

BILL OF LADING TERMS

Blue Eagle GmbH Consolidation Services

1. Definitions

- 1.1 "Bulk Goods" shall include any beverages or other liquids which are not bottled or in cartons or otherwise packaged for retail sale and which are carried or stored in a container, flexitank, isotank or similar transport container.
- 1.2 "Combined Transport" shall mean carriage covered by this Bill of Lading where the "Place of Receipt by Pre-Carrier" and/or the "Place of Delivery by On-Carrier" are indicated on the face of this Bill of Lading in the spaces so designated.
- 1.3 "Consignee" shall mean the person, body or corporate body to whom the Goods are to be delivered
- 1.4 "Carriage" shall mean any carriage performed by the Carrier under or covered by the terms of this Bill of Lading
- 1.5 "Carrier" shall mean Blue Eagle Consolidation Services GmbH.
- 1.6 "Freight" shall mean all monies of whatever nature howsoever payable by the Merchant to the Carrier
- 1.7 "Goods" shall mean any goods (including the packaging thereof) in relation to which the Carrier provides the Services.
- 1.8 "Merchant" shall mean the Shipper, the Consignee, the holder of the Bill of Lading, the owner of the Goods or any person, body or corporate body at whose request the Carrier provides Services, .
- 1.9 "Port-to-Port" carriage shall be any carriage which is not Combined Transport.

2 Application

- 2.1 All Carriage shall be subject to these conditions.
- 2.2 The Merchant warrants that it is either the owner of the Goods or that it is authorised by such owner to accept these conditions on behalf of the owner.
- 2.3 If the Carriage is subject to any compulsorily applicable legislation, regulations or directives, these conditions shall, in relation to such Carriage, be read subject to such legislation, regulations or directives.
- 2.4 Insofar as any clause or sub-clause of these conditions or any part thereof is held by a Court to be contrary to any compulsorily applicable legislation, regulation or directive or otherwise judged by a Court to be unlawful, void or unenforceable such clause or sub-clause shall, to the extent necessary, be severed from these conditions and rendered ineffective as far as possible without modifying the remaining provisions of these conditions.
- 2.5 Nothing in these conditions should be construed as a surrender by the Carrier of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under any compulsorily applicable legislation, regulations or directives.

3. Clause Paramount

- 3.1 The Hague Rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading, signed at Brussels on the 25th August 1924 as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation in the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the Hague Rules shall apply.
- 3.2 In trades where the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968 (The "Hague-Visby" Rules) compulsorily apply, the provisions of the legislation compulsorily applying the Hague-Visby Rules shall be considered to be incorporated into this Bill of Lading.
- 3.3 If the carriage covered by this Bill of Lading includes carriage from or to a port or place in the United States of America, this Bill of Lading shall be subject to the United States Carriage of Goods by Sea Act 1936 ("US COGSA"), the terms of which are incorporated herein and shall apply throughout the carriage by sea and during the time that the Goods are in the actual custody of the Carrier at the sea terminal in the United States of America before loading onto the vessel or after discharge therefrom, as the case may be.

4. Services

- 4.1 The Carrier shall have full liberty to subcontract all or any part of the Services on any terms whatsoever.
- 4.2 The Carrier shall, in its absolute discretion, decide on the means, route and method by which the Carriage is to be performed.
- 4.3 Without Prejudice to the generality of Clause 4.2 above, the Carrier may, without notice to the Merchant:
- (i) carry the Goods on or under deck;
 - (ii) load or carry the Goods aboard any vessel, whether named in this Bill of Lading or not;
 - (iii) Tranship cross pump or otherwise transfer any Goods to a different conveyance, container or similar transport unit at any time during the Carriage; or
 - (iv) at any time during the Carriage unpack and remove any Goods which may have been loaded in or on a trailer, container, pallet or similar transport unit.
- 4.4 The Goods shall be deemed to be delivered when they have been handed over or placed at the disposal of the Merchant or his agent in accordance with this Bill of Lading or when the Goods have been tendered for delivery at the usual place of delivery at the consignee's address within the usual local business hours or handed over to any authority or other party to whom, pursuant to the law, regulation or custom applicable at the place of delivery, the Goods must be handed over, or such other place at which the Carrier is entitled to call upon the Merchant to take delivery.
- 4.5 If the Consignee fails to take delivery of the Goods at the time and place when and where the Carrier is entitled to deliver or call upon the Merchant to take delivery:
- (i) the Carrier shall be entitled to arrange storage of the Goods as agent for the Merchant and the Carrier may contract for such storage on any terms whatsoever;
 - (iv) the Merchant shall be responsible for any costs or expenses of such storage and/or any Freight raised in relation thereto and in addition, the Merchant shall be responsible for arranging insurance in respect of the Goods; and
 - (v) the Carrier shall be entitled to dispose of or deal with (by sale or otherwise as may be reasonable in all the circumstances):
 - (a) after at least 14 days written notice to the Merchant (or where the Merchant cannot be traced and reasonable efforts have been made by the Carrier to contact any parties who may reasonably be supposed by the Carrier to have any interest in the Goods without notice), any Goods which have been stored in accordance with this clause for a period of 28 days or more and which cannot reasonably be delivered as instructed; and

