

## **EUCON WAYBILL**

### **I GENERAL PROVISIONS**

#### **1. Applicability**

The provisions of this Contract shall apply irrespective of whether there is a unimodal or a Multimodal Transport Contract involving one or several modes of transport.

#### **2. Definitions**

*"Multimodal Transport Contract"* means a single Contract for the carriage of Goods by at least two different modes of transport. *"Eucon Waybill"* (Waybill) means this document evidencing a Multimodal Transport Contract and which can be replaced by electronic data interchange messages insofar as permitted by applicable law and is issued in a non-negotiable form clearly indicating a named Consignee.

*"Eucon Shipping and Transport Ltd."* (Eucon) means the person named on the face hereof who concludes a Multimodal Transport Contract and assumes responsibility for the performance thereof as a Carrier.

*"Carrier"* means the person who actually performs or undertakes to perform the carriage, or part thereof, whether he is identical with Eucon or not.

*"Merchant"* includes the Shipper, the Receiver, the Consignor, the Consignee and the owner of the Goods.

*"Consignor"* means the person who concludes the Multimodal Transport Contract with Eucon and/or any party who committed himself to pay the freight due under this Multimodal Transport Contract.

*"Consignee"* means the person entitled to receive the goods from Eucon.

*"Taken in charge"* means that the Goods have been handed over to and accepted for carriage by Eucon.

*"Delivery"* means

i) the handing over of the Goods to the Consignee; or  
ii) the placing of the Goods at the disposal of the Consignee in accordance with the Multimodal Transport Contract or with the law or usage of the particular trade applicable at the place of delivery; or  
iii) the handing over of the Goods to an authority or other third party to whom, pursuant to the law or regulation applicable at the place of delivery, the Goods must be handed over.

*"Special Drawing Rights"* (SDR) means the unit of account as defined by the International Monetary Fund. *"Goods"* means any property including live animals as well as containers, reefer containers, bulk containers, tank containers, pallets, flatracks, trailers covered or uncovered flats or similar articles of transport or packaging not supplied by Eucon, irrespective of whether such property is to be or is carried on or under deck.

#### **3. Time Bar**

Eucon shall, unless otherwise expressly agreed, be discharged of all liability under this Waybill unless suit is brought within nine months after:

i) the Delivery of the Goods; or  
ii) the date when the Goods should have been delivered.

#### **4. Law and jurisdiction**

This Contract shall be governed by and construed in accordance with English law.

Any dispute arising out of or in connection with this Contract, involving amounts in excess of €50,000 (Euros

(Fifty Thousand) shall be subject to the exclusive jurisdiction of the High Court in London.

Any dispute arising out of or in connection with this Contract involving amounts up to and including €50,000 (Euros Fifty Thousand) shall be referred to arbitration by a single arbitrator in London in accordance with the provisions of the London Maritime Arbitrators Association (LMAA) Small Claims Procedure current at the time that arbitration proceedings are commenced.

### **II PERFORMANCE OF THE CONTRACT**

#### **5. Methods and Routes of Transportation**

1) Eucon is entitled to perform the transport and all services related thereto in any reasonable manner and by any reasonable means, methods and routes.

2) In accordance herewith, for instance, in the event of carriage by sea, vessels may sail with or without pilots, undergo repairs, adjust equipment, drydock and assist vessels in all situations.

#### **6. Optional stowage**

a) Goods may be stowed by Eucon by means of containers, reefer containers, bulk containers, tank containers, pallets, flatracks, trailers, covered or uncovered flats, pallets or similar articles of transport used to consolidate Goods.  
b) Containers, reefer containers, bulk containers, tank containers, flatracks, trailers and covered or uncovered flats, whether stowed by Eucon or received by them in a stowed condition, may be carried on or under deck without notice to the Merchant.

### **7. Delivery of the Goods to the Consignee**

Eucon undertakes to perform or to procure the performance of all acts necessary to ensure Delivery of the Goods, upon proof of his identity, to the person named as Consignee in the document or a person as instructed by the Consignor or by a person who has acquired the Consignor's or the Consignee's rights under the Multimodal Transport Contract to give such instructions.

