

## Terms and Conditions of Carriage.

### 1. Definitions

Wherever (the term "Merchant" is used in this Contract of Ocean Carriage (hereinafter referred to as "Contract") it shall include the shipper, receiver, consignee, owner of the Yacht to be carried and the party concluding this Contract with the Ocean Carrier guarantees to be empowered to represent all those parties. The Ocean Carrier under this Contract are the Owners of the Vessel, as referred to in the Contract ("Vessel's name"), unless otherwise expressly stated. Wherever the term "Vessel" is used it is the vessel as referred to in this Contract ("Vessel's name") which the Ocean Carrier may, but is not obliged, to substitute. Wherever the term "Yacht" is used it is the boat or boats, including separate parts, modules, contents and appurtenances (to be) carried as referred to in this Contract ("Description of the Yacht").

### 2. Scope of Contract

The parties to this agreement recognize that the carriage of the Yacht is not an ordinary commercial shipment made in the ordinary course of trade. The circumstances, terms and conditions under which the carriage of the Yacht is to be performed justify reasonably this special Agreement and the parties agree that no bill of lading shall be issued for this carriage. It is agreed between the Ocean Carrier and the Merchant that the Merchant hereby charters space on deck of the Vessel, unless otherwise expressly agreed in writing, from the Ocean Carrier for carriage of the Yacht from the loading port to the discharging port. The Vessel shall proceed, upon completion of her prior commitments, to the loading port, or so near thereto as she may safely get and lie, swell free, always afloat. The Ocean Carrier shall notify the Merchant before arriving at the loading port, indicating the time and place where the Yacht will be loaded and the Merchant shall bring the Yacht in time to the place indicated for loading the Yacht, all in accordance with the provisions of this Contract. The Vessel shall sail to the discharging port, or so near thereto as she may safely get and lie, swell free, always afloat. The Ocean Carrier shall notify the Merchant before or upon arrival, indicating the place where the Yacht shall be discharged.

### 3. Cargo description

The Merchant warrants that the Yacht is fit for Lifting with slings and that the Yacht's lashing points (including but not limited to bits) are of sufficient strength/stiffness for use during the anticipated voyage. The Merchant shall provide the Ocean Carrier immediately upon signing of this Contract with all information needed for carriage of the Yacht, including but not limited to an up-to-date general arrangement plan of the Yacht, an accurate docking plan of the Yacht specifying any protrusions under the keel line and indicating precisely the location where under the Yacht's hull the supports/cribbings/cradles are to be placed, the precise weight of the Yacht (including stores, water and fuel but note that only minimal fuel and no water/bilge should be onboard) when tendered for loading, the Yacht's center of gravity indicating the positions for placing the slings in order to lift the Yacht in a level position as well as the positions suitable for placing lashings. The Merchant shall also disclose all other information (including but not limited to information concerning supports /cribbing/cradles supplied by the Merchant) which might in any way affect the loading and docking arrangement on board the vessel. Failure to provide all information needed for the carriage entitles the Ocean Carrier at all times to make additional arrangements for the account of the Merchant, and/or to suspend its obligations to carry the Yacht without releasing the Merchant from its obligations under this Contract.

### 4. Loading and discharging

1. The Ocean Carrier shall in no case be responsible for any loss or damage to the Yacht howsoever arising before or during loading onto and during or after discharge from the Vessel.
2. Unless otherwise expressly stated, the Ocean Carrier shall load and discharge the Yacht as far as reasonably possible and permitted with its own gear or tackle free of charge to the Merchant, but at the Merchant's sole risk. If loading and/or discharging shall not be reasonably possible or permitted with the Vessel's own gear or tackle the Ocean Carrier shall arrange for a shore crane free of charge to the Merchant, but at the Merchant's sole risk. The Merchant shall bring the Yacht alongside the Vessel, as and when required by the Ocean Carrier and within reach of such loading equipment. The Ocean Carrier and Vessel shall be allowed to sail without the Yacht and without cost or penalty if the Yacht will not be brought alongside as required and in time for loading, in which case, Merchant shall remain liable for Freight.
3. The Ocean Carrier shall provide the Merchant with stickers which the Merchant shall place on the Yacht's side in a visible way indicating the Yacht's center of gravity and the positions for placing the slings to lift the Yacht. In case the Merchant has failed to provide all information described in Clause 3 or to place the stickers, the Ocean Carrier shall be entitled to hire a diver at Merchant's expense to locate the exact positions for placing the slings to lift the Yacht.
4. The Merchant shall take delivery of the Yacht upon discharge as required by the Ocean Carrier and within reach of said gear or tackle, failing which the Ocean Carrier shall be entitled to leave the Yacht at the place of discharge.
5. The Master shall be entitled, without any obligation, to give instructions regarding loading, lashing, securing and discharging, which instructions shall be followed by the Merchant at the Merchant's own risk and expense. The Master has the right to appoint a superintendent at Ocean Carrier's expense, which superintendent shall be entitled to supervise loading, lashing and discharging operations, but at Merchant's risk.
6. The Yacht is to be lashed/unlashed and secured/unsecured as per Master's requirements but always free of any risk, liability and expense whatsoever to the Ocean Carrier or Master. Any time lost by the vessel waiting for loading/ discharging, lashing/ unlashing or securing and/or unsecuring to be paid for by the Merchant at the demurrage rate as stated in Box 11.

