

### IMPORTANT NOTE

*The General Conditions of Carriage below are applicable to cargo carried and/or to be carried under the terms and rates set out in the Agreement between the Government of Nunavut and NEAS for the communities in area A including GN's cargo and Arctic Resupply Users' cargo as defined in said Agreement.*

## **GENERAL CONDITIONS OF CARRIAGE**

**THIS CONTRACT GIVES YOU RIGHTS AND RESPONSIBILITIES. THIS CONTRACT LIMITS THE LEGAL RESPONSIBILITY OF THE CARRIER. PLEASE READ IT CAREFULLY.**

**The Hague-Visby Rules on the water carriage of goods do not apply to this contract.**

**This contract is not covered by any bill of lading.**

### ***The persons who are part of this contract***

1. This contract applies to the person who is named as the shipper on the booking note, any person who owns the goods described on the booking note and any person who receives the Cargo described on the booking note at the place of delivery. In this contract, all of these persons are called the Shipper.
2. This contract also applies to Nunavut Eastern Arctic Shipping inc. (also known as NEAS). In this contract, this is called the Carrier.

### ***The Types of Goods Covered under this contract***

In this contract:

**“Cargo”** means goods presented by the Shipper for transport by the Carrier and goods received for transport by the Carrier from the Carrier's marine terminal to the places of discharge in the areas covered in this Agreement. Cargo includes Lateral Cargo and Retrograde Cargo.

**“Lateral Cargo”** means goods received for transport and carried by the Carrier between places in the Areas covered by this Agreement.

**“Retrograde Cargo”** means goods received for transport and carried by the Carrier from places in the Areas covered by this Agreement to the Carrier's marine terminal.

Cargo does not include live animals or gold, silver, precious stones or other high value Cargo unless it is declared to and accepted by the Carrier.

### ***What the Shipper needs to do before the goods are carried***

3. The Shipper needs to contact the Carrier and reserve space for the Cargo.
4. The Shipper needs to give the Carrier the information requested on the booking note form.

5. After the Carrier tells the Shipper space for the Cargo is reserved, the Shipper must pay the price that the Carrier charges for transporting the Cargo before the Carrier will accept the Cargo for transport. In this contract, this price is called the Freight. If the Shipper wants extra time to pay Freight, the Shipper must apply to the Carrier for credit. The Carrier will decide for itself if it wants to give the Shipper extra time to pay Freight and on what terms. The Carrier has agreed to carry Cargo shipped by the Government of Nunavut on Freight credit terms.
6. If the size or weight of the Cargo when it arrives at the Carrier's marine terminal is different than the size or weight given by the Shipper on the booking note, the Carrier has the right to ask the Shipper to pay adjusted Freight. If the difference in size or weight is so much that the Cargo cannot be loaded on board the planned ship safely or would shut out other booked Cargo, the Carrier will choose for itself to transport the Cargo on a later voyage or to return the Cargo to the Shipper at the Carrier's marine terminal. The Shipper will pay any terminal storage charges before the Cargo is returned to the Shipper.
7. The Shipper has to arrange and pay for getting the Cargo to the Carrier's marine terminal before the cut off date that the Carrier gives the Shipper. If the Cargo is late getting to the Carrier's marine terminal and there is another voyage to the delivery port planned for the season, the Carrier will try to fit the cargo on a later voyage. If there is not enough capacity for the Cargo on the ship's next voyage, the Carrier will tell the Shipper and the Shipper has to arrange and pay for taking the Cargo away from the marine terminal or pay for its storage until the next available ship or next season. If the Shipper chooses to take the Cargo away from the marine terminal, the Carrier will refund the freight, less any terminal storage charges, and any Dead Freight. Even if the Carrier already has confirmed space for the Cargo with the Shipper, or accepted Cargo for transport, the Carrier is allowed to refuse or delay accepting the Cargo at the Carrier's marine terminal, or refuse or delay loading of Cargo if the Carrier cannot operate or faces serious difficulties in operating, because of natural disasters, war, public violence, damage to port areas, severe port congestion, strikes, lockouts or labour disputes, or any happening which is not the fault of the Carrier or which did not arise from something the Carrier did or did not do.
8. The Shipper needs to package general Cargo strongly so the Cargo can be safely carried by sea and the packages can be palletized or stacked up to 3.7 metres (12 feet) feet high.
9. The Shipper must properly mark or label each package, crate, barrel or other unit of the Cargo so the Carrier can know what it needs to unload at each destination port and the name of the person it needs to deliver the Cargo to.
10. If the Shipper stuffs the Cargo into shipping containers, the shipping containers must meet ISO standards for international shipping containers and the containers must allow the use of forklifts or other reasonable equipment to take the Cargo out of the containers at delivery port. The Shipper is responsible to properly tie down and brace the Cargo inside the shipping container so the container is safe to be transported by sea. Bracing and tonnage needs to be clean and free from fungus, insects and rodents. The

