

This rule applies to shipments in the China trade only.

SEA WAYBILL TERMS AND CONDITIONS OF CARRIAGE  
MATSON NAVIGATION COMPANY, INC.

1. DEFINITIONS. The word "Carrier" shall include Matson Navigation Company, Inc.; the owner, operator, charterer and master of the Vessel; the Vessel; and any connecting or substituted water carrier performing transportation under the transportation agreement evidenced by this sea waybill. The term "sea waybill" refers to the face and this reverse side of this document. The term "transportation agreement" shall have the meaning stated in paragraph 2 below. The word "Vessel" shall include the vessel named on the face of this sea waybill and any other vessel, lighter or watercraft owned, operated, chartered or employed by Carrier or any connecting or substituted water carrier performing transportation under the transportation agreement. The word "Shipper" shall include the person entering into the transportation agreement with Carrier and for whose account the goods are shipped. The word "Goods" shall include articles of every kind and description, including their packaging, containers or other shipping units or materials, tendered to Carrier for transportation under the transportation agreement and described on the face of this sea waybill. The word "Consignee" shall include the person named as consignee on the face hereof, the owner of the Goods, and all other persons lawfully entitled to possession of the Goods (other than Carrier). The word "Charges" shall include freight, demurrage, equipment detention, general average, salvage, all surcharges and any other money obligations incurred or payable by the Shipper and/or the Consignee, or for the payment of which Carrier has a security interest or maritime lien on the Goods. An endorsement that the Goods have been shipped "on board" means on board Carrier's vessel or on another mode of transport operated by or on behalf of Carrier en route to the port of loading for loading aboard the Vessel.

2. CLAUSE PARAMOUNT. The receipt, custody, carriage and delivery of the Goods are governed by the provisions of the transportation agreement which consists of (i) the terms and conditions of Carrier's applicable freight tariffs, (ii) the terms and conditions stated on the front

and back of this sea waybill, (iii) the terms and conditions of any service contract in effect between the parties and applicable to the shipment covered by this sea waybill, and (iv) the provisions of the United States Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. 30701 *note*. The Shipper and Consignee shall be bound by all the provisions of the transportation agreement. Carrier shall also have the benefit of sections 4281 through 4286 and 4289 of the Revised Statutes of the United States and amendments thereto, and all other statutes of the United States or any other country which may be applicable to grant Carrier exoneration from or limitation of liability. The provisions of COGSA, except as otherwise provided herein, shall be extended to apply to Goods stowed on deck as provided in paragraph 7, before the Goods are loaded on and after the Goods are discharged from the Vessel, and throughout the entire time the Goods are in the actual or constructive custody of Carrier, its agents and independent contractors, including those persons and entities referred to in paragraph 5, provided that as to loss or damage occurring before the Goods are loaded to or after the Goods are discharged from the Vessel, and notwithstanding the provisions of COGSA Section 4(2)(q), the Shipper or Consignee and /or every person having an interest in the Goods shall bear the burden of proving that the actual fault or privity of Carrier or the fault or neglect of Carrier's agents or servants contributed to the loss or damage. Nothing herein contained shall be deemed a surrender by Carrier of any of its rights or immunities or an increase of any of its responsibilities under COGSA. Notwithstanding the foregoing, to the extent that another international convention or national law governing Carrier's liability is mandatorily applicable, or precludes the application of COGSA in the country in which a court having jurisdiction shall adjudicate a dispute arising out of the transportation agreement, then such international convention or national law shall to that extent be applied in determining Carrier's liability in connection with such dispute. The provisions of the transportation agreement shall govern the relationships between the Shipper, Consignee and every person having an interest in the Goods, on the one hand, and Carrier, on the other hand, and shall supersede any prior booking note, mate's or dock receipt, or other document to the extent conflicting. The terms and conditions of the transportation agreement shall be severable. If any term

or condition is invalid or unenforceable, or if any breach of or deviation from any provision occurs, such circumstance shall not affect the validity or enforceability of the remaining terms and conditions.

