

CC: OS
OGC
BLS(x)
ORIGINAL

PLAINTIFFS' OPENING BRIEF

TAYLORS RESOURCES INC (USA) D/B/A/BRIDGEWATER LANDING

v.

mitsui O.S.K LINES LTD /MOL AMERICA INC.

WASHINGTON DC FEDERAL MARITIME COMMISSION DOCKET 1954 (F).

HONORABLE JUDGE CLAY G. GUTHRIDGE PRESIDING

: OCTOBER 14, 2016

FILED

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**Federal Maritime Commission
Office of the Secretary**

I: INTRODUCTION

THIS IS A SIMPLE CASE OF ABUSE OF POWER THE PLAINTIFF TAYLORS RESOURCES INC, D.B.A BRIDGEWATER LANDING CONTENDS THE DEFENDANT MOL AMERICA COMMITTED FOR ITS OWN PURPOSES.

II. PARTIES

A. Plaintiffs - Taylors Resources Inc D/B/A Bridgewater Landing Inc

Bridgewater Landing is a small minority owned business that specializes in exporting plastic scrap from the United States to several overseas destinations. Opened for business since 2004 Bridgewater Landing has served the plastic scrap community and provided opportunities to many business's in the USA to sell their scrap products overseas. BLI has an excellent reputation within the plastics industry and working with shipping lines.

B. Defendant - MOL America

MOL America is a professional Cargo Carrier Line. At the time of the incident, MOL and many shipping companies were struggling with the issue of operation Green Fence initiated by the Chinese government. Many lines had containers stuck in Customs due to this regulation and were desperately trying to get shipping equipment released and not allowing container to be reshipped to other locations, such as Hong Kong. Which is where BLI requested to ship this container after being advised of the problem with the consignee 41 days after cargo arrival by MOL.

III : Plaintiff Opening Statement

On or about January 18, 2013, Bridgewater Landing (BLI) tendered a shipment of goods in a 45 foot container to MOL America (MOL) for shipment from Atlanta GA through the Port of Jacksonville FL to the Port of Xingang - CY. MOL issued a bill of lading for this shipment showing (BLI) as the shipper and Tianjin Shanhai Jiafu Commercial Trade Co., Ltd as the consignee the container number was MOEU 0108835/ Seal number 3114896. This is evidenced on MOL-001. This shipment arrived in Xingang CY on or about March 12, 2013

On or about March 10, 2013, BLI authorized a telex release to MOL for the consignee Tianjin Shanhai Jiafu Commercial Trade Co.

BLI Contends MOL knowingly violated the following sections of The Shipping Act of 1984 and in addition to damages claimed by BLI against MOL, that also MOL is also subject to penalties to be considered by the Federal Maritime Commission.

In particular, MOL knowingly violated, 46 U.S. Code & Section 41104 (4) (D) for service pursuant to a tariff, engaged in any unfair or unjustly discriminatory practice in the matter of loading and landing of freight. Under MOL Mitsui O.S.K Lines Rule Tariff, page # 19. Section 2.1.5.1 (Exhibit #14) " We ask the court to please review the MOL published policy regarding demurrage. Page 19 section 2.1.5.1 Exhibit #14 below.

“2.1.5 DEMURRAGE AND STORAGE GENERAL

2.1.5.1 Demurrage

Is the charge imposed for equipment including its storage kept beyond the free-time allowed for taking receipt of cargo in the port/terminal/CY. It normally commences following the free-time period given after the cargo date of availability.

As defined in rule 2.1.1.1, demurrage also applies to the export shipments delivered but detained for loading prior to the commencement of the official receiving period, and when the shipment is delayed at Merchant's request.

Full details of these times and charges for individual ports/areas will be found at the Local MOL Office adjacent to such ports/areas.

If after a period of seven days from the expiry of free storage time as defined above, the Merchant has failed to remove or accept delivery of the cargo, the Carrier shall be entitled, at the Merchant's risk to unpacked the container and place the cargo into a warehouse. The Merchant will be responsible for all transfer, unpacking and storage charges.”