Shipper must load the container so the Cargo inside, the delivery port and names of persons taking delivery of the Cargo.

11. Before the Carrier agrees to accept frozen or refrigerated Cargo for transport, the Shipper must tell the Carrier the range of temperatures to keep the Cargo and confirm with the Carrier if the carrying ship has power sources suitable for any refrigerated containers which the Shipper plans to use. If the Carrier agrees to accept frozen or refrigerated Cargo for transport, the Shipper must arrange to have the Cargo arrive at the Carrier's marine terminal within required temperature limits.
12. If the Cargo includes explosives, chemicals, or other things that are covered by the Transportation of Dangerous Goods Act or the International Maritime dangerous Goods Code. The Shipper must do everything required by the *Transportation of Dangerous Goods Act* and its regulations and the IMDG Code, which includes giving the Carrier full information about the type of Cargo and properly packaging and labelling the Cargo. The Carrier may charge additional Freight for transporting such Cargoes. The Carrier has the right to refuse to accept any dangerous or hazardous Cargo for transport if the Carrier believes reasonably the Shipper has not done everything that the Shipper is required to do before handing over that type of Cargo for transport.
13. The Carrier has the right to refuse any Cargo that it has reason to suspect is illegal or does not have complete or correct documentation.
14. Where the Cargo is construction equipment, prefabricated building sections, or other types of heavy or large size Cargo, the Shipper must properly prepare the Cargo for ocean transport, such as fitting weather tight coverings for sensitive equipment, marked lifting points or lugs and skids. When booking such Cargo, the Shipper must warn the Carrier about unusual Cargo features such as off center points of balance. The Carrier has the right to refuse any Cargo that is too bulky or heavy for its ships' capacity.
15. The Carrier can consolidate non-containerized Cargo with other Arctic Resupply Users' Cargo. If the Carrier does this, it will separate packages and units for different Shippers at the discharge port.

### ***The Carrier's responsibility***

16. The Carrier agrees to take responsibility for the Cargo from the time non - containerized Cargo leaves railcars or truck tailgates at the Carrier's marine terminal or from the time Shipper stuffed containers arrive at the Carrier's marine terminal, until the time Cargo is transported above high water mark at destination ports, and for Retrograde or Lateral Cargo, at all times when the Cargo is under the operational control of the Carrier.
17. The Carrier will take reasonable steps to keep, care for, load, transport, discharge and deliver the Cargo under this contract during the whole time the Carrier takes responsibility for the Cargo
18. The responsibilities and defences of the Carrier apply to Cargo that is loaded on deck and under deck.