- (b) without notice, any Goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Carrier or any third parties or to contravene any applicable laws or regulations.

5. Negotiability and Title

5.1 This Bill of Lading is issued in a negotiable form unless it is marked "non-negotiable". The holder of this Bill of Lading by endorsement shall be entitled to receive or to transfer the Goods and the Carrier shall be entitled to effect delivery to such holder.

5.2 This Bill of Lading shall be prima facie evidence of the receipt by the Carrier of the Goods as described in this Bill of Lading unless a contrary indication, such as "shipper's weight, load and count", "shipper packed container" or similar expressions, has been made on the Bill of Lading.

6. Dangerous Goods

6.1 Without prior written agreement by an authorised officer of the Carrier, the Carrier will not accept or deal with Goods which, by their nature, require special handling, carriage or security including, but not limited to, bullion, coin, precious stones or precious metals, jewellery, pictures, antiques, valuables, watches, human remains, livestock or plants. Should the Merchant cause the Carrier to handle or deal with such goods otherwise than under a prior written agreement, the Carrier shall have no liability whatsoever for any loss or damage suffered by or in relation to the Goods, howsoever caused.

6.2 If the Goods are dangerous or may become dangerous during the Carriage, the Merchant shall:

- (a) advise the Carrier in writing before the commencement of the Carriage of the exact nature of the Goods and of the danger and, if appropriate, any precautions to be taken by the Carrier to ensure that the Goods do not cause harm to any person, property or the environment;
- (b) ensure that the Goods, their packaging and any container, flexitank, isotank, trailer or other equipment supplied by the Merchant is clearly marked and labelled and that such marking and labelling and any packaging is in accordance with any applicable local law or regulations; and
- (c) comply with any legislation, conventions or regulations relating to the Carriage of such Goods.

6.3 Unless notice is given by the Merchant in accordance with Clause 6.2 above, the Merchant warrants that it will not tender for Carriage any Goods which are or might become dangerous or damaging to either themselves, goods, property, any person or the environment.

6.4 If, in the Carrier's reasonable opinion, the Merchant has or may have breached Clauses 6.2 and 6.3 above or the Goods may otherwise pose a risk to health, property or the environment:

- (a) the Carrier may, at the expense and risk of the Merchant and without liability to the Carrier destroy, dispose of, abandon, render harmless or otherwise deal with the Goods in any way in which the Carrier, in its absolute discretion considers appropriate;
- (b) the Merchant shall indemnify the Carrier from all and any claims, actions, indemnities, liabilities, expenses, losses, damages, costs, penalties or fines arising from or in relation to the Goods, the Carriage and the Carrier acting in accordance with Clause 6.4(a) above.

7. The Goods

- 7.1 The Merchant warrants that:-
- 7.1.1 The description and particulars of the Goods and any information supplied by the Merchant (including any information supplied by third parties on behalf of the Merchant) is full and accurate;
- 7.1.2 All Goods are packed and labelled and/or marked in a method which is suitable and appropriate having regard to the nature of the Goods and the anticipated Carriage;
- 7.1.3 Where the Goods are supplied already loaded in a container, flexitank, Isotank, trailer, or other transport unit, the Goods are properly loaded, stowed and secured therein and the container, flexitank, Isotank, trailer or other transport unit is in sound condition and suitable for the Carriage;
- 7.1.4 The Merchant has obtained all necessary permits, licenses or other permissions or documents required of the Merchant necessary for the intended carriage of the Goods.

8. Merchant's Undertakings

8.1 The Merchant agrees not to make any claim against any director, agent, employee or sub-contractor of the Carrier in connection with the Carriage whether or not such claim arises out of the negligence on the part of any of them. If, notwithstanding the provisions of this Clause, such a claim is made, whether by the Merchant or otherwise, every director, agent, employee or sub-contractor shall have the benefit of all provisions herein benefitting the Carrier as if such provisions were expressly for their benefit and in entering into this contract, the Carrier incorporates such provisions not only on its own behalf but also as agent and trustee for such directors, agents, employees and sub-contractors.