### **8. Hindrances etc.**

#### **Affecting Performance**

- a) Eucon shall use reasonable endeavours to complete the transport and to deliver the Goods at the place designated for Delivery.
- b) If at any time the performance of the Contract as evidenced by this Waybill is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind, and if by virtue of sub-clause 8 a) Eucon has no duty to complete the performance of the Contract, Eucon (whether or not the transport is commenced) may elect to:
- i) treat the performance of this Contract as terminated and place the Goods at the Merchant's disposal at any place which Eucon shall deem safe and convenient; or
  - ii) deliver the Goods at the place designated for Delivery.
- c) If the Goods are not taken Delivery of by the Merchant within a reasonable time after Eucon has called upon him or his agents do so, and in any event within six weeks after discharge, Eucon shall be at liberty to put the Goods in safe custody on behalf of the Merchant at the latter's risk and expense, subject to the lien provisions of clause

19 hereof. Such storage shall constitute delivery for the purposes of Section III of this Waybill.

d) In any event Eucon shall be entitled to full freight for Goods received for transportation and additional compensation for extra costs resulting from the circumstances referred to above.

### **III Liability of Eucon**

#### **9. Basis of Liability**

- a) The responsibility of Eucon for the Goods under this Contract covers the period from the time Eucon has taken the Goods into its charge to the time of their Delivery.
- b) Subject to the defences set forth in clauses 10 and 11, Eucon shall be liable for loss of or damage to the Goods if the occurrence which caused the loss or damage took place while the Goods were in its charge as defined in sub-clause 9 a), unless Eucon proves that no fault or neglect of its own, its servants or agents or any other person referred to in sub-clause 9 c) has caused or contributed to the loss or damage.
- c) Eucon shall be responsible for the acts and omissions of its servants or agents, when any such servant or agent is acting within the scope of his employment, or of any other person of whose services it makes use for the performance of the Contract, as if such acts or omissions were their own.
- d) Eucon shall not be liable for consequential loss, other than loss of or damage to the goods, except in so far as mandatory rules to this effect are applicable.
- e) If Eucon is held liable in respect of delay, consequential loss or damage other than loss of or damage to the Goods,

Eucon's liability shall be limited to an amount not exceeding the equivalent of the freight for the relevant unit or units under the Multimodal Transport Contract or the value of the Goods, whichever is the lesser.

#### **10. Defences for Carriage by Sea or Inland Waterways**

Notwithstanding the provisions of Clause 9 b), Eucon shall not be responsible for loss, damage or delay in Delivery with respect of Goods carried by sea or inland waterways when such loss, damage or delay during such carriage results from:

- i) act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the vessel;
- ii) fire, unless caused by the actual fault or privity of the Carrier;
- iii) the causes listed in the Hague-Visby Rules article 4; however, always provided that whenever loss or damage has resulted from unseaworthiness of the vessel, Eucon can prove that due diligence has been exercised to make the vessel seaworthy at the commencement of the voyage.

#### **11. Limitation of Liability**

a) Unless the nature and value of the Goods have been declared by the Consignor before the Goods have been taken in charge by Eucon and inserted in the Waybill, Eucon shall in no event be or become liable for any loss or damage to the Goods in an amount exceeding the equivalent of 666.67 SDR per package or unit or two SDR per kilogramme of gross weight of the Goods lost or damaged, whichever is the higher.

b) Where a container, flatbed, tank container, pallet or similar article of transport is loaded with more than one package or unit, the packages or other shipping units enumerated in the Waybill, as packed in such article of transport shall be considered the package or unit. Except as aforesaid, such article of transport shall be considered the package or unit.

c) In any case, when the loss of or damage to the Goods occurred during one particular stage of the Multimodal Transport, in respect of which an applicable international convention or mandatory national law would have provided another limit of liability if a separate contract of carriage had been made for that particular stage of transport, then the limit of Eucon's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory national law.

d) In Multimodal Transport, if the stage of carriage where loss or damage to the Goods occurred cannot be determined, or is known but no international convention or national law applies, compensation shall be calculated in accordance with sub-clause 11 a) above.

e) The aggregate liability of Eucon shall not exceed the limits of liability for total loss of the Goods.

**12. Notice of Loss of or Damage to the Goods**

a) Unless notice of loss or damage to the Goods, specifying the general nature of such loss or damage, is given in writing by the Consignee to Eucon when the Goods are handed over to the Consignee, such handing over is prima facie evidence of the Delivery by

Eucon of the Goods as described in the Waybill.

b) Where the loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within seventy two (72) consecutive hours after the day when the Goods were handed over to the Consignee.