3. FREIGHT. Charges shall be due and payable to Carrier in accordance with the provisions of Carrier's applicable tariffs and this sea waybill. Freight may be calculated on the basis of information furnished by the Shipper, but Carrier may open containers, packages, or other shipping units and examine, weigh, measure and identify the true nature and quantity of the Goods. If Shipper-furnished information is determined to be erroneous and additional freight or other charges are payable, the Shipper, Consignee and the Goods shall be liable therefor and for any expense incurred by Carrier in examining, weighing and measuring the Goods. Full freight to the Port of Discharge or Place of Delivery, if indicated, shall be completely earned upon receipt of the Goods by Carrier, whether or not the freight is stated on the front side hereof or intended to be prepaid or collected at destination, and whether or not the Goods are damaged or sound, and said freight shall be received and retained regardless of whether the Vessel and/or the Goods are lost or not lost or the voyage is broken up or abandoned, or under any other circumstances whatsoever. Carrier shall have a lien on the Goods, which shall survive delivery, for all Charges earned or due under the transportation agreement or otherwise and may enforce this lien by public or private sale without notice and by all other lawful means. The Shipper and the Consignee shall be jointly and severally liable to Carrier for the payment of all Charges, as well as for any expenses incurred by Carrier, including attorneys' fees, in connection with claims or proceedings brought by Carrier for collection of Charges due to Carrier and /or proceedings brought by the Shipper, Consignee or any third party claiming to have the right to possess the Goods. All Charges shall be paid to Carrier in full without offset, counterclaim or deduction in the lawful currency of the United States.

#### 4. COMBINED TRANSPORT

(a) If the Carrier undertakes to perform and/or arrange for performance of the carriage of the Goods 1) from the Place of Receipt to the Port of Discharge or the Place of Delivery or 2) from the Port of Loading to the Place of Delivery,

Carrier's liability, unless otherwise provided in this bill of lading, shall be determined in accordance with the provisions of paragraphs 2 and 22.

(b) During the period before loading to the vessel at the Port of Loading and after discharge from the vessel at the Port of Discharge, the Carrier shall be entitled to all rights, defenses, immunities, exemptions, limitations of or exonerations from liability, liberties and benefits contained or incorporated in the contract between the Carrier and any person by whom the carriage is performed or undertaken, whether directly or indirectly (including such persons listed in paragraph 5) and who would have been liable to the Shipper or Consignee as if the Shipper or Consignee had contracted directly with such person or contained in any compulsory legislation applicable to such person. In no event shall Carrier's liability under a combined transport bill of lading exceed that determined pursuant to paragraphs 2 and 22.

(c) If it cannot be determined at which stage of the carriage the loss or damage occurred, it shall be conclusively presumed to have occurred while the Vessel was at sea and Carrier's liability shall be determined in accordance with paragraphs 2 and 22.

5. CARRIER'S CONTRACTORS. Carrier may require the assistance of others to perform the services undertaken under the transportation agreement. Every subsidiary, affiliate company, servant, agent, stevedore, terminal services contractor, and any other person whose services and/or equipment has been used in the performance of the services undertaken under the transportation agreement, whether or not in direct contractual privity with Carrier, shall have the benefit of every exemption from and limitation of liability, defense, right and liberty to which Carrier is entitled under any provision of the transportation agreement or by applicable law. For purposes of the foregoing provision, Carrier shall be deemed to be the agent or trustee for the benefit of all such persons and all such persons shall be deemed to be parties to the transportation agreement to that extent.

6. SHIPPER'S WEIGHT, LOAD AND COUNT; SHIPPER'S WARRANTIES. When containers, vans, trailers, portable tanks, skids palletized units, and other cargo units are not packed or loaded by the Carrier, Carrier does not represent to be accurate and is not bound by any description of the value, quantity, weight, condition, or existence of the contents thereof as furnished by or on behalf of the Shipper and identified in this sea waybill by use of the phrase "said to contain", "shipper's weight load and count" or terms of like meaning, and Carrier in such case shall not be liable for any difference in value,

quantity, weight or condition of the Goods furnished by or on behalf of the shipper and that of the Goods actually delivered. Carrier shall have no responsibility or liability whatsoever for the packing, loading, securing, shoring and/or stowage of contents of such cargo units, or for loss or damage caused thereby or resulting therefrom.

With respect to cargo units not packed or loaded by Carrier, the Shipper and Consignee represent and warrant: (a) that the Goods are properly described, marked, secured, and packed in their respective cargo units; (b) that any cargo units other than Carrier furnished units are seaworthy and physically suitable, sound, and structurally adequate to properly contain and support the Goods during handling and the transportation contemplated by the transportation agreement, and that such cargo units may be handled in the usual and customary manner without damage to themselves or to their contents, or to the Vessel or its other cargo, or to property, or to persons; (c) that all particulars furnished to Matson with regard to the cargo units and their contents, and the weight of each said cargo unit, are in all respects correct and complete; and (d) that such units are in compliance with all applicable government regulations. Shipper and Consignee represent and warrant that each shall timely submit all documentation and information required for the transportation, import, and export of the Goods. Shipper and Consignee, jointly and severally, agree to indemnify and hold Carrier harmless in respect of any injury to or death of any person, or any loss or damage to the Goods, or to other cargo or to any other property or to the Vessel or to any other vessel, and for all fines, duties, payments or liabilities of any kind, or any other loss or expense, including, but not limited to, lost profits and attorneys' fees, caused by breach of any of the foregoing representations or warranties or incurred or levied upon Carrier by reason of the Goods being or having been in Carrier's possession.