19. The Carrier agrees to receive, temporarily store, load, stow and deliver dangerous goods and explosives to meet the requirements of the Transportation of Dangerous Goods Act, the IMDG Code, and the highest standards of safe industry practice. If certain types of dangerous goods or explosives cannot by law be handled at the Carrier's regular marine terminal or port of loading, the loading will be done at places permitted by law. The Carrier will tell the Shipper at the time of booking the alternate places to receive such Cargo for transport and tell the Shipper about any additional Freight for handling charges.
20. The Carrier does not provide heated or ventilated cargo space. The Carrier is not required to accept bookings for un-refrigerated perishable goods if the Carrier believes the Cargo could be damaged from lack of ventilation or low temperatures. The Carrier has the right at any time before loading or during the voyage to refuse to load or to remove and dispose of perishable Cargo that the Carrier reasonably believes has become spoiled or infested. The Carrier has the right, after giving notice to the person receiving the Cargo, to discharge perishable Cargo immediately after the ship arrives at discharge ports even if the Cargo could be damaged by weather conditions.
21. If the Carrier agrees to transport refrigerated containers, the Carrier must supply power to operate container refrigeration plant from the time the refrigerated containers arrive at the Carrier's marine terminal to the time of offloading at the discharge ports of the refrigerated containers, with sufficient reserves of power and fuel for reasonably foreseen delays during the voyage. The Carrier is not responsible for providing power to refrigerated containers during transfer between the carrying ship and above high water mark.
22. The Carrier agrees to:
  - a) use due diligence to make the carrying ship seaworthy;
  - b) to secure that the ship is properly manned, equipped and supplied; and
  - c) to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception and carriage.
23. The Carrier agrees to take reasonable steps to follow the scheduled order of ports. The Carrier has the right to transship the Cargo. The Carrier has the choice to change port rotations, discharge a part Cargo and return to the same port to complete discharge or change the order of discharge of Cargo during any one voyage if reasonably necessary to avoid being trapped in ice, to use the whole cargo space efficiently or for the safety of the carrying ship.
24. To service intended discharge ports, the Carrier will use all reasonable efforts to select carrying ships whose capacity and ice class will permit them to complete voyages to planned ports under ice and weather conditions forecast for the season and the voyage. The Carrier agrees to use all reasonable efforts to transship Cargo or use substitute carrying ships of a higher capacity or ice class if forecasted or actual ice and weather conditions for planned voyages worsen over a shipping season. The carrying ship is not required to force ice. Where icebreaking assistance is arranged for voyages to certain discharge ports named by agreement between the Carrier and the Government of Nunavut, the Carrier agrees to follow icebreakers in conditions

within the carrying ship's and icebreaker's permitted combined ice class capacity and where prudent under arctic navigation.

25. If the Carrier foresees that an intended discharge port will be icebound beyond the ship's ice class capacity or ice or weather conditions will prevent the safe completion of a voyage to any intended discharge port, the Carrier will give notice to the Government of Nunavut and to the chief municipal officer or administrative officer at the intended discharge port. These parties will consult with a view to agreeing on an alternate way to transport the Cargo by water to the intended discharge port or to an alternate discharge port. The carrying ship may sail to a convenient open place to await the Government of Nunavut's instructions. Instructions will be provided by the Government of Nunavut within two days of the Carrier giving notice under this clause. By this contract, the Shipper gives the Government of Nunavut the power to agree on the Shipper's behalf for delivery to an alternate discharge port. If this type of agreement is made, delivery to an alternate discharge port of all Cargo in an undamaged condition is complete performance of the Carrier's responsibility to deliver to the originally planned discharge port on that voyage. The consultation is to avoid the Cargo being returned to the loading port or being shut out of the Arctic for the season. The Carrier will give notice to Shippers about the location of the alternate discharge port.
26. The Shipper understands the Carrier has to use lighters to transfer the Cargo from ship to shore at Nunavut discharge ports. The Carrier may use any reasonable floating vessel or amphibious vehicle as a lighter. The Carrier may use any reasonable method to shift Cargo from lighters to above the high water mark.

### ***Shipper's responsibility at delivery***

27. The Shipper agrees to be ready itself or to give to the Carrier the name and address or telephone number of a responsible person to take delivery of the Cargo from the Carrier above high water mark at discharge ports.
28. The Carrier agrees to give two days prior notice to Shippers or Shippers' named persons to take delivery, of the estimated actual time of beginning of unloading of the carrying ship at discharge ports.
29. In discharge ports without a warehouse, the Shipper is responsible for taking delivery of Cargo from the Carrier as soon as the Cargo is landed above the high water mark.
30. Where the Shipper keeps a Carrier's shipping container after the Cargo is landed, the Shipper is responsible to deliver the shipping container back to the Carrier at the usual wharf or landing place above the high water mark in an undamaged condition, fair wear and tare excepted. The Shipper agrees to pay the Carrier a fee for keeping back the shipping container until the time the Shipper returns the shipping container to the Carrier. This rate is shown in the Carrier's list of fees.