**13. Defences and Limits for Eucon, Servants, etc.**

a) The provisions of this Contract shall apply to all claims against Eucon relating to the performance of the Multimodal Transport Contract, whether the claim be founded in contract or in tort.

b) The Merchant undertakes that no claim shall be made against any servant, agent or other persons whose services Eucon has used in order to perform this Multimodal Transport Contract and if any claim should nevertheless be made, to indemnify Eucon against all consequences thereof.

c) The provisions of this Contract apply whenever claims relating to the performance of the Multimodal Transport Contract are made against any servant, agent or other person whose services Eucon have used in order to perform the Multimodal Transport Contract, whether such claims are founded in contract or in tort and such persons shall be entitled to avail themselves of the defences and limits of liability which Eucon is entitled to invoke under this Contract, as if they were made expressly for their benefit. In entering into this Contract, Eucon, to the extent of such provisions, do so not only on their own behalf, but also as agent or trustee for such persons.

d) The aggregate liability of Eucon, its servants, agents or other persons whose services Eucon has used in order to perform this Multimodal Transport Contract shall not exceed the limits in Clause 11.

**IV DESCRIPTION OF GOODS**

**14. Description of the Goods**

a) The Consignor warrants the accuracy and compliance with local and international regulations of the particulars furnished by him relating to the Goods, their marks, number, quantity, volume and weight and shall indemnify Eucon against any loss, damage, or expense arising or resulting from any inaccuracies, inadequacies or non-compliance of such particulars.

b) In the absence of reservation by Eucon, any statement in the Waybill or similar document as to the quantity or condition of the Goods shall as between Eucon and the Merchant be prima facie evidence of receipt of the Goods as so stated.

c) The Consignor shall remain liable even if the Goods have been delivered.

**15. Return of Containers**

a) Containers, reefer containers, bulk containers, tank containers, pallets, flatracks, trailers, covered or uncovered flats or similar articles of transport supplied by or on behalf of Eucon shall be returned to Eucon in the same order and condition as handed over to the Merchant, normal wear and tear excepted, with interiors clean and within the time prescribed by Eucon's tariffs or elsewhere.

b) (i) The Consignor shall be liable for any loss of, damage to, or delay, including demurrage, of such

articles, incurred during the period between handing over to the Consignor and return to Eucon for carriage.

(ii) The Consignor and the Consignee shall be jointly and severally liable for any loss of, or damage to, or delay, including demurrage, of such articles, incurred during the period between handing over to the Consignee, and return to Eucon.

c) Lashing and stowing material provided by Eucon shall be returned within seventy two (72) hours from the moment the cargo is taken in charge by the Consignee at the discharge port. In default thereof the Merchant shall pay a charge of € 50.00 per day pro rata until the lashing and stowage materials are returned to Eucon.

#### **16. Dangerous Goods**

a) The Consignor shall comply with all internationally recognised requirements and all rules which apply according to national law or by reason of international convention, relating to the carriage of Goods of a dangerous nature, and shall in any event inform Eucon in writing of the exact nature of the danger before Goods of a dangerous nature are taken in charge by Eucon and indicate to them, if need be, the precautions to be taken.

b) If the Consignor fails to provide such information and Eucon is unaware of the dangerous nature of the Goods and the necessary precautions to be taken and if, at any time, they are deemed to be a hazard to life or property, they may at any place be unloaded, destroyed, or rendered harmless, as circumstances may require, without compensation and the Consignor shall be liable for

all loss, damage, delay or expenses arising out of their being taken in charge, or their carriage, or of any service incidental thereto.

The burden of proving that Eucon knew the exact nature of the danger constituted by the carriage of the said Goods shall rest upon the claimant.

c) Eucon may refuse to load dangerous Goods if they are not accompanied by a correctly completed "Dangerous Goods Declaration", without any liability whatsoever to the Merchant.

d) If any Goods shipped with the knowledge of the Carrier as to their dangerous nature shall become a danger to the vessel 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 Eucon.