8.2 The Merchant shall save harmless and keep the Carrier indemnified from and against all liability, loss, damage, costs and expenses incurred by the Carrier (including, but not limited to, claims, demands, proceedings, fines, penalties and damages) arising out of:

- (i) the Carrier acting in accordance with the Merchant's instructions whether or not caused or contributed to directly or indirectly by any act, omission, neglect or default on the part of the Carrier and/ or its employees or agents;
- (ii) any act, omission or default on the part of the Merchant or any breach by the Merchant of any of the warranties or terms of these conditions; and
- (iii) any claims for general average made against the Carrier in relation to the Goods. The Merchant agrees to provide security for any general average claims to the Carrier or any other party designated by the Carrier, both promptly and in a form acceptable to the Carrier.

8.3 The Merchant shall save harmless and keep the Carrier indemnified from and against all claims, costs and demands whatsoever, howsoever arising and by whomsoever made or preferred, in excess of the liability of the Carrier under these conditions.

9. Merchant Packed Containers

9.1 If a Container (which, for the purposes of this clause shall include any container, flat rack or other open container, trailer, tank, flexitank or Isotank or other such transport unit) is packed by or on behalf of the Merchant:

9.1.1 The Carrier shall not be responsible for any loss or damage to the Goods or any other contents thereof arising from or in relation to:

- (a) the manner in which the Container has been packed or the Goods loaded or stowed therein;
- (b) the unsuitability of the Goods for carriage in the Container;
- (c) the unsuitability or defective condition of the Container;
- (d) the failure to set any thermostat, ventilation or other such controls or apparatus properly or at all.

9.1.2 If the Container was supplied by or on behalf of the Carrier Clause 9.1.1(c) shall only apply to exclude the liability of the Carrier insofar as the unsuitability or defective condition of the Container should have been apparent to the Merchant upon a reasonable inspection of the Container prior to or during loading.

9.1.3 The Merchant shall inspect Containers prior to and during packing and the use of the Container by the Merchant shall be prima facie evidence of it being fit for purpose and in good and sound condition.

