

**SEASPAN ULC STANDARD TERMS AND CONDITIONS
FOR THE CARRIAGE OF GOODS AND RELATED SERVICES**

THESE PROVISIONS CONTAIN TERMS THAT EXCLUDE AND LIMIT THE LIABILITY OF SEASPAN

1. DEFINITIONS

“**Cargo**” means any goods or property of any description whatsoever to be transported by water from one place to another.

“**Carriage Conditions**” means these Standard Terms and Conditions for the Carriage of Goods and Related Services.

“**Carriage Services**” means the transportation of Cargo by water from one place to another using Seaspan supplied Vessels and related services but does not include the use of a Seaspan tug to move or tow barges, ships or floating objects not owned, chartered, leased, operated or supplied by Seaspan and does not include ship docking or undocking services.

“**Customer**” means the party requesting Seaspan to provide Carriage Services and the shipper, owner and consignee of any Cargo (see cl.3 below).

“**Dangerous Cargo**” means any goods, article, substance or liquid specified in any applicable statute or regulation as a “dangerous good” or that is otherwise of a dangerous, inflammable, hazardous or noxious nature.

“**Loss or Damage**” means any physical, monetary or economic loss of any nature whatsoever, including without limiting the generality of foregoing: damages, awards and judgments for loss of or damage to Cargo or other property, personal or fatal injury, loss of use and lost profits; costs and expenses; and fines and penalties.

“**Seaspan**” means Seaspan ULC (and any successor corporate entity).

“**Vessel(s)**” means any and all tugs, barges or other watercraft owned, chartered, leased, operated or supplied by Seaspan and utilized to perform the Carriage Services.

2. SERVICES PROVIDED SUBJECT TO CONDITIONS All Carriage Services provided by Seaspan are subject to these Carriage Conditions, the terms of which may not be varied or amended except by written agreement signed by an authorized representative of Seaspan.

3. CUSTOMER’S WARRANTY OF AUTHORITY The Customer warrants that it is the owner of the Cargo or, if not the owner of the Cargo, the Customer warrants that it has the full authority of the owners of the Cargo to accept these Carriage Conditions on their behalf and agrees that the Customer and owners of the Cargo are bound jointly and severally by these Carriage Conditions. The Customer further warrants that it has authority to contract on the credit of the Cargo.

4. COMMON CARRIER OBLIGATIONS EXCLUDED The Customer acknowledges and agrees that Seaspan is not a common carrier and does not accept the responsibilities or liabilities of a common carrier. Seaspan does not bind itself to dispatch any Vessel(s) at advertised times or to guarantee the sailing or arrival of any Vessel(s) or Cargo.

5. PRIVATE CARRIAGE AND U.S. PORTS In respect of Carriage Services to or from a port or place in the United States of America, the services are for the private carriage of Cargo and neither the *U.S. Carriage of Goods by Sea Act* nor the *U.S. Harter Act* will apply.

6. DECK CARRIAGE It is understood and agreed that all Cargo will be stowed and carried on deck unless otherwise expressly agreed in writing.

7. HAGUE VISBY RULES DO NOT APPLY No Bills of Lading will be issued or deemed to be issued in respect of the Cargo and the Hague-Visby Rules as enacted in the *Marine Liability Act* of Canada, as amended, shall not apply to Carriage Services.

8. DANGEROUS CARGO The Cargo shall not contain any Dangerous Cargo unless the Customer has advised Seaspan in advance, in writing, of the presence of the Dangerous Cargo and Seaspan agrees to accept, in writing, the Dangerous Cargo. In any event, the Customer shall indemnify (including costs on a solicitor and client basis), defend and hold harmless Seaspan and the Vessel(s) in respect of any Loss or Damage incurred or arising in respect of Dangerous Cargo, howsoever caused, including if caused by the unseaworthiness of the Vessel(s) or the negligence of Seaspan.