#### **17. Packing and Stowing of Containers etc.**

a) If a container has not been filled, packed or stowed by or on behalf of Eucon, Eucon shall not be liable for any loss of or damage to its contents and the Consignor shall indemnify any loss or expense incurred by Eucon if such loss, damage or expense has been caused by:

(i) negligent filling, packing or stowing of the container;  
(ii) the contents being unsuitable for carriage in container; or  
(iii) the unsuitability or defective condition of the container unless the container has been supplied by Eucon and the unsuitability or defective condition would not have been apparent upon reasonable inspection at or prior to the time when the container was filled, packed or stowed.

b) The provisions of sub-clause a) of this clause also apply with respect to reefer containers, bulk containers, tank containers, flatracks, trailers, covered or uncovered flats and pallets which have not been filled, packed or stowed by Eucon.

c) Eucon does not accept liability for damage due to the unsuitability or defective condition of reefer equipment or trailers supplied by the Merchant.

d) If the Goods accepted for transportation are containers, the contents having been packed and stowed inside the container by or on behalf of Eucon or its servants or agents:

i) Eucon shall be deemed to be acting as the agent of the Merchant and shall not be liable in the event of loss of or damage to any of the Goods directly or indirectly caused by the manner in which the contents have been packed and/or stowed inside the container(s) or by the unsuitability of the contents for container carriage or by the unsuitability or defective condition of the container;  
ii) the Merchant hereby agrees to indemnify Eucon against any loss which Eucon may incur on account of personal injury or loss of or damage to any property, including but not limited to the container itself, due to the manner in which the contents have been packed and/or stowed inside the container or due to the unsuitability or defective condition of the container;  
iii) the Merchant further agrees to indemnify Eucon against any additional expenses, fines, duties and taxes which Eucon may incur by reason of errors or omissions in the marks, numbers or descriptions of the container or its contents.

e) i) The Merchant undertakes not to tender for transportation any Goods which require refrigeration or heating without previously giving written notice of their nature and particular temperature range to be maintained and in case of a refrigerated or heated container packed by or on behalf of the Merchant, further warrants and undertakes that the Goods have been properly, and at such correct temperature, stowed in the container and that its thermostatic controls have at all material times been appropriately set by him before or at the time of receipt of the Goods by the Carrier.

If the above requirements are not complied with, the Carrier shall not be liable for any loss of or damage to the Goods, howsoever arising.

ii) The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, derangement, breakdown, stoppage of the refrigerating or heating machinery, plant, insulation and/or apparatus of the container, vessel, conveyance and any other facilities whatsoever or for any delay in providing a suitable electricity supply to the unit's refrigeration plant provided that the Carrier shall before or at the beginning of the transport check that the temperature setting of the container accords with the Merchant's written instructions.

## **V FREIGHT AND LIEN**

### **18. Freight**

a) Freight shall be deemed earned when the Goods have been taken into charge by Eucon and shall be paid in any event, in full without any counterclaim or deduction.

b) For the purpose of verifying the freight basis,

Eucon reserves the right to have the contents of containers, trailers or similar articles of transport inspected in order to ascertain the weight, measurement, temperature of the cargo (if applicable), value, or nature of the Goods.

If on such inspection it is found that the declaration is not correct, it is agreed that a sum equal either to five times the difference between the correct freight and the freight charges or to double the correct freight less the freight charges, whichever sum is the smaller, shall be payable as liquidated damages to Eucon notwithstanding any other sum having been stated on this Waybill as the freight payable.

c) All dues, taxes and charges levied on the Goods and other expenses in connection therewith shall be paid by the Merchant.

### **19. Lien**

Eucon shall have a lien on the Goods and may enforce such lien in any reasonable manner, including sale or disposal of the Goods by public auction or otherwise (i) for any amount due under this Contract; and (ii) in respect of any previously unsatisfied amounts of the same nature; including but not limited to all freight, charges and expenses of whatever kind and nature and for the costs of recovering the same including the costs and expenses of exercising such a lien and such sale. Such lien and liability shall endure notwithstanding that the Goods have been landed, stored or otherwise dealt with and if on the sale of the Goods the proceeds fail to realise the amount due to Eucon, Eucon shall be entitled to recover the

difference from the Merchant.

## **VI MISCELLANEOUS PROVISIONS**

### **20. General Average**

a) General Average shall be adjusted at any port or place at Eucon's option and be settled according to the York-Antwerp Rules 1994, in respect of all Goods, whether carried on or under deck.

The New Jason Clause as approved by BIMCO to be considered as incorporated herein.

b) Such security including a cash deposit as Eucon may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon, shall, if required, be submitted to Eucon prior to Delivery of the Goods.

### **21. Both-to-Blame Collision Clause**

The Both-to-Blame Collision Clause as adopted by BIMCO shall be considered incorporated herein.