

# CONDITIONS OF CARRIAGE OF GOODS BY SEA

## I - DEFINITIONS

In these general conditions, the term :

“**carrier**” means the maritime carrier, being SEAFRANCE SA and its employees and agents ;

“**client**” means any person by whom or in whose name or on behalf of whom the contract of carriage has been concluded with the carrier and the goods and vehicles which are actually delivered to the carrier for carriage ;

“**vehicles**” means any commercial vehicle, including the tractor alone, or the trailer alone or the tractor and its trailer, in each case whether empty or loaded ;

“**goods**” means the cargo, its packaging as well as any container, pallet or any other similar item, even shipped empty ;

“**dangerous goods**” means goods designated as dangerous by the regulation of the IMO and IMDG Code ;

“**abnormal loads**” means any goods or vehicles whose weight and/or dimension exceeds :

- in length: 18,50 m

- in width: 2,50 m

- in height: 4,35 m

- in weight: 44 Tons PTRAC

Are considered also as abnormal loads caravans,

combined harvesters, bulldozer and generally speaking any goods and vehicles requiring specific devices for loading and handling ;

“**in writing**” also means by fax, cable, telex or email ;

“**Hague-Visby Rules**” means the provisions set out in the Brussels Convention of 25<sup>th</sup> August 1924 as amended by the Protocols of 23<sup>rd</sup> February 1968 and 21<sup>st</sup> December 1979 on the contract of carriage of goods by sea.

## 2 - PRELIMINARY GENERAL PROVISIONS

### 2.1 – The contract of carriage

The carrier shall not issue a bill of lading or any other negotiable instrument.

The contract of carriage is evidenced by the present general terms and conditions of carriage and by the consignment note remitted by the carrier to his client.

### 2.2 – Parties to the contracts

The contract of carriage is concluded between the carrier and his client.

The services provided by the carrier are reserved for his client and shall not be assigned under any circumstances to a third party without prior consent of the carrier. In that case, the client shall undertake that the third party has known and accepted these general conditions.

In case of unauthorized transfer of the services provided by SEAFRANCE SA to a third party, the carrier may, at its discretion, cancel the client's credit facilities and in particular may retrospectively apply the full price to the services in question.

The carrier may also repudiate the contract and the carrier will be only held liable for this repudiation.

Then all amounts due by the client to the carrier shall become immediately payable.

The client shall remain in any case liable for all amounts due in relation to the services provided by the carrier, regardless of whether these services are used by the client or a third party. Furthermore, the client shall remain liable for losses sustained by the carrier and resulting from the act or fault of the third party.

### 2.3 – Warranty

The client warrants that he has the authority to act on behalf of the owner of the goods and/or vehicles or of any person having whatever interest in the goods and/or vehicles or that he is himself the owner of the goods and/or vehicles.

### 2.4 – Applicable law and jurisdiction

The Hague-Visby Rules shall be incorporated in these general conditions.

The carriage of commercial drivers or any person accompanying them shall be subject to the provisions of the **Conditions particulières de vente et de transport par mer SEAFRANCE**, governing carriage of passengers. In so far as anything has not been dealt with the Hague-Visby Rules or these general conditions, French law shall govern the contract of carriage.

Any dispute as to the construction and/or performance of the contract of carriage shall be brought before the **COMMERCIAL COURT OF PARIS**.

## 3 – LIABILITY OF THE CARRIER

### 3.1 – Performance of the contract of carriage

The contract of carriage takes effect from the time the goods and vehicles are taken over by the carrier and it is terminated at the time of their delivery.

The carrier shall exercise due diligence to make the ship seaworthy and to properly man, equip and supply the ship.

Subject to the exceptions hereunder mentioned, the carrier shall proceed to properly and carefully load, carry, care for and, discharge the goods and vehicles.

### 3.2 – Taking over and delivery

Accompanied traffic :

Goods and vehicles shall be taken over by the carrier on shore, alongside the ship, immediately before they get across the approach ramp and shall be delivered on shore, immediately after they have passed the approach ramp at the port of discharge.

The commercial driver remains the representative of the client and shall be liable for any loss or damage resulting from faulty manoeuvres and especially during the passing of the approach ramp.

