4.69 per kg whichever is the higher.	
<b>Spain</b>	Hague-Visby Rules (Carriage of Goods by Sea Act 1949)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	
<b>Thailand</b>	Carriage of Goods by Sea Act 1991	THB10,000 per unit of carriage or THB30 per kg of goods whichever is the higher.	Not a signatory to the Hague, Hague-Visby, or Hamburg Rules. Mainly influenced by Hamburg Rules.
<b>United Kingdom</b>	Hague-Visby Rules (Carriage of Goods by Sea Act 1971)	666.67 SDR per package or 2 SDR per kg whichever is the higher.	
<b>USA</b>	US Carriage of Goods by Sea Act	US \$500 per package or (if not shipped in packages) per customary freight unit.	US CoGSA substantially follows the Hague Rules. The meaning of customary freight unit is not clear, but how freight is stated to be calculated on the b/l may be a significant factor (eg "per unit", or "per mt").

## Notes

