

HIGHLANDER MARINE SERVICES LTD - STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

"Highlander" shall include Highlander Marine Services Ltd., its management, directors, officers, crew, servants, agents, and employees.

"Goods" shall include all cargo and objects being carried on a Vessel.

"Vessel" or "Vessels" shall include all Vessels owned, chartered, leased or operated by Highlander or its subcontractors and used for any service provided by Highlander.

"Customer" includes the party requesting Highlander's services and the shipper and owner of any Goods with respect to which Highlander provides services.

"Terms" means these Standard Terms and Conditions and any amendments thereto and agreed to by Highlander in writing.

2. SERVICES BEING PROVIDED

Highlander agrees to provide a Vessel or Vessels to carry the Customer's Goods from the port or place of sailing agreed upon to the anchorage or place of destination requested by the Customer. Unless specifically provided otherwise in a quote or agreement in writing and signed by Highlander, all services provided by Highlander including all services before and after the carriage of Goods, are subject to these Terms which the Customer must accept in order to receive any services from Highlander.

3. CUSTOMER'S WARRANTY OF AUTHORITY

The Customer, if not the owner of the Goods, expressly warrants that it has the full authority of the owner of the Goods to act on behalf of the owner of the Goods in entering into this Agreement, and in particular has the authority of the owner to contract on the credit of the Goods. The Customer, if not the owner of the goods further warrants that it has given or will give notice of the provisions of this clause and Liability/Indemnity clause herein to the owner.

4. COMMON CARRIER OBLIGATIONS EXCLUDED

Highlander is not and does not accept the responsibility of a common carrier.

5. PRIVATE CARRIAGE

Highlander's services are for the private carriage of Goods.

6. ALL CARRIAGE ON DECK UNLESS STATED OTHERWISE

It is understood and agreed that all Goods will be carried or stored on deck.

7. HAGUE VISBY RULES DO NOT APPLY

No Bills of Lading will be issued or deemed to be issued. The Hague-Visby Rules as enacted in the *Marine Liability Act* of Canada shall not apply to Highlander's services.

8. DANGEROUS GOODS

The Customer will give Highlander advance notice of any dangerous goods it wishes to ship. Highlander may, at its absolute discretion, refuse to ship any dangerous goods.

9. ENTITLEMENT TO FREIGHT

Any charges due hereunder shall be considered completely earned upon commencement of loading the Goods to the Vessel or Vessels, and shall be payable, Goods lost or not lost. Freight shall be paid on damaged or unsound Goods and any costs incurred by Highlander in repairing, or re-packing the Goods. All freight charges are the joint and several liability of the person requesting Highlander's service, the shipper and the owner.

10. METHOD AND PLACE OF DELIVERY

When the Goods are carried to a port or place where there is no wharfinger, warehouseman or other responsible person to receive the Goods on behalf of the Customer, the Customer or its representative shall be on hand to receive the Goods, and if not on hand, Highlander may deliver the Goods by unloading them and depositing them at any place deemed by Highlander's Master to be suitable for delivery of Goods at the place of destination; or, where appropriate.

11. DEVIATION

Any deviation by the Vessel or Vessels, of whatever nature and howsoever arising, shall not be deemed to be an infringement or breach of this Agreement.

12. CARGO INSURANCE

The Customer will obtain all risks marine cargo insurance on any Goods aboard the Vessel or Vessels in an amount equal to the full value of the Goods at destination. Each of the policies of insurance shall expressly waive subrogation against Highlander and the Vessel or Vessels and the Customer specifically waives any deductible or uninsured portion of any loss or claim.

13. LIABILITY/INDEMNITY

Highlander and the Vessel or Vessels, shall be not liable to the Customer for any loss or damage to the Goods, or delay in delivery or any other damage, loss or expenses of any nature whatsoever, however caused, including if caused by negligence of Highlander or unseaworthiness of the Vessel or Vessels.

The Customer shall indemnify Highlander and /or the Vessel or Vessels for any disputes, actions, causes of action, claims or demands made against Highlander for delay or damage, expense, or loss of any nature, sustained or incurred by the Customer or any person arising from the services provided hereunder, including lawyer's fees on a solicitor and own client basis and defence costs, regardless of whether the disputes, actions, causes of action, claims or demands arise out of or were caused, in whole or in part, by the negligence of Highlander or the unseaworthiness of the Vessel or Vessels.

