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Standard Conditions governing the Consoltainer Line (CTL) Multimodal Transport Bill of Lading – Issued subject to ICC Uniform Rules

Definitions:

- "CTL" means the Multimodal Transport Operator who assumes liability for the performance of this multimodal transport contract as a carrier.
- "Merchant" means and includes the Shipper, the Consignor, the Consignee, the Holder of this Bill of Lading (if made out negotiable), the Receiver and the Owner of the Goods.
- "Consignor" means the person who concludes this multimodal transport contract with CTL.
- "Consignee" means the person entitled to receive the goods from CTL.
- "Taken in Charge" means that the goods have been handed over to and accepted for carriage by CTL at the place of receipt evidenced in this Bill of Lading.
- "Goods" means any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by CTL, irrespective of whether such property is to be or is carried on or under deck.

1. Applicability

Notwithstanding the heading "Consoltainer Line Multimodal Transport Bill of Lading" these conditions shall also apply if only one mode of transport is used.

2. Issuance of this Multimodal Transport Bill of Lading

2.1. By the issuance of this Bill of Lading CTL

- a) undertakes to perform and/or in his own name to procure the performance of the entire transport from the place at which the goods are taken in charge to the place designated for delivery in this Bill of Lading.
- b) assumes liability as set out in these conditions.

2.2. Subject to the conditions of this Bill of Lading CTL shall be responsible for the acts and omissions of his servants or agents acting within the scope of their employment, or any other person of whose services he makes use for the performance of the contract evidenced by this Bill of Lading, as if such acts and omissions were his own.

3. Negotiability and title to the goods

3.1. This Bill of Lading shall be non negotiable unless made out "to order" in which event it shall be negotiable and shall constitute title to the goods and the holder, by endorsement of this Bill of Lading, shall be entitled to receive or to transfer the goods herein mentioned.

3.2. This Bill of Lading shall be prima facie evidence of the taking in charge by CTL of the goods as herein described unless a contrary indication, such as "shipper's weight, load and count", "shipper packed container" or similar expressions, has been made in the printed text or superimposed on this Bill of Lading. However proof of the contrary shall not be admissible when the Bill of Lading has been transmitted to and acknowledged by the consignee who in good faith has relied and acted upon.

4. Dangerous goods and Indemnity

4.1. The merchant shall comply with rules which are mandatory according to the national law or by reason of International Convention, relating to the carriage of goods of a dangerous nature, and shall in any case inform CTL in writing of the exact nature of the danger, before goods of a dangerous nature are taken in charge by CTL.

4.2. If the merchant fails to provide such information and CTL is unaware of the dangerous nature of the goods and the necessary precautions to be taken and if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation. The Merchant shall indemnify CTL against all

loss, damage, liability, or expense arising out of their being taken in charge, or their carriage, or of any service incidental thereto.

- 4.3. If any goods shall become a danger to life or property, they may in like manner be unloaded or landed at any place or destroyed or rendered harmless. If such danger was not caused by the fault and neglect of CTL he shall have no liability and the Merchant shall indemnify CTL against all loss, damage, liability and expense arising therefrom.

5. Description of Goods and Merchant's Packing and Inspection

- 5.1. The Consignor shall be deemed to have guaranteed to CTL the accuracy, at the time the goods were taken in charge by CTL, of all particulars relating to the general nature of goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the goods, as furnished by him or on his behalf for insertion on the Bill of Lading.
- 5.2. CTL shall not be liable for any loss, damage or expense caused by defective or insufficient packing of goods or by inadequate loading or packing within containers or other transport units when such loading or packing has been performed by the Merchant or on his behalf by a person other than CTL, or by the defect or unsuitability of the containers or other transport units supplied by the Merchant, or if supplied by CTL if a defect or unsuitability of the container or other transport unit would have been apparent upon reasonable inspection by the Merchant. The Merchant shall indemnify CTL against all loss, damage, liability and expense so caused.