Unaccompanied traffic :

Goods and vehicles shall be taken over by the carrier when he receives from the client the shipment documents, accepts them and issues accordingly the consignment note. Delivery shall take place while these shipment documents are given back to the client at the port of discharge.

In any case, delivery shall be deemed to be effective if the shipment documents have not been claimed/asked for within 2 working hours after goods and vehicles have been discharged.

### 3.3 – Methods of carriage and routes

The carrier has liberty to perform the contract of carriage as he thinks fit. He may then, as the circumstances may require or if he deems it necessary :

- sub-contract the whole or any part of the carriage to a sub contractor  
- transport the goods and vehicles on any other vessel or any other means of carriage, owned by the carrier or not, transship goods and vehicles or deviate the ship.

### 3.4 – Deck Cargo

The carrier can choose to carry goods and vehicles under deck or on deck. In this case, the client is deemed to have agreed on an on deck shipment unless he gives contrary instruction to the carrier before the issuance of the consignment note.

### 3.5 – Events affecting performance

In case a major problem prevents embarkation of goods and vehicles, the carrier shall use reasonable endeavours to find an alternative means of carriage.

If at any time the performance of the contract is affected by any risk, delay, difficulty or obstacle, the carrier may elect to abandon the carriage or to go to an alternative port of discharge and take any other appropriate measure without prior notice to the client.

## 4 – RIGHTS AND OBLIGATION OF THE CLIENT

4.1 - Goods and vehicles shall be properly stamped by the client who also guarantees proper packaging and securing of the goods.

He also guarantees that goods and vehicles comply with applicable legislations and regulations at sea and ashore. In particular, the client guarantees that the vehicle shall be fitted with appropriate systems, equipments and anchorage points allowing proper securing during the sea passage.

The client shall have to present the goods and vehicles with the shipping documents at the reservation office at least one hour before departure time.

The client will have to declare with accuracy the nature, condition and quantity of carried goods and will have to supply all information and documents necessary to

comply with the requirements of Customs, Immigration, Health services and other State Authorities.

If necessary, the client shall, prior to embarkation, submit to a search of the vehicles or to any necessary inspection required by regulations in force, especially regarding terrorism prevention, and he undertakes to answer any question he is asked.

Failing this, the carrier shall be entitled to refuse embarkation of goods and vehicles and can not be held liable for this refusal. The price of the crossing shall be then refunded without incurring any other liability towards the client.

4.2 – Furthermore, the client shall ensure that any person allowed on board the vessel with the goods and vehicles is in possession of documentation requested by Customs, Health, Immigration Services of the States where the vessel calls.

The client shall be liable for all costs in respect of detention, repatriation, fines, legal fees... incurred by the carrier for any stowaway or any other person found on board the vessel without documents requested by Customs, Health, Immigration or any other Authority of the States where the vessel calls.

The client shall also pay the carrier the published tariff price for the transport on board of any person who accompanies the driver(s).

4.3 – For accompanied traffic, the drivers shall put the parking brakes when their vehicles are parked on board at their designated parking space.

The absence or failure of parking brakes shall be notified to the carrier before loading.

The drivers whose vehicles are not equipped with parking brakes shall put into gear and put on the handbrake.

4.4 – The drivers or any person accompanying them shall not stay in the vehicles during the crossing.

4.5 – The client shall take delivery of the goods and/or vehicles :

- for accompanied traffic, as soon as the vessel is alongside the quay  
- for unaccompanied traffic, within 2 hours at the latest upon completion of discharge operations.

Failing that, the client shall be liable for removal storage or any other costs advanced by the carrier.

In case of engine failure, the vehicle shall be embarked or discharged at client's risk and expense.

4.6 – As a general rule, the client shall indemnify the carrier against any damage caused to the vessel, her crew, passengers or any other third party by the goods, the vehicle and any person accompanying them, on board of the vessel or ashore.

## 5 – DANGEROUS AND POLLUTING GOODS

5.1 – The client shall comply with all regulations in relation to the carriage of dangerous and polluting goods and especially with the provisions of the IMDG Code. He shall pack and label in a suitable manner these goods and shall also ensure that vehicles are properly marked with warning notices to allow lashing on board. He shall also provide the carrier with all relevant information with respect to security and any other documents.