### 5. Supports/cribbings/cradles

Unless otherwise expressly stated, the Merchant shall at its risk and expense supply suitable/fitting and seaworthy supports /cribbings/cradles as needed for loading, lashing and securing the Yacht. The Merchant shall ensure that the Yacht will be properly trimmed in accordance with the Ocean Carrier's instructions, and that the Yacht will be as light as possible, unless the Ocean Carrier agrees otherwise in writing. The Merchant warrants that all lashing/mooring points on the Yacht are suitable for seaworthy lashing and securing. Any loose parts on board the Yacht shall be secured for ocean carriage by the Merchant. All supports/cribbings/cradles, lashing material etc. shall be discharged from the Vessel and disposed of/removed by the Merchant at his cost and expense.

### 6. Deckcargo

The Merchant consents to the carriage of the Yacht on deck, at the Merchant's sole risk. Neither the Vessel or the Ocean Carrier shall be liable for any loss and/or damage and/or liability of whatsoever nature howsoever arising and by whomsoever caused to the Yacht. The Merchant shall indemnify the Vessel, the Ocean Carrier, the Agent and all of their respective agents, sub-agents, servants, employees, contractors and sub-contractors, for any and all claims, costs and attorneys' fees with respect to damage or loss to the Yacht. The Merchant shall fully insure the Yacht as provided in Clause 7 for the benefit of the Vessel, the Ocean Carrier, the Agent and all of their respective agents, sub-agents, servants, employees, contractors and sub-contractors.

### 7. Insurance & Liability

1. Throughout the duration of this Contract (and the period of any pre-carriage and/or on-carriage, if applicable) the Merchant shall procure and maintain adequate insurance of the Yacht, for its own benefit and for the benefit of and without recourse against the Vessel, the Ocean Carrier and any and all of their respective agents, sub-agents, servants, employees, contractors or sub-contractors, covering all risks, including but not limited to contributions in General Average.
2. If the Yacht is carried under deck to or from the United States, and to or from Canada, this Contract shall be deemed to incorporate and shall have effect subject to the provisions of the United States Carriage of Goods by Sea Act, (COGSA) approved April 16, 1936, or the Water Carriage of Goods Act, (WCOGA) 1936, as amended, of Canada is applicable, and nothing therein contained shall be deemed a surrender by the Ocean Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities thereunder, nor shall Ocean Carrier be deemed to have warranted the seaworthiness of the vessel. The provisions stated in said Acts shall (except as may be otherwise provided herein) govern before the Yacht is loaded on and after it is discharged from the Vessel and throughout the entire time that it is in the custody of the Ocean Carrier at a United States or Canadian port. For purposes of COGSA, the Merchant and Ocean Carrier agree that the Yacht shall be deemed a single package as well as the customary freight unit regardless of whatever method has been used in calculating freight.
3. If the Yacht is carried under deck between ports outside the United States and Canada, this Contract shall be deemed to incorporate and shall have effect subject to any national law making the provisions of the International Convention for the Unification of Certain Rules Relating to Bills of Lading dated 25 August 1924 (The Hague Rules, or HAGR) or if applicable, as amended by the Protocol signed on 23 February 1968 (The Hague-Visby Rules, or HAGVR), compulsorily applicable to this Contract.
4. Neither the Ocean Carrier nor the Vessel, the Master, the agent, managing agents, servants or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of the Vessel nor shall the Ocean Carrier, the Vessel, the Master, the agent, the managing agents, servants or charterers be held liable for damage or losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, inherent defect, quality or vice of the Yacht, or from insufficiency of packaging, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the Yacht, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.
5. In case of any liability of the Ocean Carrier, the Ocean Carrier's total liability shall be limited to GBP 100 per package (Yacht) but in no circumstances whatsoever and howsoever arising shall it exceed 666.67 SDR per package (Yacht) or 2 SDR per kilo of the gross weight of the Yacht lost or damaged, whichever is the higher. SDR means Special Drawing Rights as defined by the International Monetary Fund.
6. In case of carriage to or from the United States of America and only insofar as COGSA applies, neither the Ocean Carrier, the Vessel nor any of their respective agents, sub-agents, servants, employees, contractors or sub-contractors shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods (Yacht) in an amount exceeding USD 500 per package (Yacht) lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit (Yacht), or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper (Merchant) before shipment and inserted in the shipping documents and the additional freight thereon has been paid by Merchant. This declaration, if embodied in the shipping documents, shall be prima facie evidence, but shall not be conclusive on the Ocean Carrier.
7. In case the value of the Yacht has been declared, the Freight shall be increased by 10 per cent of the declared value.