7. UNDER DECK AND ON DECK STOWAGE. Carrier shall have the right to carry Goods stowed in containers, vans, trailers, cradles, or portable tanks on deck or below deck without notice to the Shipper and without notation of on deck stowage on the face of this bill of lading. Such Goods shall be carried subject to the provisions of paragraph 2 of this bill of lading. All other Goods (including livestock), which are stated on the face of this bill of lading to be carried on deck, shall be carried on deck at shipper's risk of loss or damage and Carrier shall not be liable for any loss,

damage, or delay in connection with said Goods from any cause whatsoever. In any event, Carrier's liability, if any, for Goods carried on deck shall be governed by paragraph 22 of this bill of lading.

8. SPECIAL STOWAGE; REFRIGERATION. Goods will not be provided temperature controlled, insulated or naturally ventilated stowage unless agreed by Carrier in writing in advance of Carrier's receipt of the Goods, and, in the absence of such agreement, the Shipper and Consignee warrant that the Goods do not require such protection. Carrier does not provide mechanically ventilated stowage and does not furnish or maintain preservative gasses in connection with temperature controlled stowage, and Carrier shall not be responsible for loss or damage to the Goods arising in whole or in part from any lack of mechanical ventilation or preservative gasses. With respect to refrigerated container shipments tendered at Carrier's container yard ("CY") in Carrier's 24-foot equipment, Carrier does not supply temperatures lower than -5 degrees F, and Carrier shall not be liable for any loss of or damage to the Goods arising by reason of the Goods requiring any lower temperature, and the Shipper, by tendering Goods to be refrigerated, warrants and agrees that said Goods may be carried without loss or damage at temperatures at and above -5 degrees F. With respect to refrigerated container shipments tendered at Carrier's CY in Carrier's 40-foot equipment, Carrier does not supply temperatures lower than -15 degrees F, and Carrier shall not be liable for loss of or damage to the Goods arising by reason of the Goods requiring any lower temperature, and the Shipper, by tendering Goods to be refrigerated, warrants and agrees that said Goods may be carried without loss or damage at temperatures at and above -15 degrees F.

9. RECONDITIONING, ETC. Carrier reserves the right to recondition, repair, or restow the Goods whenever necessary for the safety of persons, the Vessel or the Goods or to bring the Goods into conformance with applicable law, and Carrier shall be reimbursed therefor at accessorial labor and equipment rental rates named in any applicable tariff or, if no such rates apply, at 120% of Carrier's costs of performing such work.

10. TRANSSHIPMENT; SUBSTITUTION OF VESSEL. Whether or not the Goods are consigned to a port or place where the Vessel discharges, Carrier may, without notice, transship the whole or any part of the Goods before or after loading at the original port of loading or any other place or places even though outside the scope of the voyage or the route to or beyond the port of discharge or the place of delivery of the Goods, by any substituted or connecting water carrier's vessel or other means of transportation by water, by land or by air, whether operated by Carrier or by others.

11. SCHEDULE; DELAY. Carrier does not undertake that the Goods will be transported from or loaded at the place of receiving or loading or will arrive at the place of discharge, delivery or transshipment aboard any particular vessel or other conveyance or at any particular date or time or to meet any particular market or in time for any particular use. Scheduled or advertised departure and arrival times are only expected times and may be advanced or delayed if carrier or any connecting carrier shall find it necessary, prudent or convenient. Carrier shall not be liable for any loss or damages whatsoever, including but not limited to incidental or consequential damages (even if Carrier is advised of the possibility of same), due in whole or in part to any delay in the scheduled departures or arrivals of the Vessel or other conveyances transporting the Goods.

12. SCOPE OF VOYAGE; CARRIER'S LIBERTIES. Carrier may call at scheduled ports in or out of the usual order, may provide substituted service by modes other than water, may omit scheduled routes or ports, may include unscheduled routes or ports and may lighten the Goods. The Vessel may sail with or without tugs or pilots, undertake rescue or salvage, tow or be towed, or undergo dry-docking or repairs. In any situation whatsoever which, in the opinion of the master or Carrier, gives rise to risk of seizure, detention, damage, loss, delay or disadvantage to the Vessel or the Goods, or of materially detaining the equipment of Carrier or would make it imprudent, unlawful or commercially impracticable to commence or continue the voyage or to enter or discharge the Goods at the port of discharge, the master or Carrier may discharge the Goods, or any part of them, at any port or place considered by Carrier to be safe or advisable under the circumstances

and forward or arrange to forward the Goods by land, water, or air conveyance, or place the Goods in a storage facility, all at the risk and expense of the Goods. The exercise of any of the foregoing liberties by Carrier or the master shall constitute performance under the transportation agreement and not a deviation from the scope of the voyage. When the Goods are discharged from the Vessel and delivered to a forwarding agent or carrier or to a storage facility under the provisions of this paragraph, or when required to be delivered to local customs authorities under local law, such discharge and delivery shall constitute complete delivery and performance under the transportation agreement.

