

Bill of Lading · Terms and Conditions

Version 04/26 · www.gsmsa.es/bill-of-lading-terms

1. Applicability

This Bill of Lading constitutes a contract between the Carrier and the Merchant. The Merchant is jointly and severally liable for all obligations and liabilities hereunder, including payment of Freight without deduction or set-off. The Merchant warrants authority to agree to these terms.

2. Definitions

“**Bill of Lading**” Transport document issued by the Carrier.

“**Carrier**” means the party named on page 2 of this Bill of Lading.

“**Combined Transport**” Applies when Place of Receipt and/or Place of Delivery is designated herein.

“**Freight**” All charges, costs and expenses payable to the Carrier including storage, per diem and demurrage.

“**Goods**” All cargo carried hereunder including packing and Merchant-owned containers.

“**Hague Rules**” Brussels Convention 1924.

“**Hague-Visby Rules (HVR)**” Hague Rules as amended by the 1968 and 1979 SDR Protocols; not contractually applied unless compulsorily applicable by governing law.

“**Inland Transport**” Non-sea legs in Combined Transport.

“**Merchant**” Booking Party, Shipper, Receiver, Consignor, Consignee, holder of this B/L and owner of Goods.

“**Port-to-Port Carriage**” Between Port of Loading and Port of Discharge.

“**Subcontractor**” Owners, charterers and operators of Vessel(s), slot charter partners, vessel sharing contractors, stevedores, port operators, terminals, road/rail operators, security services, warehousemen and all sub-contractors, servants and agents, regardless of direct privity.

“**Vessel**” Named vessel or any substituted vessel, feeder, lighter or watercraft.

3. Carrier's Tariff

The Carrier's applicable Tariff in effect on the date of shipment is incorporated herein. Copies are available on request. In case of inconsistency, this Bill of Lading prevails.

4. Time Bar

The Carrier's liability is extinguished unless legal action is commenced within twelve (12) months after delivery or the date delivery should have occurred.

5. Subcontracting

- The Carrier may subcontract the whole or any part of the carriage on any terms.
- No claims shall be made against any servant, agent or subcontractor of the Carrier, including stevedores, port operators, terminals, security services and warehousemen. If made, the Merchant shall indemnify the Carrier. All such persons are entitled to all defences, limitations and immunities herein. The Carrier acts as agent and trustee for each such person, who may enforce these terms as if party hereto.
- The protections in 5.2 extend to all parties using space or slots on the Vessel.
- No claims against the Carrier beyond these terms; any such claims shall be indemnified by the Merchant.

6. Methods and Routes of Transportation

- The Carrier reserves the right, at any time and without prior notice to the Merchant, to:
 - Utilize any means of transport or storage.
 - Transfer the Goods between conveyances, including transshipment or carriage on a vessel other than the one named on the front of this Bill of Lading, or by any other means of transport, even if such transshipment or forwarding was not originally contemplated or provided for.
 - Load and unload the Goods at any place or port (regardless of whether such port is named on the front of this Bill of Lading as the Port of Loading or Port of Discharge), and store the Goods at any such port or place, including, but not limited to, the use of off-dock storage at any port.
 - Comply with any orders or recommendations issued by any government or authority, or any person or body purporting to act as or on behalf of such government or authority, or having the right to issue orders or directions under the terms of insurance for any conveyance used by the Carrier.
- The liberties granted in Clause 6 (1) may be exercised by the Carrier for any purpose whatsoever, whether or not related to the carriage of the Goods. Any action or inaction taken in accordance with Clause 6(1), or any resulting delay, shall be considered within the scope of the contractual carriage and shall not constitute a deviation.

7. Optional Stowage / Matters Affecting Performance

Goods may be stowed in containers or tank containers and carried on or under deck without notice. The Carrier will use reasonable efforts to complete transport. If performance is affected by any hindrance, risk, delay, difficulty, or disadvantage of any kind, and if, by virtue of Clause 7, the Carrier is not obligated to complete performance, the Carrier (regardless of whether transport has commenced) may choose terminate and place Goods at Merchant's disposal or continue carriage. If the Merchant fails to take delivery within 30 days of the Carrier's request, the Carrier may deem the Goods abandoned and sell or dispose of them by public auction, private sale or such other reasonable method, and where required by applicable law, by judicial authorisation or notarial process. Full Freight is due in any event.

8. Paramount Clause

These conditions are subject to mandatory provisions of applicable international conventions or national law. For sea and inland waterway carriage, the HVR apply as compulsorily mandated.

9. Delay and Consequential Damages

The Carrier does not guarantee delivery by any specific date. Advertised schedules are estimates only. The Carrier is not liable for consequential damages or delays. If held liable for delay, liability is limited to 2.5 times the freight payable, not exceeding total freight paid.

10. Carrier's Liability

- Sea Leg. Responsibility begins on loading and ends on discharge. Liability is governed by HVR Articles 1-9, subject to applicable law, not exceeding the limits incorporated into these terms. If responsibility is extended by law, the Carrier retains all HVR rights and defences throughout.
- Combined Transport. The Carrier undertakes to perform or procure carriage from Place of Receipt to Place of Delivery.

