

**Articles 1 to 8 of the Amended Hague Rules**

**As incorporated into the Birdon Conditions of Contract**

**ARTICLE 1**

1. In these Rules, the following words are employed, with the meanings set out below:

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

(aa) "Consignment note" means a non-negotiable document that:

(i) contains or evidences a contract of carriage by sea in connection with which no bill of lading or similar document of title has been issued;

(ii) clearly states that no liability for any loss of, damage to or delay of the goods will be accepted by the carrier of the goods; and

(iii) is clearly marked as being non-negotiable.

(b) "Contract of carriage" means a contract of carriage covered by a sea carriage document (to the extent that the document relates to the carriage of goods by sea), and includes a negotiable sea carriage document issued under a charterparty from the moment at which that document regulates the relations between its holder and the carrier concerned.

(ba) "Data message" means information generated, stored or communicated by electronic, optical or analogous means (including electronic data interchange, electronic mail, telegram, telex or telecopy) even if the information is never reproduced in printed form.

(c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals.

(d) "Ship" means any vessel used for the carriage of goods by sea.

(e) "Carriage of goods by sea" covers the period during which a carrier is in charge of the goods, according to paragraph 3 of this Article.

(f) "Negotiable sea carriage document" means:

(i) a bill of lading (other than a bill of lading that, by law, is not negotiable); or

(ii) a negotiable document of title that is similar to a negotiable bill of lading and that contains or evidences a contract of carriage of goods by sea.

(g) "Sea carriage document" means:

(i) a bill of lading; or

(ii) a negotiable document of title that is similar to a bill of lading and that contains or evidences a contract of carriage of goods by sea; or

(iii) a bill of lading that, by law, is not negotiable; or

(iv) a non-negotiable document (including a consignment note and a document of the kind known as a sea waybill or the kind known as a ship's delivery order) that either contains or evidences a contract of carriage of goods by sea.

[NOTE: These Rules do not apply to all sea carriage documents—see Article 10.]

(h) “Writing” includes electronic mail, electronic data interchange, facsimile transmission, and entry in a database maintained on a computer system.

2. For these Rules, goods are taken to be delivered to the consignee when they are delivered to, or placed at the disposal of:

- (a) the consignee; or
- (b) an authority to which the goods are required by law to be delivered; or
- (c) a person authorised by the consignee to take delivery of the goods.

3. For these Rules:

- (a) a carrier begins to be in charge of goods at the time the goods are delivered to the carrier (or an agent or servant of the carrier) within the limits of a port or wharf; and
- (b) the carrier ceases to be in charge of the goods at the time the goods are delivered to, or placed at the disposal of, the consignee within the limits of the port or wharf that is the intended destination of the goods.

4. For these Rules, the limits of a port or wharf in Australia are the limits of:

- (a) the area within the limits fixed for the port or wharf by the Comptroller-General of Customs under paragraph 15 (1) (a) or (2) (a) of the Customs Act 1901; and
- (b) any terminal area used for cargo handling that has a common boundary with the area within the limits mentioned in paragraph (a).

5. However, if the Minister is satisfied that, for a particular port or wharf, the limits worked out as set out in paragraph 4 of this Article may produce an anomalous result, the Minister may by instrument determine the limits of the port or wharf for these Rules.

6. For these Rules, the limits of a port or wharf outside Australia are the limits fixed by any local law (including any terminal area used for cargo handling that has a common boundary with the area within those limits).

## **ARTICLE 1A**

1. These Rules apply, with any necessary changes, to a sea carriage document in the form of a data message in the same way as they apply to such a document in printed form.

2. Without limiting paragraph 1, for these Rules in their application to such sea carriage documents:

- (a) a sea carriage document is issued when a data message is generated in a way that constitutes issue of such a document within the system being used by the parties to the relevant contract of carriage; and
- (b) a sea carriage document is transferred when a data message is generated in a way that constitutes transfer of the sea carriage document within the system being used by the parties to the relevant contract of carriage.

## **ARTICLE 2**

1. Subject to the provisions of this Article and Articles 6 and 6A, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care

and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities, set out in these Rules.

2. For paragraph 1 of this Article, “goods” includes goods (except live animals) carried on or above deck.

3. However, if the shipper has specific stowage requirements for goods carried on or above deck, then, for paragraph 1 of this Article to apply, the shipper must tell the carrier in writing of those requirements at or before the time of booking the cargo.

4. Despite Article 4<sup>bis</sup>, if a carrier carries goods on or above deck contrary to an express agreement with the shipper of the goods made at or before the time of booking the cargo, then, for any loss or damage to the goods that results solely from the goods being carried on or above deck, the carrier is not entitled:

(a) to any exception or exemption under these Rules; or

(b) to any limit provided by these Rules to its liability for the loss or damage.

[NOTE: Article 6A allows a shipper and a carrier to agree that these Rules do not apply to certain kinds of cargo that must be carried on deck—see that Article.]

### **ARTICLE 3**

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—

(a) Make the ship seaworthy.

(b) Properly man, equip and supply the ship.

(c) 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.

2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a sea carriage document showing among other things—

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the sea carriage document any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a sea carriage document shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). However, proof to the contrary shall not be admissible in the case of a negotiable sea carriage document that has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the sea carriage document.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6<sup>bis</sup> the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered.

This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6<sup>bis</sup>. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the sea-carriage document to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" negotiable sea carriage document, provided that if the shipper shall have previously taken up any sea carriage document for such goods, he shall surrender the same as against the issue of the "shipped" negotiable sea carriage document, but at the option of the carrier a negotiable sea carriage document may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article 3, shall for the purpose of this article be deemed to constitute a "shipped" negotiable sea carriage document.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connexion with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

#### **ARTICLE 4**

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 in accordance with the provisions of paragraph 1 of Article 3. 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 or 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.