10	Charges and Payment		
10.1	Unless otherwise stated in writing, any quotes provided by the Carrier:	12.2.4	Where the Merchant is unable to prove the stage of the carriage during which the loss, damage or delay occurred, the liability of the Carrier shall be determined in accordance with Clauses 12.3 to 12.9 below.
	(i) Shall be exclusive of VAT, except sales tax as appropriate ;	12.3.	The Carrier shall not be liable for any loss, damage or claims arising from or in relation to:
	(ii) Shall be exclusive of any taxes, levies, imposts, duties or other such costs or expenses raised upon the Goods; and		(i) Act of God;
	(iii) Shall, up to the time of shipment, be subject to variation to take into consideration increases in fuel charges, currency fluctuations, freight rates or other such expenses. If a quotation is so varied, the Carrier shall advise the Merchant as soon as practicable.		(ii) Consequences of war, invasion, act of foreign enemy, hostilities, civil war, riots, rebellion, insurrection, military or usurped power or confiscation, requisition or destruction of or damage to property by or under the order of any government or public or local authority;
10.2	Unless otherwise agreed in writing by an authorised officer of the Carrier and subject to Clause 10.3 below, all Freight shall be fully earned on receipt of the Goods and shall be non-returnable.		(iii) Seizure or forfeiture under legal process;
10.3	The Merchant acknowledges that Freight has been calculated by reference to particulars provided by the Merchant. The Merchant warrants the correctness of the declaration of contents, insurance, weight, measurements and value of the Goods but if these particulars are incorrect it is agreed that a sum equal to double the correct Freight less the Freight charged shall be payable as liquidated damages for loss of Freight to the Carrier. This clause is without prejudice to the Carrier's rights or remedies otherwise enforceable or recoverable in the event of the Merchant providing incorrect particulars.		(iv) Breach by the Merchant of a warranty or other obligation provided by the terms of these conditions;
10.4	The Merchant shall pay all sums due to the Carrier in cash or as otherwise agreed without reduction or deferment on account of any claim, counterclaim, set-off or abatement.		(v) Any other error, act or omission, misstatement or misrepresentation by the Merchant or other owner of the Goods or by servants or agents of either of them;
10.5	Freight and any other charges or sums payable to the Carrier shall be paid in the currency named in this Bill of Lading or, at the Carrier's option, in the currency of the country of dispatch or destination at the rate of exchange most favourable to the Carrier for bankers sight bills current for prepaid Freight on the day of dispatch and for Freight payable at destination on the day when the Merchant is notified on arrival of the Goods there or on the date of withdrawal of the delivery order, whichever rate is the most favourable to the Carrier, or at the option of the Carrier on the date of this Bill of Lading.		(vi) Inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods;
10.6	All duties, taxes and other charges or expenses arising in relation to the Goods shall be paid by the Merchant.		(vii) Insufficient or improper packing, labelling, addressing or, where performed by the Merchant or owner of the Goods or servants or agents of either of them, insufficient or improper loading, stowage and securing;
10.7	The Merchant shall be responsible for any demurrage charges raised in relation to any vessel or equipment used for the provision of the Carriage.	12.4	Where the Carrier can demonstrate that the loss, damage or claim could be attributable to one of the causes in clause 12.3 above, it shall be presumed that the loss, damage or claim was so caused. However, the Merchant shall be entitled to prove that the loss, damage or claim was not so caused.
10.8	The Merchant shall reimburse the Carrier in proportion to the amount of any Freight for any costs for deviation or delay or any other increase of costs of whatever nature arising from or in relation to one of the causes listed in Clause 12.3.	12.5	The Carrier gives no warranties or undertakings with regard to collection or delivery dates or times and is under no liability whatsoever for failure to adhere to any collection or delivery dates or times.
10.9	If any sum payable by the Merchant to the Carrier becomes overdue, interest will be charged at 2% above the Bank of England base rate from time to time in force and shall accrue at such rate after as well as before any judgment. Furthermore, the Merchant shall save harmless and keep the Carrier indemnified from and against all costs, liabilities, expenses, fines, penalties, claims or other losses of whatever nature arising by reason of such late payment.	12.6	The Carrier shall not in any circumstances be liable for any consequential loss whatsoever, howsoever arising, including, but not limited to, loss of profits (whether direct or consequential), goodwill, market share, future or anticipated sales, loss of production or factory "downtime", damages, costs and expenses incurred or payable by the Merchant to any third party or any other indirect or consequential loss.
10.10	Notwithstanding any agreement by Carrier to collect Freight, duties, taxes or any other sums of whatever nature from the Consignee or any other person, the Merchant shall remain liable to pay such sums to the Carrier.	12.7	For all claims whatsoever, howsoever arising the Carrier's liability shall not exceed:
11.	Lien	(a)	For claims for loss of or damage to Bulk Goods:-
11.1	The Carrier has a general lien on all goods, documents and money held by or on behalf of the Carrier which may be applied against any account or sums due from the Merchant or the owner of the Goods to the Carrier whatsoever. The Carrier also has a particular lien on all Goods, documents and money held by or on behalf of the Carrier.		(i) the value of the loss or damage; or
11.2	Upon the Carrier exercising its lien under Clause 11.1 above, storage charges shall apply to any Goods or documents held subject to the lien. Such storage charges shall be for the account of the Merchant.		(ii) a sum calculated at the rate of 300 SDR per metric tonne on the gross weight of the goods actually lost or damaged; or