9. LOADING, STOWING, DISCHARGE AND DELIVERY (a) The Cargo shall be properly and carefully stored, handled, assembled, loaded, stowed and unloaded/disassembled by the Customer, at the risk of the Customer and without any liability on the part of Seaspan. (b) In the event that Seaspan personnel participate in the storing, handling, assembly, loading, stowing or unloading/disassembly of the Cargo or provide advice, assistance or supervision in respect of same, the Customer shall nevertheless remain solely responsible and liable for the proper storing, handling, assembly, loading, stowing and unloading/disassembly of the Cargo. (c) The Customer or a representative of the Customer shall be available to receive the Cargo upon delivery. If the Customer or its representative is not available to receive the Cargo on delivery, Seaspan may, in its absolute discretion, and at the cost, risk and expense of the Customer: (i) unload the Cargo as agent of the Customer; or (ii) anchor or moor the Vessel(s) in which the Cargo is stowed and leave it/them unattended, in which case cl. 19 hereof shall apply.

10. SAFE BERTH WARRANTY The Customer shall provide and maintain safe and proper berths and moorings for the Vessel(s) for loading, unloading and standby, where the Vessel(s) can safely get and lie, always afloat at all stages of the tide at any port, berth, moorage, anchorage or place to which they are directed to proceed by the Customer.

11. DEVIATION Any deviation by the Vessel(s), of whatever nature and howsoever arising, shall not be deemed to be an infringement or breach of these Carriage Conditions.

12. CARGO INSURANCE The Customer shall, at its expense, obtain and maintain during the entire performance of the Carriage Services, insurance insuring the Cargo against “all risks” in an amount equal to the full value of the Cargo. The insurance shall add Seaspan as an additional insured and waive all rights of subrogation against Seaspan and any deductibles under the insurance shall be for the sole account of the Customer, without recourse against Seaspan.