### ***Defences and Limits of Liability of the Carrier***

31. The Carrier is not responsible for loss of or damage to the Cargo caused by reasons which are listed in article 4 of the Hague-Visby Rules. These reasons are listed as part of this contract. These reasons apply during the whole time the Carrier is responsible for the Cargo under this Contract.
32. The Carrier's contractors, agents and employees have the same defences and limits of liability that the Carrier has under this contract. The wording of article 4*bis* of the Hague-Visby Rules applies to the Carrier's contractors, agents and employees. The modified wording of this article is included as part of this contract.
33. The Carrier is not responsible for any loss or damage to the Cargo or loss to the Shipper caused by delay, unless the damage resulted from an act or omission of the Carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
34. Unless the Carrier intentionally or recklessly destroys or damages the Cargo as described in paragraph 33, the amount of money the Carrier has to pay is limited to:
  - \$2,500 per package or unit of Cargo lost or damaged; or
  - Where the cargo is a motor vehicle, \$3.50 per kilogram of the motor vehicle lost or damaged, up to the lesser of the amount of the damage, the value of the Motor vehicle or \$70,000.
35. The Carrier has the right to abandon, destroy or damage Cargo without responsibility to pay the Shipper if this is necessary to save the ship and the rest of the Cargo. The Carrier only has this right if the Carrier gives notice to the Shippers of General Average. General Average will be adjusted in Canada under the York-Antwerp Rules 1974 as amended 1994. The Carrier must agree to a non-separation agreement and a Bingham clause acceptable to the Government of Nunavut as part of any General Average it declares. The Carrier agrees it will not seize or lien any Cargo or begin any legal proceeding in rem against the Cargo as security for Shippers' contribution to General Average until the Government of Nunavut and the Carrier first agree on a system to fund security for Shippers' contribution to General Average. If the Carrier's failure to follow its responsibilities under this contract caused or contributed to the situation of danger leading to General Average, the Carrier must, after General Average is adjusted, refund all or part of the Shippers' contribution to General Average to the Shippers or the persons giving security on the Shippers' behalf.

### ***Making claims under this contract***

36. If damage to Cargo is foreseen before the carrying ship reaches a discharge port, or Cargo is seen to be damaged at the time of discharge, the Shipper and Carrier agree to co-operate to make a joint inspection and keep records of the damage.
37. If a Shipper believes Cargo, the Shipper must give notice of claim to the Carrier within 30 days of the discharge of the Cargo for concealed damage, or

within 10 days for damage which can be seen on the outside of the Cargo. If the Shipper believes that the Cargo has been lost by the Carrier, notice of claim to the carrier must be made within 30 days of the date lost Cargo was scheduled to be discharged.

38. Any and all claims by a Shipper against a Carrier must be brought in accordance with the Sealift Claims Handling Rules which are annexed to these Conditions of carriage as Appendix A.
39. This Contract is governed by Canadian Maritime Law.

## **PART OF ARTICLE IV WORDING AND MODIFIED ARTICLE IV bis WORDING OF HAGUE-VISBY RULES INCLUDED AS PART OF THIS CONTRACT**

### **Rights and Immunities**

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.  
  
Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
  - (a) 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;
  - (b) fire, unless caused by the actual fault or privity of the carrier;
  - (c) perils, dangers and accidents of the sea or other navigable waters;
  - (d) act of God;
  - (e) act of war;
  - (f) act of public enemies;
  - (g) arrest or restraint of princes, rulers or people, or seizure under legal process;
  - (h) quarantine restrictions;
  - (i) act or omission of the shipper or owner of the goods, his agent or representative;
  - (j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
  - (k) riots and civil commotions;
  - (l) saving or attempting to save life or property at sea;

(m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;

(n) insufficiency of packing;

(o) insufficiency or inadequacy of marks;

(p) latent defects not discoverable by due diligence;

(q) any other cause arising without the actual fault and privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.
4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting there from.
5. (a) *Wording in first clause of Article 5(a) not included in this contract.*

Neither the Carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding \$2,500 per package or unit; or

Where the Cargo is a motor vehicle, \$3.50 per kilogram of the motor vehicle lost or damaged, up to the lesser of the amount of damage, the value of the motor vehicle or \$70,000.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the cargo manifest as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on the date to be determined by the law of the Court seized of the case. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the

method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions.

(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) *Not included as part of this contract*

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper *Phrase not included as part of this contract*

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

## **ARTICLE IV BIS**

### **Application of Defences and Limits of Liability** *Added words in italics*

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a *contractor*, servant or agent of the carrier, such *contractor*, servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.
3. The aggregate of the amounts recoverable from the carrier, and such *contractors*, servants and agents, shall in no case exceed the limit provided for in these Rules.
4. Nevertheless, a *contractor*, servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the *contractor*, servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.