**8. Duties, taxes and additional charges levied**

The Merchant shall pay any and all duties, taxes, fines, expenses, costs and/or charges of whatsoever nature levied on the Yacht, the Ocean Carrier, the Vessel and/or the Freight arising from the performance of this Contract and voyage irrespective of how the amount hereof may be assessed. Any time lost by the Vessel due non-fulfillment of formalities and/or payment of duties etc. to be paid by Merchant at the demurrage rate.

**9. Liberties Clause**

The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist vessels in all situations, and also to deviate for the purpose of saving life and/or property. The intended voyage shall not be limited to the direct or quickest route, but shall be deemed to include any proceeding to, returning to, stopping or slowing down at, or off any ports or places for any reasonable purpose connected with the service including maintenance of Vessel and crew. Whether expressly arranged beforehand or otherwise, the Ocean Carrier shall at any time be at liberty to carry and/or to tranship the Yacht to its port or place of destination by the said or other vessels or vessels either belonging to the Ocean Carrier or others without any obligation to effect such carriage or transhipment and the Ocean Carrier shall be at liberty to unload, store and reload the Yacht at any port for the purpose of such transhipment or otherwise. The Ocean Carrier shall have the liberty of re-stowing the Yacht and of loading and of discharging other cargo(es) for the account of others than the Merchant from places en route or not en route to places en route or not en route. The rotation of loading and discharging places shall be at the Ocean Carrier's option. The Ocean Carrier shall not be responsible for any loss, damage or delay of whatsoever nature, howsoever caused, sustained by the Merchant by reason of the Ocean Carrier exercising any of the liberties of this clause 9 which shall in no way whatsoever constitute a deviation. In the event the Ocean Carrier will nevertheless be held liable for delay his liability shall be limited to a maximum of five percent of the Freight paid or payable under this Contract.

**10. Freight, charges and fines**

The Freight, whether actually paid or to be paid, shall be considered as fully earned upon signing of this Contract and non-returnable in any event Vessel lost or not lost. The Ocean Carrier's claim for any duties, taxes, fines, expenses, costs and/or charges under this Contract shall be considered definitely payable in like manner as soon as the charges have been incurred. Dutch legal interest shall be payable from the date when Freight and charges are due. The Merchant shall further be liable for any and all charges, expenses or fines which are incurred by the nature of the Yacht or any of its contents or appurtenances, leakages or spills therefrom (including without limitation oil or hazardous materials) or consequences therefrom as well as for any and all fines and/or costs which the Ocean Carrier, Vessel, agents or Yacht may incur through those events or non-observance of Custom House and/or import or export regulations. The Merchant shall before loading pay the Freight. All parties falling within the definition of the term "Merchant" shall be jointly and severally liable for payment of Freight, charges, fines, general average contributions, indemnities, compensations, indemnifications or damages under this Contract.

**11. Lien**

The Ocean Carrier shall have a lien on the Yacht for any and all Freight, deadweight, demurrage, claims for damages, general average contributions, salvage, costs, fines, expenses, duties and for any and all other amounts due under this Contract including costs of recovering same.