Liability for the inland leg shall be construed in accordance with the applicable international convention, or, absent such law, the subcontractor's contract terms. Where the stage is unknown, liability shall be treated as sea transport.

11. Limitation of Liability

- Compensation shall be determined by reference to the value of the Goods at the place and time of delivery to the Merchant, or when delivery should have occurred. For the purpose of assessing the Carrier's liability for loss or damage, the sound value of the Goods shall be deemed to be the invoice value plus any freight and insurance paid.
- Liability limited to the higher of 666.67 SDR per package/unit or 2 SDR/kg gross weight. Where both carton count and pallet/skid count appear on the face hereof, the pallet or skid constitutes the Package for limitation purposes; this does not reduce the applicable SDR per-package limit.
- Statutory protections and limitation rights are preserved.
- These limits apply to all claims in contract or tort including against subcontractors; aggregate liability shall not exceed these limits.

12. Notice of Loss or Damage / Time Bar

Written notice must be given at handover for apparent damage. For non-apparent damage, notice must be given within three (3) consecutive days of delivery. The Carrier is discharged of all liability unless suit is brought within one year of delivery or the date delivery should have occurred.

13. Defences and Limits

All defences and limitations apply to claims in contract or tort. Limitation does not apply to wilful misconduct or reckless conduct by the Carrier. No claim shall be made against servants, agents or other persons used by the Carrier.

14. Sea Waybills

If a Sea Waybill is issued, the Shipper indemnifies the Carrier against all claims arising from its use, including wrongful delivery claims and refusal by the consignee to pay charges.

15. Carrier's Responsibility / Unidentifiable Goods

This Bill of Lading is prima facie evidence of receipt of Goods as described. Proof to the contrary is inadmissible once transferred in good faith. Where Goods of like character cannot be individually identified after loss or damage, any loss or damage shall be allocated among Merchants in proportion to the quantity of Goods shipped by each.

16. Merchant's Responsibility

- The Merchant guarantees to the Carrier the accuracy of the Goods' description, marks, number, quantity, and weight provided by them at the time the Goods were taken in charge by the Carrier. The Merchant shall defend, indemnify, and hold the Carrier harmless against all loss, damage, and expenses arising from any inaccuracies or inadequacies in these particulars. The Carrier's right to this indemnity does not limit their responsibility and liability under this Bill of Lading to any person other than the Merchant. The Merchant remains liable even if the Bill of Lading is transferred.
- The Merchant also warrants that the Goods and/or Merchant-packed Containers are lawful, contain no contraband, drugs, other illegal substances, or stowaways, and that any hazardous or potentially dangerous characteristics of the Goods have been fully disclosed. The Merchant further warrants that the Goods will not cause loss, damage, or expense to the Carrier, other cargo, Containers, the Vessel, or any person during carriage.
- If any particulars from a letter of credit, import license, sales contract, invoice, order number, or details of any contract to which the Carrier is not a party are shown on the front of this Bill of Lading, these particulars are shown at the Merchant's sole risk and for their convenience. The Merchant agrees that these particulars do not constitute a declaration of value and shall not increase the Carrier's liability under this Bill of Lading. The Merchant indemnifies the Carrier for any increased liability caused, including reasonable legal expenses and costs.
- The Merchant shall comply with all regulations or requirements of customs, port, and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses, or losses (including, without limitation, Freight for any additional carriage undertaken) incurred due to these regulations or requirements, or any illegal, incorrect, or insufficient declaration, marking, numbering, or addressing of the Goods. The Merchant shall indemnify the Carrier for these items, including reasonable legal expenses and costs.
- If Goods are detained and/or seized, or a Container must be opened for inspection (for any reason, including, but not limited to, a breach or infringement of a trademark, patent, or other intellectual property right) by order of authorities at any place, the Carrier is not liable for any resulting loss or damage. The Carrier may recover from the Merchant all charges, fines, costs, losses, and expenses (including reasonable legal expenses and costs) resulting from such action, including, but not limited to, detention, demurrage, and storage charges for the Goods and/or the Container.

17. Shipper-Packed Containers

Carrier not liable for loss/damage to contents of containers packed by the Merchant. Merchant bears loss caused by negligent packing, unsuitable contents or defective container supplied by Merchant. These provisions apply equally to tanks, trailers, flats and pallets not packed by Carrier.

18. Perishable Goods / Reefer Containers

The Merchant must give written temperature and setting requirements before tender. Carrier will exercise due diligence to maintain specified temperature within +/- 2 degrees Celsius. The Carrier's responsibility shall be limited to connecting, operating, and monitoring the equipment during carriage. The Carrier shall not be liable for loss or damage arising from latent defects, inherent vice or nature of the Goods (including decay, deterioration, or wastage), insufficiency or unsuitability of packing, or inadequate instructions, provided that due diligence has been exercised.

19. Dangerous Goods

The Merchant shall comply with all applicable DG regulations and give prior written notice to the Carrier. Undeclared dangerous goods may be destroyed or rendered harmless without compensation; the Merchant bears all resulting costs. Goods declared as dangerous but becoming a danger may be similarly disposed of without Carrier liability (save General Average).