14. GENERAL AVERAGE

General Average shall be payable according to the York-Antwerp Rules, 1994. In the event of accident, danger, damage or disaster, before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, Highlander is not responsible, by statute, contract, or otherwise, the Customer, jointly and severally, shall contribute with Highlander and the Vessel or Vessels in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the Goods. If a salving ship is owned or operated by Highlander, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

15. BOTH TO BLAME COLLISION CLAUSE

If the Vessel or Vessels come into collision with another ship as a result of the negligence of the other ship, and/or any act, neglect or default of Highlander in the navigation or in the management of the Vessel or Vessels, the Customer, jointly and severally, will indemnify Highlander against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the Customer, paid or payable by the other or non-carrying ship or her owners to the Customer and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the Vessel or Vessels. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact.

16. LIEN

Highlander shall have a particular and general lien on the Goods for all sums, including freight, due to Highlander either in respect of such Goods or for any general balance or other monies due to Highlander. The lien shall include interest on overdue amounts and the cost of exercising such lien. For the purpose of enforcing such lien, the Highlander may without notice sell the Goods by public auction or by private bailiff at the sole option of the Highlander. Should the sale of the Goods be insufficient to recover the full amount owing, the Customer remains liable for the deficiency.

17. CARE, CUSTODY AND CONTROL OF VESSEL

Where any Vessel is surrendered to the shipper or owner of the Goods, their servants, agents, contractors, or any other person for towing, loading, unloading or any other purpose, it is agreed that the Vessel and its contents are in the care, custody and control of the said shipper or owner and that the said shipper or owner accepts all risk and liability for loss or damage howsoever caused to the Vessel or to property of the shipper, consignee or owner of the said Goods or to the property of third parties in connection with the Vessel is surrendered or delivered to the shipper, consignee or owner of the said Goods until the time it is re-accepted by Highlander's Master.

18. LIMITATION OF LIABILITY

Should the exclusions of liability and/or indemnity provisions set out in these Terms be found to be inapplicable or ineffective, then it is agreed that the collective liability of Highlander and the Vessel or Vessels shall be limited to the lesser of (a) the Customer's invoice cost of the damaged or lost goods for any and all of their liabilities resulting from any one incident arising out of or relating to these Terms, or to the services provided by Highlander or the Vessel or Vessels or (b) Five hundred Canadian dollars.

19. FORCE MAJEURE

Highlander shall not be liable for loss or damage arising or resulting from saving or attempting to save life or property at sea, act of God, war or public enemies, strikes or lock-outs, or stoppage or restraint of labour from whatever cause.

21. FORUM SELECTION/CHOICE OF LAW AND TIME FOR SUIT

All disputes, actions, causes of action, claims or demands arising out of or relating to the services provided by Highlander or the Vessel or Vessels, even those involving carriage to or from the United States, shall be brought exclusively before the Provincial Court of British Columbia, the Supreme Court of British Columbia or the Federal Court of Canada and no other court shall have jurisdiction with regard to any such action. The law of Canada shall apply to interpretation and construction of these Terms and to any and all disputes, actions, causes of action, claims or demands arising out of or relating to the services provided by Highlander or the Vessel or Vessels. All disputes, actions, causes of action, claims or demands against Highlander or the Vessel or Vessels arising out of or relating to these Terms, or to the services provided by Highlander or the Vessel or Vessels, must be filed with either Court within One (1) year from the date that the Goods were delivered or ought to have been delivered, or the claim is extinguished.

22. OVERDUE ACCOUNTS

If not required to be paid in advance or upon delivery of the Goods, all charges for Highlander's services are due within 30 days of invoicing. Interest at the rate of 1.0% per month (12% per year) must be paid on all over due amounts.

23. Carriage of Passengers

Carriage of passengers and their luggage shall be pursuant to the terms of the *Marine Liability Act*, S.C. 2001, c. 6 and amendments thereto. Highlander shall not be responsible for any loss, damage or inconvenience suffered by any passenger resulting from late arrivals regardless of the cause. In accordance with Article 8 of Schedule II to the *Marine Liability Act*, it is agreed that the liabilities of Highlander to each passenger shall be subject to the following deductibles:

1. Damage to vehicle: 300 units; and
2. Damage or loss of luggage: 135 units.

(Revised February 2013)