5.2 – Dangerous goods shall not be shipped without prior consent of the carrier. In this respect, the client shall send to the carrier at least 24 hours prior to embarkation written notification of the dangerous character of the goods and of the precautions to be taken.

Notification is requested at least 72 hours prior to embarkation for radioactive goods. Only clients with an authorized account with the carrier shall be allowed to ship radioactive goods.

5.3 – The carriage shall be made at the client's risk and the carrier shall not be liable for losses or delays resulting from the dangerous nature of the goods.

The carrier shall be entitled at all time to refuse to carry or to delay taking over of goods and vehicles. As the circumstances may require, the goods may at any time be unloaded, destroyed or rendered harmless by the

carrier at the client's expense and without payment of compensation for resulting loss. In any event, the carrier's freight shall remain due by the client.

5.4 – The client shall indemnify the Carrier for all and any liability, loss, damage and/or expense whatsoever suffered by the Carrier and/or any third party in connection with the goods.

5.5 – If the loading of a vehicle containing dangerous goods has been delayed for more than 12 hours, the vehicle will have to leave the port area if the port authority asks him to do so, without the carrier being held liable.

## 6 – REEFER MACHINES

To comply with IMDG Code, the drivers shall switch off during crossing the refrigerating compressor and all other heating or refrigerating electrical devices of their vehicles, except if, at the request of the drivers, and subject to available space, the vehicles are shipped on deck.

## 7 – SPECIAL GOODS

7.1 – The following goods shall be considered as special:

- abnormal loads
- live animals
- new and second hand vehicles to be sold
- Glass, china, casting or any other material of a brittle or fragile nature
- hanged goods

7.2 – Special goods shall not be shipped without prior consent of the carrier. In this respect, the client shall inform the carrier in writing, at least 48 hours prior to embarkation, of the characteristics of the goods and of the precautions to be taken.

7.3 – The carrier shall be entitled at any time to refuse to carry or to delay the taking over of these goods.

7.4 – As an exception to the provisions relevant to the liability of the carrier, the carriage of the vehicles and goods shall be made in any event at the sole risk of the client.

The carrier is entitled to take necessary measures should any live animal be likely to be dangerous for the ship and/or the passengers. These measures shall be at the client's expense and without payment of compensation for any resulting loss. In any event, the carrier's freight shall remain due and payable by the client.

## 8 – FREIGHT, PAYMENT, LATE PAYMENT PENALTY

8.1 – Unless otherwise agreed between the client and the carrier:

- Freight and related costs shall be calculated by reference to the tariffs of the carrier in force at the date of crossing
- Freight shall be payable at the latest upon receipt of goods and vehicles by the carrier.

8.2 – Freight shall be paid in any event and is not returnable.

8.3 – Interest at 1,5 times the value of the French legal interest rate shall automatically run from the date when freights and related costs are payable.

This rate shall be increased by 2% for each further month's delay in payment.

## 9 – PAYMENT BY ACCELERATION

If the client is in default in making a payment by the due date, he shall be liable for the payment by acceleration of all amounts due to the carrier in relation to a given shipment and/or any other previous shipments and/or the debit balance of a current account.

These amounts shall be payable within 10 days following written demand (by registered letter) from the carrier.

If the client fails to comply with the provisions of clauses 4, 5, 6 & 7 of these conditions, he shall also be liable for payment by acceleration of all amounts resulting from the non compliance of his obligations and guarantees under the present conditions.

## 10 – LIEN

The carrier shall have a lien on goods and vehicles in its possession for all sums including freight and related costs as well as any other amount due if the client fails to comply with these conditions, in relation to a given shipment and/or any other shipments and/or the debit balance of a current account.

The carrier shall be entitled to sell the goods and/or vehicles privately or by public auction and to use the proceeds of the sale to settle unpaid freight, related costs or any other amount due by the client.

## 11 – CLAIMS AND ACTIONS AGAINST THE CARRIER

### 11.1 – Notice of claim and time to sue

Unless notice of loss or damage be given to the carrier at the time of delivery, or if the loss or damage be not apparent, within 3 days, the carrier shall be deemed to have delivered all goods and vehicles in good condition. In any case, the carrier shall be exonerated from all liability whatsoever, even in tort or in breach of contract, unless Court proceedings are brought within one year of delivery of the goods or of the date when they should have been delivered.