11.3	Upon giving the Merchant at least 28 days written notice, the Carrier may sell, dispose of or otherwise deal with the Goods or documents as agent for and at the expense of the Merchant and apply the proceeds towards the payment of any sums due from the Merchant or the owner of the Goods to the Carrier.		(iii) a sum not exceeding 7,300 SDR for all Goods contained within any one container, flexitank, Isotank or similar transport container
11.4	Upon accounting to the Merchant for any balance remaining after payment of any overdue sums and the costs of and/or associated with the storage, sale, disposal and/or dealing with the Goods or documents, the Carrier shall be discharged from any liability whatsoever in respect of the Goods or documents.		whichever shall be the least.
11.5	The notice period for the sale, disposal or dealing with the Goods or documents in Clause 11.3 above shall not apply where the Goods are likely to perish, deteriorate or damage other goods or property or if the Carrier considers them to be a risk to life, health or the environment. In such circumstances, the right to sell, dispose or deal with the goods in Clause 11.3 shall arise immediately upon the sum becoming due. The Carrier shall take reasonable steps to notify the Merchant or other persons interested in the Goods or documents of its intention to sell, dispose or otherwise deal with the Goods or documents.	(b)	For claims for loss of or damage to all other Goods:-
11.6	The Carrier may apply any money held by the Carrier to the settlement of any sums due from the Merchant or owner of the Goods as the Carrier, in its absolute discretion, considers appropriate. The Carrier will, after satisfaction of all sums due from the Merchant or owner of the Goods, account to the Merchant for the balance of any money so held.		(i) the value of the loss or damage; or
12.	Liability		(ii) the sum of 2 SDR per kilo of the gross weight of the Goods lost or damaged,
12.1	<u>Port to Port Shipments</u>		whichever shall be the least.
12.1.1	If the Carriage covered by this Bill of Lading is Port-to-Port the Carrier's liability (if any) for loss, damage or delay to the Goods occurring from and during loading on to any vessel up to and during discharge from that vessel or from another vessel into which the Goods have been transhipped shall be determined in accordance with the Hague Rules or such other provisions as may be incorporated by Clause 3 above.	12.8	For the purposes of Clause 12.7, the value of the Goods shall be taken to be their value upon the taking over of the Goods by or on behalf of the Carrier.
12.1.2	The Carrier shall have no liability whatsoever howsoever arising for any loss or damage to the Goods (whether or not the Goods are in its actual or constructive possession) before loading or after discharge.	12.9	The Carrier may, at its discretion, agree to increase the limits of liability herein. The Carrier reserves the right to demand an additional charge for the Carriage if such an increase is agreed. Such an agreement must be made in writing and signed by an authorised officer of the Carrier.
12.1.3	If, and to the extent that, Clause 12.1.2 is contrary to any compulsory legislation, convention or law, the Carrier shall have the benefits of any rights, immunities, limits, exclusions and defences available to the Carrier in Clause 12.1.1 as if the loss or damage occurred at sea.	12.10	These Conditions apply to and govern all claims made against the Carrier arising from or in relation to the Carriage whether such claims are pursued in contract, tort, bailment or otherwise.
12.2	<u>Combined Transport</u>	13.	Claims
12.2.1	If the Carriage covered by this Bill of Lading is Combined Transport, the Carrier undertakes to perform and/or in his own name procure the performance of the carriage from the Place of Receipt by Pre-Carrier or the Port of Loading (as applicable) to the Place of Delivery or the Port of Discharge by On-Carrier (as applicable).	13.1	Unless the Merchant gives notice to the Carrier or its agent at the Port of Discharge or Place of Delivery by On-Carrier (as applicable) of the general nature of loss, damage or delay before or at the time of removal of the Goods or, if the loss or damage be not apparent, within 3 working days, such removal shall be conclusive evidence of the delivery of the Goods in accordance with and as described in this Bill of Lading.
12.2.2	The Carrier shall have no liability for loss, delay or damage whatsoever and howsoever caused to the Goods which occurs before the Goods are received by or on behalf of the Carrier or after delivery of the Goods to the Merchant or the Consignee or otherwise in accordance with the Merchant's instructions or the terms of this Bill of Lading.	13.2	The Carrier shall, in any event, be discharged from all liability whatsoever and howsoever arising unless suit is bought and written notice thereof is given to the Carrier within 9 months from:
12.2.3	If the Merchant can prove the stage of the carriage during which the loss, damage or delay occurred the liability of the Carrier shall be determined:		(i) The date of the event or occurrence alleged to give rise to the cause of action against the Carrier; or
	(a) by the provisions of any national law or international convention, the provisions of which cannot be departed from by private contract and which apply compulsorily to the relevant stage of the carriage;		(ii) Where the date of the aforementioned event or occurrence cannot be ascertained, the date of delivery or intended delivery of the Goods;
	(b) where the loss, damage or delay occurred during the carriage of the Goods aboard water borne craft (whether upon inland waterways, coastal routes or the high seas), by the provisions of Clause 12.1.1;	14.	Law and Jurisdiction
		14.1	These conditions and any contract or agreement between the Customer and the Company which is subject to these conditions and any dispute arising thereunder (including, but not limited to, disputes as to the validity of and effects of such agreement, these conditions or any part thereof and whether or not such disputes are pursued for breach of contract or duty in tort, bailment or otherwise) shall be construed and resolved in accordance with German law.
		14.2	The German courts shall have exclusive jurisdiction to hear and determine any dispute arising from or in relation to these conditions and any contract or agreement subject thereto (whether or not such disputes are pursued for breach of contract or duty in tort, bailment or otherwise) including, but not limited to, any dispute as to the validity or interpretation of the contract or agreement or of these conditions.