6. CTL's Liability

- 6.1. The responsibility of CTL for the goods under these conditions covers the period from the time CTL has taken the goods in his charge to the time of their delivery.
- 6.2. CTL shall be liable for loss of or damage to the goods as well as for delay in delivery if the occurrence which caused the loss or damage took place while the goods were in CTL's charge as defined in clause 2.1.a, unless CTL proves that no fault or neglect of his own, his servants or agents or any other person referred to in clause 2.2. has caused or contributed to such loss or damage.
- 6.3. Arrival times are not guaranteed by CTL.
- 6.4. Failure to effect delivery within 90 days after the expiry of a time limit expressly agreed upon in the Bill of lading or otherwise or, where no time limit is expressly agreed , failure to effect delivery within 90 days after the time it would be reasonable to allow for diligent completion of the multimodal transport operation shall, in the absence of evidence to the contrary, give to the party entitled to receive delivery, the right to treat the goods as lost.
- 6.5. When CTL establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more causes or events, specified in a-g of the present clause, it shall be presumed that it was so caused, always provided, however, that the claimant shall be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of such causes or events:
 - a) an act or omission of the Merchant or person other than CTL acting on behalf of the Merchant or from whom CTL took the goods in charge.
 - b) insufficiency or defective condition of the packing or marks and/or numbers.
 - c) handling, loading, stowage or unloading of the goods by the merchant or any person acting on behalf of the merchant.
 - d) inherent vice of the goods.
 - e) strike, lockout, stoppage or restraint of labour, the consequence of which CTL could not avoid by the exercise of reasonable diligence.

- f) any cause or event which CTL could not avoid and the consequence whereof he could not prevent by the exercise of reasonable diligence.
- g) a nuclear incident if the operator of a nuclear installation or a person acting for him is liable for this damage under an applicable international convention or national law governing liability in respect of nuclear energy.

6.6. Defences for carriage by sea or inland waterways

Notwithstanding Clauses 6.2., 6.3. and 6.4. CTL shall not be liable for loss, damage or delay in delivery with respect to goods carried by sea or inland waterways when such loss or damage during such carriage has been caused by act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, fire, unless caused by the actual fault or privity of the carrier, however, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, CTL can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage.

7. **Paramount clauses**

- 7.1 These conditions shall only take effect to the extent that they are not contrary to the mandatory provisions of international conventions or national law applicable to the contract evidenced by this Bill of Lading.
- 7.2 The Hague Rules contained in the International Convention for the unification of certain rules relating to Bills of Lading, dated Brussels 25 August 1924, or in those countries where there are already in force the Hague-Visby Rules contained in the Protocol of Brussels, dated 23 February 1968, as enacted in the country of shipment, shall apply to all carriage of goods by sea and also to the carriage of goods by inland waterways and such provisions shall apply to all goods whether carried on deck or under deck.
- 7.3 The Carriage of Goods by Sea Act of the United States of America (US COGSA) or the Carriage of Goods by Water Act 1936 of Canada if this Bill of Lading is subject to Canadian law shall apply to the carriage of goods by sea, whether on deck or under deck, if compulsorily applicable to this Bill of Lading or would be applicable but for the goods being carried on deck in accordance with a statement on this Bill of Lading.