**12. Both-to-Blame Collision Clause**

If the Vessel comes into collision with another vessel as a result of the negligence and/or fault of both vessels, the Merchant will indemnify the Ocean Carrier against all loss or liability the Ocean Carrier owes the other vessel, not carrying the Yacht, or the other vessel's owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the Merchant paid or payable by the other, non-carrying vessel, or her owners and set-off, recouped, or recovered by the non-carrying vessel or her owner as part of their claim against the carrying Vessel or the Ocean Carrier. The foregoing provisions shall also apply where the Ocean Carrier, carriers or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault respect of a collision or contact.

**13. General Average and New Jason Clause**

General Average shall be stated and adjusted in Amsterdam, The Netherlands, according to York-Antwerp Rules 1994 and any subsequent modification thereof. The Merchant's contribution to General Average shall be payable even when such average is the result of a fault, neglect or error of the Vessel's Master, crew or pilot. In the event of accident, danger, damage, or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Ocean Carrier is not responsible by statute, contract or otherwise, the Merchant, the cargo, shippers, consignees, or owners of the cargo shall contribute with the Ocean Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Ocean Carrier or the Ocean Carrier's managers, salvage shall be paid for as fully as if the salving ship or ships belonged to strangers. Such deposit as the Ocean Carrier or their agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the Merchant, the cargo, shippers, consignees, or owners of the cargo to the Ocean Carrier before delivery.

**14. Unanticipated circumstances**

If there arises, in the opinion of the Ocean Carrier, any unanticipated circumstances, such as a change in regulations, shipping schedules, orders or directions by underwriters or authorities, strikes, war, warlike operations, terrorist acts or threats thereof, blockades, lockouts, difficulties to enter any port due to whatever reason, such as swell, strike, lockout, congestion etc., or other difficulties or any other event that may influence the voyage before loading of the Yacht, the Ocean Carrier shall have the option of cancelling this Contract whereupon any prepaid Freight shall be repaid to the Merchant less any costs incurred by Agent, Ocean Carrier or others and each party shall be released from any and all obligations under this Contract. If any unanticipated circumstance as referred to herein will arise after loading of the Yacht, the Ocean Carrier shall have liberty to discharge the Yacht at the port of loading or any other convenient port. The Merchant shall be informed if possible and after discharge all parties shall be released from all obligations under this Contract except Merchant shall not be released from its obligation to pay for any non-paid Freight, charges or expenses to the Ocean Carrier.

**15. Exemptions and Immunities of all servants and agents of the Carrier**

Where any action related to this Contract or the carriage of the Yacht is instituted against the Agent or any servant, agent, sub-agent, managing agent, booking agent, employee, contractor or sub-contractor of the Ocean Carrier or any other party, such Agent, servant, agent, sub-agent, managing agent, booking agent, employee, contractor or sub-contractor or other party may invoke as a defense any exemption, limitation, condition and/or liberty contained in this Contract or to which the Ocean Carrier would otherwise be entitled and the Merchant shall reimburse such Agent, servant, agent, sub-agent, managing agent, booking agent, employee, contractor or sub-contractor or other party as referred to herein for any amount that will have to be paid related to this Contract or to the carriage of the Yacht and that would not have been for the account of the Ocean Carrier if such amount was claimed under this Contract from the Ocean Carrier.

**16. Warranty**

The Merchant warrants that at any and all times after the Yacht is presented to the not named but is To Be Nominated ("TBN"), then on notification of the name of the Vessel this Contract will only exist between the Merchant and the Owner of the named Vessel which is the Ocean Carrier to the exclusion of any other party or person, unless such other party is specifically identified as Ocean Carrier.

**17. Jurisdiction, Applicable Law and Time for Suit**

- 1. Any dispute arising from this Contract which cannot be settle amicably shall be decided according to the laws of Australia, except as provided elsewhere herein, and to the exclusive jurisdiction of which the Ocean Carrier and the Merchant submit themselves.
- 2. The Ocean Carrier shall in any event be discharged from all ability whatsoever in respect of the Yacht and this Contract, unless suit is brought within one year of its delivery or of the date when it should have been delivered.

**18. Ocean Carrier**

It is agreed that under all circumstances this Contract shall exist only between the Merchant and the Owner of the named Vessel which is the Ocean Carrier, to the exclusion of any other party or person, unless such other party is specifically identified as Ocean Carrier. If the Vessel at the time of signing this Contract is

**19. Validity**

If any term of this Contract is held to be null or void, the remainder of this Contract will remain in full force and effect.

Read and understood by Merchant, please sign here:

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Date and Place: .....