[NOTE: For the liability of a carrier for loss caused by delay, see Article 4A.]

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 therefrom.

5.

(a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the sea carriage document, 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 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(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 sea carriage document 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 a 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. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in these Rules to be applied in its territory shall be fixed as follows:

(i) in respect of the amount of 666.67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 10,000 monetary units;

(ii) in respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900'. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in sub-paragraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

(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) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the sea carriage document, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(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 in the sea carriage document.

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 4A**

1. Despite Article 4, a carrier is liable to a shipper for loss (including but not limited to, pure economic loss, loss of markets or deterioration) caused to the shipper by the shipper's goods being delayed while the carrier is in charge of the goods unless the carrier establishes, on the balance of probabilities, that:

(a) the delay was excusable; and

(b) the carrier (or, if at the time of the delay, the goods were under the control of servants or agents of the carrier, those servants or agents) took all measures that were reasonably required to avoid the delay and its consequences.

[NOTE: For the meaning of "in charge of the goods", see paragraph 2 of Article 1.]

2. For this Article, goods have been delayed if they are not delivered at the port of discharge specified in the relevant contract for carriage of goods:

(a) within the time allowed in the contract for that purpose; or

(b) if the contract does not specify a time for that purpose—within a reasonable time for delivery, at that port, of similar goods carried by a diligent carrier (having regard to any particular circumstances of the case and the intentions of the shipper and the carrier).

[NOTE: For the meaning of "delivered", see paragraph 1A of Article 1.]

3. For paragraph 1 (a) of this Article, a delay is excusable only if:

(a) it is caused by a deviation authorised by the shipper, or by a term in the contract of carriage; or

(b) it is caused by circumstances beyond the reasonable control of the carrier or its servants or agents; or

(c) it is reasonably necessary to comply with an express or implied warranty; or

(d) it is reasonably necessary for the safety of the ship or its cargo; or

(e) it is for the purposes of saving human life or aiding a ship in distress; or

(f) it is reasonably necessary for the purpose of obtaining medical or surgical aid for a person on board; or

(g) it is caused by barratrous conduct of the master or crew; or

(h) paragraph 4 of this Article applies.

4. For paragraph 1 (a) of this Article, a delay caused by industrial action is excusable if the industrial action was not substantially caused, or substantially contributed to, by unreasonable conduct of the carrier.
5. For paragraph 4, conduct of servants or agents of the carrier is not taken to be conduct of the carrier if the servants or agents engaged in the conduct without the carrier's express or implied authority.
6. The quantum of the carrier's liability for loss caused by the delay is limited to whichever is the lesser of:
  - (a) the actual amount of the loss; or
  - (b) two and a half times the sea freight payable for the goods delayed; or
  - (c) the total amount payable as sea freight for all of the goods shipped by the shipper concerned under the contract of carriage concerned.
7. To avoid doubt, nothing in Article 4 or this Article prevents a carrier being liable to a shipper under both Article 4 and this Article.

#### **ARTICLE 4<sup>bis</sup>**

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 servant or agent of the carrier (such servant or agent not being an independent contractor), such 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 servants and agents, shall in no case exceed the limit provided for in these Rules.
4. Nevertheless, a 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 servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

#### **ARTICLE 5**

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these Rules, provided such surrender or increase shall be embodied in the sea carriage document issued to the shipper. The provisions of these Rules shall not be applicable to charter parties, but if negotiable sea carriage documents are issued in the case of a ship under a charter party they shall comply with the terms of these Rules. Nothing in these rules shall be held to prevent the insertion in a sea carriage document of any lawful provision regarding general average.

#### **ARTICLE 6**

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea.

However:



- (a) the terms so agreed must be set out in a receipt or consignment note; and
- (b) the receipt or consignment note must be, and must be marked as being, non-negotiable; and
- (c) the receipt or note must state that no other sea carriage document has been, or will be, issued for the carriage.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

#### **ARTICLE 6A**

1. A shipper of goods and the carrier of the goods may agree in writing, at or before the time the cargo is booked, that these Rules do not apply to the carriage of the goods if:

- (a) the goods must be carried on deck; and
- (b) the character or condition of the goods reasonably justifies a special agreement regarding the carriage of the goods on deck.

2. In paragraph 1, goods:

- (a) does not include containerised goods (that is, goods that are carried in or on cellular equipment that is capable, after the goods are loaded into or onto it, of being carried in the standard cell guides of a cellular container ship, whether or not the equipment in or on which the goods are loaded is carried within such cell guides during its carriage by sea); and
- (b) includes breakbulk cargo (including breakbulk cargo that is too large to fit into the standard cell guides of a cellular container ship even if cellular equipment of some kind is used to carry it).

[NOTE: The standard cell guides of a cellular container ship are designed primarily to hold containers measuring either 20 feet by 8 feet by 8 feet 6 inches, or 40 feet by 8 feet by 8 feet 6 inches (although they may be able to accommodate other kinds of standard cellular equipment).

3. An agreement under this Article has effect only if the sea carriage document for the carriage of the goods bears a statement endorsed on its face that the shipper and the carrier have entered into it.

4. This Article applies to all shipments of goods referred to in paragraph 1, including ordinary commercial shipments made in the ordinary course of trade.

#### **ARTICLE 7**

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connexion with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the ship on which the goods are carried by sea.

#### **ARTICLE 8**

These Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.