8. **Limitation of Liability**

- 8.1 Assessment of compensation for loss of or damage to the goods shall be made by reference to the value of such goods at the place and the time they are delivered to the consignee or at the place and time when, in accordance with this Bill of Lading, they should have been so delivered.
- 8.2 The value of the goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price or, if there are no such prices, by reference to the normal value of goods of the same name and quality.
- 8.3 Subject to the provisions of subclauses 8.4 to 8.8 inclusive, CTL shall in no event be or become liable for any loss of or damage to the goods in an amount exceeding the equivalent of 666.67 SDR per package or unit or 2 SDR per kilogramme of gross weight of the goods lost or damaged, whichever is the higher, unless the nature and value of the goods shall be declared by the consignor and accepted by CTL before the goods have been taken in his charge, or the ad valorem freight rate paid, and such value is stated in this Bill of Lading by him, then such declared value shall be the limit. However CTL shall not in any case be liable for an amount greater than the actual loss to the person entitled to make the claim.
- 8.4 Where a container, pallet or similar article of transport is loaded with more than one package or unit, the packages or other shipping units enumerated in this bill of Lading as packed in such article of transport are deemed packages or shipping units. Excepts as aforesaid, such article of transport shall be considered the package or unit.
- 8.5 a) When the loss of or damage to the goods occurred during one particular stage of the multimodal transport, in respect of which an applicable international convention or

mandatory national law would have provided another limit of liability if a separate contract of carriage had been made for that particular stage or transport, then the limit of CTL's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory national law.

b) Unless the nature and value of the goods shall have been declared by the merchant and inserted in this Bill of Lading, and the ad valorem freight rate paid, the liability of CTL under US COGSA, where applicable, shall not exceed USD 500.-- per package or, in the case of goods not shipped in packages, per customary freight unit.

8.6 If CTL is liable in respect of loss following from delay in delivery, or consequential loss or damage other than loss of or damage to the goods, the liability of CTL shall be limited to an amount not exceeding the equivalent of twice the freight for the multimodal transport under this bill of lading.

8.7 The aggregate liability of CTL shall not exceed the limits of liability for total loss of the goods.

8.8 CTL is not entitled to the benefit of the limitation of liability if it is proved that the loss, damage or delay in delivery resulted from a personal act or omission of CTL 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.

9. Applicability to Actions in Tort

These conditions apply to all claims against CTL relating to the performance of the contract evidenced by this Bill of Lading, whether the claim be founded in contract or in tort.

10. Liability of Servants and other persons

10.1 These Conditions apply whenever claims relating to the performance of the contract evidenced by this Bill of Lading are made against any servant, agent or other person (including any independent contractor) whose services have been used in order to perform the contract, whether such claims are founded in contract or tort, and the aggregate liability of CTL and of such servants, agents or other persons shall not exceed the limits in clause 8.

10.2 In entering into this contract as evidenced by this Bill of Lading, CTL, to the extent of these provisions, does not act only on his own behalf, but also as agent or trustee for such persons, and such persons shall to this extent be or be deemed to be parties to this contract.

10.3 However, if it is proved that the loss of or such loss or damage of the goods resulted from a personal act or omission of such a person referred to in clause 10.1, done with intent to cause damage, or recklessly and with knowledge that the damage would probably result, such person shall not be entitled to benefit of limitation of liability provided for in clause 8.

10.4 The aggregate of the amounts recoverable from CTL and the persons referred to in clauses 2.2 and 10.1 shall not exceed the limits provided for in these conditions.

11. Method and Route of Transportation

Without notice to the Merchant, CTL has the liberty to carry the goods on or under deck and to choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the goods.

12. Delivery

12.1 Goods shall be deemed to be delivered when they have been handed over or placed at the disposal of the consignee or his agent in accordance with this Bill of Lading, or when the goods have been handed over to any authority or other party to whom, pursuant to the laws or regulation applicable at the place of delivery, the goods must be handed over, or such other place at which CTL is entitled to call upon the Merchant to take delivery.

- 12.2 CTL shall also be entitled to store the goods at the sole risk of the merchant, and CTL's liability shall cease, and the cost of such storage shall be paid upon demand by the Merchant to CTL
- 12.3 If at any time the carriage under this Bill of Lading is or is likely to be affected by any hindrance or risk of any kind (including the condition of the goods) not arising from any fault or neglect of CTL or a person referred to in clause 2.2 and which cannot be avoided by the exercise of reasonable endeavours CTL may abandon the carriage of the goods under this Bill of Lading and, where reasonably possible, place the goods or any part of them at the merchant's disposal at any place which CTL may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of CTL in respect of such goods shall cease. In any event, CTL shall be entitled to full freight under this Bill of Lading and the Merchant shall pay any additional costs resulting from the above mentioned circumstances.