13. NOT A DOCUMENT OF TITLE. It is the intent of the parties that this sea waybill evidencing the transportation agreement shall not operate as a document of title. The shipper retains control over the designation of the party entitled to take possession of the Goods upon delivery and may change to designation from time to time by timely and adequate notice to and the agreement of the Carrier. The Carrier may deliver the Goods to the designated Consignee without taking up a copy of the sea waybill, whether or not denominated as an "original" copy.

14. UNDELIVERED GOODS. If, for any reason whatsoever, the Consignee refuses or fails to take delivery of the Goods upon their arrival and availability at destination and upon expiration of tariff-prescribed free time or any notice period as set forth in a notice of arrival, availability or demand given by Carrier, Carrier may, without further notice or demand, and in addition to any other legal or equitable remedies, exercise its maritime lien for any charges due at a private or judicial sale of the Goods, or may place the Goods in storage at the risk and expense of the Goods, subject to a lien in favor of Carrier for any charges due.

15. CARRIER'S CONTAINERS. Whenever a Shipper or Consignee, or an agent or contractor acting on behalf of either of them, shall take possession of Carrier's equipment including containers, semi-trailers and refrigeration equipment, the Shipper or Consignee in possession, or for whose benefit an agent or contractor has taken possession, shall defend, indemnify and hold

Carrier harmless from and against any loss or damage to Carrier's equipment and property owned by third parties and injury to or death of persons arising out of the use of said equipment.

16. DANGEROUS, HAZARDOUS OR NOXIOUS CARGO. Goods of a flammable, explosive, corrosive, radioactive, noxious, hazardous, unstable or dangerous nature, may at any time before discharge, be landed at any place, thrown overboard, destroyed or rendered innocuous without liability on the part of Carrier or other shippers or consignees if, in the opinion of Carrier, such goods are or will become dangerous or noxious to the Vessel or to cargo or to persons. The Shipper shall indemnify Carrier for all losses, damages, (including, but not limited to, consequential damages such as lost profits and expenses related to Carrier's inability to use its vessels and equipment), liabilities, fines, civil penalties and expenses (including attorneys' fees) suffered by Carrier as a result of carriage or handling of such Goods.

17. GENERAL AVERAGE. General average shall be adjusted, stated and settled, according to York/Antwerp Rules, 1994, except rule XXII thereof, at such port or place in the United States as may be selected by Carrier, and as to matters not provided for by these Rules, according to the laws and usage at the Port of San Francisco, CA. In such adjustment, disbursements in foreign currencies shall be exchanged into legal tender of the United States at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the Vessel. A general average guarantee and/or bond and such additional security as may be required by Carrier must be furnished before delivery of the Goods. Such cash deposit as Carrier may deem sufficient as additional security for the contribution of the Goods and for any salvage and special charges thereon shall, without prejudice to the ultimate liability of the parties, be made by the Goods, the Shipper or Consignee to Carrier before delivery. Such deposits shall, at the option of Carrier, be payable in legal tender of the United States and be remitted to the general average adjuster. When so remitted, the deposit shall be held in a special account at the place of adjustment in the names of

the adjuster pending settlement of the general average, and refunds or credit balances, if any, shall be paid in legal tender of the United States.

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, Carrier is not responsible to the Goods, to the Shipper or to the Consignee by statute, contract, or otherwise, the Goods, the Shipper and Consignee shall contribute with 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 Goods. If salvage services be rendered to the Goods by Carrier or by other vessels owned by or in the service of Carrier, such services shall be paid for as fully as if rendered by strangers.

Carrier agrees to absorb the portion of general average allocated to the Goods on board the Vessel if owned by Matson Navigation Company at the time of the event giving rise to the declaration of general average.

18. **BOTH TO BLAME COLLISION CLAUSE.** The Both to Blame Collision Clause currently published by the Baltic and International Maritime Conference is deemed to be incorporated into this sea waybill and is available from the Carrier or his agent upon request.