### 11.2 – Period of liability

The carrier can only be liable for losses and/or damage to the goods and vehicles which occurred between the time of its taking over of the goods and vehicles and the time of their delivery to the client, as specified in clause 3.2.

In any case, at the expiry of the 2 working hours period mentioned in clause 3.2, the carrier shall be discharged from all liability for losses and damage to the goods and vehicles.

The burden of proving that loss and damage occurred when the goods and vehicles were in the custody of the carrier shall rest on the client.

### 11.3 – Substitution of vessel, transshipment

The liability of the carrier shall be limited to the part of the carriage performed by him on vessels under his management.

When goods and vehicles are transshipped on vessels other than those managed by the carrier, the liability of the carrier covers the period from the time he takes over the goods and vehicles on board his own vessel until the time he has delivered them, at the port of discharge. The notions of taking over and discharge are defined in clause 3.2.

For all other operations, prior to taking over and after the delivery, the carrier shall be deemed to act as a mere agent on behalf of the client, even if the freight for the whole voyage has been collected by him.

### 11.4 – Exclusion of responsibility

The carrier shall not be responsible for loss and/or damage resulting from one of the circumstances specified in clauses 4.2.a to 4.2.q of The Hague-Visby Rules.

### Special cases

Goods specified in clauses 5 to 7 and goods loaded on deck shall be carried at the sole risks of the client.

The carrier can never be held liable for loss and damage to the goods and vehicles of whatever nature and howsoever caused.

Any deterioration in the bodywork (including canvas and other covering materials) or tyres of vehicles during carriage shall be presumed due to normal wear and tear unless it is proved that damage has been caused by the carrier.

### 11.5 – Basis for compensation

Without prejudice to the limitation of liability specified in clause 11.6, the basis of compensation shall be limited to the value of the goods and vehicles. In no circumstances shall the carrier be responsible for consequential loss or damage of whatsoever nature and howsoever arising.

### 11.6 – Limitation of liability

Unless the value of goods and vehicles have been declared, the liability of the carrier for any loss or

damage to or in connection with the goods and vehicles shall not exceed an equivalent to 666,67 SDR per unit or 2 SDR per kg of gross weight of goods and/or vehicles lost or damaged, provided that their weight is inserted in the contract of carriage.

### 11.7 – Delay

Times of departure and of arrival are approximate and not guaranteed. The carrier shall in no circumstances be held liable for loss and/or damage caused by delay.

The carrier shall not be either liable for any delay in embarkation due to the completion of searches, inspections and questionnaires specified in clause 4.1.

## 12 – CLAIMS AND ACTIONS AGAINST THE CLIENT

The client shall indemnify the carrier against all financial consequences resulting from the breach of his obligations and warranties specified in these conditions. Especially, but not restrictively, the client shall indemnify the carrier against any loss and/or damage caused to the carrier or to a third party by the goods, the vehicles, the drivers and any person accompanying them.

The client shall remain in any case personally liable for all amounts due arising in relation to the services provided by the carrier, regardless of whether these services are used by a third party. Furthermore, the client shall be jointly and personally liable for losses sustained by the carrier and resulting from the act or fault of the third party.

Payment of these amounts shall take place within 15 days following the written demand from the carrier.

## 13 – GENERAL AVERAGE

General Average shall be adjusted at Paris by one or more adjusters appointed by the carrier and settled according to the York-Antwerp Rules 1994.

The carrier shall have a lien on goods and vehicles pending the client providing a provisional cash deposit or the remittance of a guarantee issued by a first rank French bank or any other security as the carrier may deem sufficient to cover the estimated general average contribution of the client.

In case of salvage services rendered to the vessel and the cargo, the client agrees that the carrier may act as his agent to settle salvage remuneration.

## 14 – MISCELLANEOUS

These conditions shall come into force on 1<sup>st</sup> of February 2005.

The failure by the carrier to rely upon one or more of the provisions set out herein shall not constitute a waiver to rely upon the provisions.

If one or more provisions contained herein is/are declared invalid or unenforceable, this will have no effect upon the other provisions, which shall remain valid and binding upon the parties.

**In case of dispute, the French version of these general conditions shall apply.**

**Direction Fret - Tél. + 33 (0)1 53 35 12 00**

**Siège social : 1, avenue de Flandre - 75019 Paris**