13. Freight and Charges

- 13.1. Freight shall be paid in cash, without any reduction or deferment on account of any claim, counter-claim or set-off, whether prepaid or payable at destination. Freight shall be considered as earned by CTL at the moment when the goods have been taken in his charge, and not to be returned in any event.
- 13.2. Freight and all other amounts mentioned in this Bill of Lading are to be paid in the currency named in this Bill of Lading or, at CTL's option, in the currency of the country of dispatch or destination at the highest rate of exchange for bankers sight bills current for prepaid freight on the day of dispatch and for freight payable at destination on the day when the merchant is notified on arrival of the goods there or on the date of withdrawal of the delivery order, whichever rate is higher, or at the option of CTL on the date of this Bill of Lading.
- 13.3. All dues, taxes and charges or other expenses in connection with the goods shall be paid by the merchant. Where equipment is supplied by CTL, the merchant shall pay all demurrage and charges which are not due to a fault or neglect of CTL.
- 13.4. The merchant shall reimburse CTL in proportion to the amount of freight for any costs for deviation or delay or any other increase of costs of whatever nature caused by war, warlike operations, epidemics, strikes, government directions or force majeure.
- 13.5. The Merchant warrants the correctness of the declaration of contents, insurance, weight, measurements or value of the goods but CTL has the liberty to have the contents inspected and the weight, measurements or value verified. If on such inspection it is found that the declaration is not correct it is agreed that a sum equal either to five times the difference between the correct figure and the freight charged, or the double of the correct freight less the freight charged, whichever sum is the smaller, shall be payable as liquidated damages to CTL for his inspection costs and losses of freight on other goods notwithstanding any other sum having been stated on this Bill of Lading as freight payable.
- 13.6. Despite the acceptance by CTL of instructions to collect freight, charges or other expenses from any other person in respect of the transport under this Bill of Lading, the Merchant shall remain responsible for such monies on receipt of evidence of demand and the absence of payment for whatever reason.

14. Lien

CTL shall have a lien on the goods and any documents relating thereto for any amount due at any time to CTL from the merchant under this contract or any other contract including storage fees and the cost of recovering same, and may enforce such lien in any reasonable manner which he may think fit.

15. General Average

The Merchant shall indemnify CTL in respect of any claims of a general average nature which may be made on him and shall provide such security as may be required by CTL in this connection.

16. Notice

16.1 Unless notice of loss or damage to the goods, specifying the general nature of such loss or damage, is given in writing by the consignee to CTL when the goods are delivered to the consignee in accordance with clause 12, such handing over is prima facie evidence of the delivery by CTL of the goods as described in this Bill of Lading.

16.2 Where the loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within 6 consecutive days after the day when the goods were delivered to the consignee in accordance with clause 12.

17. Time bar

CTL shall, unless otherwise expressly agreed, be discharged of all liability under these conditions unless suit is brought within 9 months after the delivery of the goods, or the date when the goods should have been delivered, or the date when in accordance with clause 6.4 failure to deliver the goods would give the consignee the right to treat the goods as lost.

18. Partial invalidity

If any clause or a part thereof is held to be invalid, the validity of this Bill of Lading and the remaining clauses or a part thereof shall not be affected.

19. Jurisdiction and applicable law

All disputes of whatsoever nature under or in connection with this Bill of Lading shall be determined according to German law. The aforementioned disputes shall be determined by the German Maritime Arbitration Association (GMAA) according to the GMAA rules of arbitration.

20. Applicability of the Austrian Forwarders' Standard Terms and Conditions

For all CTL's rights and duties as far as they are not subject to the terms and conditions of this Bill of Lading, the Austrian Forwarders' Standard Terms and Conditions are applicable.

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