20. Use of Containers

Containers must be returned in the same condition, normal wear and tear excepted, within the Tariff free time. The Merchant is liable for all loss,

damage and demurrage. Demurrage accrues after expiry of free time per the Tariff.

21. Freight

Freight is earned on receipt of Goods and is non-returnable in any event. Currency devaluation results in automatic proportional increase in Freight. The Carrier may inspect and re-weigh Goods to verify freight.

22. Lien

The Carrier has a general lien on Goods and documents for all Freight, charges and expenses under this or any other contract with the Merchant, including enforcement costs. The lien survives delivery. The Carrier may sell Goods by public auction or private sale to satisfy the lien; surplus proceeds are remitted to the Merchant.

23. Governing Law and Jurisdiction

This Bill of Lading is governed exclusively by Spanish law. All disputes shall be submitted to the exclusive jurisdiction of the Spanish courts at the Carrier's principal place of business. The Carrier reserves the right to bring proceedings for Freight recovery before any competent court. If any provision hereof is held invalid, the remaining provisions shall remain in full force and effect.

24. General Average

General Average shall be adjusted at any place selected by the Carrier and settled according to the York-Antwerp Rules 1994. The New Jason Clause (BIMCO) and Both-to-Blame Collision Clause (BIMCO) are incorporated herein. Security, including cash deposit, may be required before delivery.

25. U.S. Trade

Where U.S. COGSA 1936 applies, its provisions govern throughout the Carrier's custody. The Carrier's liability shall not exceed USD 500 per package or customary freight unit unless a higher value is declared on the face hereof.

26. Insurance

The Merchant shall maintain adequate cargo insurance. If any provision hereof is held invalid, the remaining provisions shall remain in full force and effect.

27. Identity of Carrier

- The Carrier is Gestión de Servicios Marítimos Aéreos y Terrestres S.A, its authorized affiliated companies and/or subsidiaries (collectively “GSM”), acting as NVOCC and contracting carrier.
- Third Party Agents signing on behalf of GSM incur no personal liability; all B/L protections extend to them.
- The sea leg is performed by an ocean carrier (Performing Carrier) as Subcontractor. GSM's liability on the sea leg does not exceed the amount recoverable from the Performing Carrier.

28. ISO Tank Containers

- This clause shall apply to all shipments carried in ISO tanks owned, leased, or operated by GSM and shall prevail in the event of any conflict with other terms.
- Prior to acceptance, the Merchant shall provide full and accurate particulars of the cargo, including the complete chemical name, CAS number, IMDG classification, and any applicable temperature, pressure, handling, or other requirements as may be requested by GSM from time to time.
- GSM shall be entitled, at its sole discretion, to refuse any cargo deemed incompatible or insufficiently declared, without liability. All costs and consequences arising therefrom shall be for the Merchant's account.
- The Merchant warrants that the Goods are compatible with the tank lining, valves, and fittings; comply with all applicable laws and regulations; are free from undisclosed contaminants; and that all declarations are complete and accurate. The Merchant shall indemnify GSM against all losses, costs, and liabilities arising from any breach, including (without limitation) cleaning, decontamination, loss of use, and third-party claims.
- GSM may inspect the tank and/or Goods at any time. Where non-compliance is identified, all inspection and related costs shall be borne by the Merchant.
- The Merchant shall notify all heating, insulation, and temperature requirements in writing prior to shipment. GSM shall use reasonable endeavours to maintain the specified range but shall not be liable for any deviation resulting from equipment failure despite due diligence, events beyond its control, or the Merchant's failure to provide adequate instructions.
- The tank shall be returned within the applicable tariff free time, clean, empty, and free of residue, to potable water standard unless a higher standard has been notified. All cleaning and repair costs shall be for the Merchant's account and shall be deemed Freight for the purposes of Clause 21, including lien rights.
- The Merchant shall be liable for all contamination-related losses, costs, and liabilities, including cleaning, disposal, third-party claims, and loss of use, except where such contamination is caused solely by GSMSA's negligence or wilful misconduct.

29. Sanctions

- Sanctions means restrictions imposed by the EU, Spain, the UN Security Council, the USA (OFAC/BIS) or any other authority whose measures GSM is required to comply with. Sanctioned Party means any person, entity, vessel or country subject to Sanctions.
- The Merchant warrants that no party within the Merchant definition is a Sanctioned Party; the Goods and their carriage do not violate Sanctions; no port of call is subject to comprehensive Sanctions; and proceeds are not used to finance prohibited activities.
- GSM may refuse, suspend or terminate this B/L without liability where performance would or might expose GSM or any Subcontractor to Sanctions risk. All Freight earned to the date of suspension or termination is retained.
- On suspension or termination, GSM may discharge, store or return the Goods at Merchant's risk and expense; such action constitutes due performance.
- Full indemnity from Merchant for all losses, fines and costs arising from breach of warranties or Sanctions-related enforcement action.
- GSM is not obliged to disclose the reason for refusal, suspension or termination where disclosure would itself violate applicable law or Sanctions.