- 13. RISK/EXCLUSION OF LIABILITY/INDEMNITY** (a) The Carriage Services are to be performed entirely at the risk of the Customer and without any liability on the part of Seaspan or the Vessel(s). (b) Seaspan shall not be liable to the Customer, or to any other party, for any Loss or Damage suffered or incurred by the Customer or third parties, howsoever caused, including if caused by the negligence of Seaspan or the unseaworthiness of any Vessel(s). (c) In the event a claim is made against Seaspan by a third party for Loss or Damage arising out of or relating in any way to the Carriage Services and regardless of whether the Loss or Damage claimed was caused by the breach of contract or negligence of Seaspan or the unseaworthiness of the Vessel(s), the Customer shall indemnify (including costs on a solicitor and client basis), defend and hold harmless Seaspan and the Vessel(s) in respect of such claim.
- 14. LIMITATION OF LIABILITY** Should the Customer suffer Loss or Damage not covered by the cargo insurance policy referenced in cl. 12, or if the provisions of cl. 13 are held to be inapplicable, inoperative or ineffective, or if Seaspan is otherwise liable to the Customer for breach of contract, negligence, failure to provide seaworthy Vessel(s) or on any other legal basis, the collective liability of Seaspan and the Vessel(s), shall be and is limited to Cdn.\$1,000 (One Thousand Canadian Dollars) and under no circumstances whatsoever can consequential loss including loss of use and loss of profits, market or business opportunity be claimed against Seaspan. No damages may be claimed for delay in the provision of the Towing Services.
- 15. HIMALAYA CLAUSE** Every exclusion from liability, limitation of liability, indemnity and defence applicable to Seaspan herein shall be available to and extend to the Vessel(s) and Seaspan's officers, directors, masters, crew, employees, servants, agents, and sub-contractors and, for this purpose, Seaspan acts as agent and trustee for and on behalf of those persons. Where the negligence of Seaspan is excluded in these Towing Conditions, the exclusion extends to the negligence of any of Seaspan's officers, directors, masters, crew, employees, servants, agents and subcontractors.
- 16. WORKERS COMPENSATION AND PRIME CONTRACTOR** (a) The Customer represents, warrants and agrees that all of its employees, servants, agents and subcontractors, who attend on board or nearby the Vessel(s) or are otherwise involved in the loading, unloading, stowing or securing of any Cargo, are "workers" within the meaning of the *Workers Compensation Act*, RSBC 1996 c.492 as amended, and that all such persons are covered by workers compensation in the event of personal injury or death. (b) While Vessel(s) are in the care, custody, and control of the Customer or while Cargo is being handled, assembled, loaded, stowed unloaded/disassembled or secured on or off the Vessel(s), the Customer is the Prime Contractor within the meaning of the *Workers Compensation Act*, RSBC 1996 c.492 as amended.
- 17. FREIGHT** The Customer shall pay freight to Seaspan as agreed plus any applicable taxes. Freight and any other amounts due hereunder shall be completely earned upon commencement of the loading of the Cargo to the Vessel(s), and shall be payable, Cargo lost or not lost. Freight shall be paid on damaged or unsound Cargo and the Customer shall pay any costs incurred by Seaspan in repairing or re-packing the Cargo. If not required to be paid in advance or upon delivery of the Cargo, freight and all charges are due within 30 days of invoicing and interest at the rate of 1.5% per month (18% per year) shall be paid on all overdue amounts.
- 18. LIEN** Seaspan shall have a particular and general lien on the Cargo and any other property owned by the Customer and in the possession of Seaspan for all sums due to Seaspan either in respect of such Cargo or for any general balance or other monies due from the Customer to Seaspan. The lien shall include interest on overdue amounts and the costs of exercising such lien, including the costs of discharging, moving and storing the Cargo. For the purpose of enforcing such lien, Seaspan may without notice sell, or retake possession and sell, the Cargo by public auction or by private sale at its sole option. The particular and general lien shall continue to exist notwithstanding that Seaspan has parted with possession of the Cargo. Should the sale of the Cargo be insufficient to recover the full the amount owing, the Customer remains liable for the deficiency.
- 19. CUSTOMER LIABILITY FOR DAMAGE TO VESSEL(S)** If the Customer directs Seaspan to position unmanned Vessel(s) at the port or place of loading or delivery or at an intermediate place for the purposes of loading, stowing, securing, and/or unloading the Cargo or for any other purpose, the Customer shall be deemed to have care and custody of the Vessel(s) and will be strictly liable to Seaspan for any loss of or damage to the Vessel(s) until such time as Seaspan re-takes possession even if the Customer is not negligent.
- 20. FORUM SELECTION** Any legal proceedings arising out of or relating to the Carriage Services or these Carriage Conditions shall be brought before either the Supreme Court of British Columbia or the Federal Court of Canada in Vancouver, B.C., and no other court shall have any jurisdiction whatsoever.
- 21. APPLICABLE LAW** The law of British Columbia and Canadian Maritime Law (with Canadian Maritime Law to prevail in case of conflict) shall apply to the interpretation and construction of these Carriage Conditions and to any and all disputes, actions, causes of action, claims or demands arising out of or relating to the Carriage Services.
- 22. NOTICE OF CLAIM AND TIME FOR SUIT** The Customer shall provide Seaspan with notice in writing of any claim or possible claim within seven (7) days of the events giving rise to the claim. Any legal proceedings against Seaspan or Vessel(s) arising out of or relating to these Carriage Conditions, or to the Carriage Services must be commenced within one (1) year from the date that the Cargo was delivered or ought to have been delivered, or the claim is extinguished.
- 23. FORCE MAJEURE** In addition to all defences herein, Seaspan shall not be in breach of any obligations due to a force majeure event, meaning any event not within its reasonable control including but not limited to acts of God; wind, ice, freezing conditions and other storms on land or sea; perils of the sea; floods, earthquakes, lightning, volcanic eruptions and landslides; fire or explosions; epidemics or pandemics (including any consequences of COVID 19); war (whether declared or not), blockades, piracy, riots and civil disobedience and acts or omissions of governmental authorities; and strikes, lockouts or labour disturbances (it being acknowledged that settlement of such occurrences depends on the agreement of employees and other third parties and is not wholly within the discretion of Seaspan).