19. **WAR RISKS; GOVERNMENTAL ORDERS.** Carrier shall have liberty to carry Goods declared by any belligerent to be contraband and persons belonging to or intending to join the armed forces or governmental service of any belligerent; to sail armed or unarmed and with or without convoy; and to comply with any orders, requests or directions as to loading, departure, arrival, routes, ports of call, stoppage, discharge, destination, delivery or otherwise, howsoever given by the government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having, under the terms of the war risk insurance on the Vessel, the right to give such orders, requests or directions. Delivery or other disposition of the Goods in accordance with such orders, requests or directions shall

constitute performance of Carrier's delivery obligations under the transportation agreement, and all responsibility of Carrier, in whatever capacity, shall terminate upon such delivery or other disposition.

20. **TIME FOR SUIT.** Carrier, its agents, servants and subcontractors and the Vessel shall be discharged from all liability whatsoever for loss, damage, or expense on any theory of recovery, including but not limited to negligence, breach of contract, tort, violation of statute, law or regulation, strict liability, delay, misdelivery, conversion or otherwise, unless suit is brought and jurisdiction is obtained over Carrier by service of process within one year after delivery of the goods or the date when the Goods should have been delivered. Removal of the Goods into the custody of the person entitled to take delivery shall be prima facie evidence of delivery of the Goods in the same condition in which they were received by Carrier unless written notice of loss or damage is given to Carrier before or at the time of removal. If the loss or damage is not apparent, written notice thereof must be given to Carrier within three calendar days of the removal of the Goods.

21. **LAW & JURISDICTION.** Except as provided in paragraph 2, the transportation agreement shall be governed solely by the law of the United States, and all claims, suits, proceedings or disputes arising hereunder shall be brought in and be subject to the sole and exclusive jurisdiction of the United States District Court for the Northern District of California and of no other court of the United States or any other country.

22. **LIMITATION OF CARRIER'S LIABILITY; AGREED VALUE.** Unless the Shipper shall cause the nature and value of the Goods to be declared before shipment and pay freight at the ad valorem rate set forth in Carrier's tariffs, the Shipper agrees that for the purpose of computing any liability of Carrier for loss or damage to the Goods, the value of the Goods shall be their market value at destination which shall be presumed to be invoice cost plus freight and insurance (or, where there is no invoice, the value of the Goods at the time and place of shipment plus freight and insurance). In no event shall Carrier's liability exceed U.S. \$500 per package lawful money of the United States, or in case of Goods not shipped in packages, U.S. \$500 per customary freight unit. If the Place of Receipt, Port of Loading, Port of Discharge and Place of Delivery are all within the United States, its possessions and/or territories, "U.S. \$1,000" shall be substituted for "U.S. \$500" in the preceding sentence.

Notwithstanding the foregoing, to the extent that another international convention or national law governing Carrier's liability is held applicable or precludes the application of COGSA, then such international convention or national law shall to that extent be applied in determining Carrier's liability and the words "667.67 SDRs per package or 2 SDRs per kilo of the gross weight of the Goods lost or damaged, whichever is higher" shall be substituted for the words "U.S. \$500 per package lawful money of the United States, or in case of Goods not shipped in packages, U.S. \$500 per customary freight unit" in the previous sentence. In no event shall Carrier be liable for more than the amount of damage actually sustained, nor shall Carrier be liable for loss of or damage to any Goods not identified in the transportation documents furnished to Carrier nor shall Carrier be liable for incidental or consequential damages arising from any cause whatsoever (even if Carrier has been advised of the possibility of the same).

23. VALUABLE GOODS. Carrier shall not be liable to any extent for any loss or damage to or in connection with the transportation of precious metals, gold or silver plated articles, precious stones, jewelry, trinkets, watches, clocks, glass, china, coins, bills, securities, printings, engravings, pictures, stamps, maps, papers, silks, furs, lace, and similar items of high value and small size, unless the true nature and value of the cargo has been declared in writing by the Shipper before receipt of the cargo by Carrier, and the same is inserted in this sea waybill and an appropriate ad valorem freight in accordance with the operative tariff is paid.

24. LIVE ANIMALS. Live animals, including but not limited to birds, reptiles and fish, are received and carried at the Shipper's and Consignee's risk of accident or mortality, and Carrier shall not be liable for any loss or damage thereto or in connection with the transportation thereof arising or resulting from any matters mentioned in section 4, subsections 2(a) through (p) of COGSA, or from any cause whatsoever not due to the fault of Carrier and/or its agents, servants, and subcontractors. In any event, Carrier shall not be liable for any amount in excess of the limitations set forth in the transportation agreement, in this sea waybill or in Carrier's tariff.