BLI contends at no time after the container arrived on March 12, 2013 did MOL notify or make any such offer or attempt to enforce this rule with BLI. Instead on April 21, 2013 MOL notified BLI of the problem 41 days after the cargo arrived and much later demanded we strip the container and subsequently advised BLI was responsible for all detention charges incurred after the expiration of Free-time.

BLI contends MOL knowingly violated, Section 41104 (4) (D) and engaged in a unfair and unjustly discriminatory practice in the matter of loading and landing of freight. MOL own tariff policy could have significantly reduced exposure by all parties had MOL followed their own tariff policy. To say the least this clearly demonstrates a failure in service by MOL. To say the most BLI contends MOL purposely delayed notifying BLI and violating its own policy for the purposes of running up a significant detention/demurrage bill to BLI.

MOL may contend this cargo could not be unpacked and stored since MOL contended this cargo was garbage. However since this container was never opened in Xingang. As proof BLI asks the court to compare MOL Exhibit MOL-001 and Exhibit MOL-107. The court will notice that on container MOEU0108835 the seal that was placed on the container in Atlanta # 3114896 is the same seal number listed on MOL Exhibit MOL-107. Since this seal was never broken in Xingang, we may safely infer this cargo was not inspected in Xingang or rejected.

MOL contended and provided to BLI in their response to the complaint two copies of General Invoices MOL-108, MOL-109, MOL-110, MOL-111, MOL-112 and MOL-113, for disposal services preformed for this cargo. Since this container was not opened in Xingang then we must assume it was opened in Hong Kong, where photos were taken at that time by a third unknown non-independent party. BLI was not notified of the intended opening of this container and therefore could have no representative available to observe and report on the quality of material in the container.

Since no inspection report was provided by MOL from the government agency China Inspection and Quarantine Service (CIQ) which oversees inspection of all containers. We may safely infer this container of plastic scrap cleared customs in Hong Kong. BLI has serious questions about any non-governmental inspection performed in Hong Kong and the schedule of fees provided by MOL in particular on MOL-112. We direct the court to question a Lead seal fee of 30 RMB. (MOL-109 & MOL 112) MOL Invoice If the original seal in Atlanta #3114896 was not broken until it arrived in Hong Kong how could the container have been resealed. Ocean containers are only allowed to have one seal for customs purposes. We must therefore ask the court to seriously question all fees submitted by MOL by this non-governmental third party inspection and disposal company.

BLI questions the validity of the invoice charges provided by MOL (MOL-112 & translation MOL-113) In particular MOL-112 claims storage charges for the container between 3/12/2013 until 2/28/2015. First this invoice does not take into consideration of 14 days of free time due BLI or the consignee. Second the bill of lading MOL-107 shows the container was shipped on 11/3/2015. What happened to the container between 2/28/2015 until 11/3/2015, since there is no storage charge for this period BLI must contend was either a false bill of lading has been provided to the court or false invoicing by MOL.

BLI contends MOL violate 46 U.S. Code 41102 (A) by means of false billing and (C) failing to observe just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property

We ask the court to examine MOL Exhibit MOL-050 demanding RMB 37,500 (US\$6500) for detention charges for this container up to June 5, 2013 for 69 days, which inflamed this situation and the newly submitted invoice (MOL-112) for detention charges total of RMB 26,730 (US\$4633) for detention charges for 718 days From March 12, 2013-February 28, 2015.

In addition, BLI contends MOL knowingly violated Section 40503 (3) of the shipping act by not refunding to BLI ocean freight expenses of US\$1292.00 for the failure of service demonstrated by MOL in the case of this container. BLI contends MOL failed by not offering alternatives available that would have significantly minimized losses to all parties. In particular, MOL waited 27 days after detention charges started to accrue before notifying BLI there was a problem and lack of prompt professional responses to BLI requests further compounded the situation. In addition, MOL did not offer service or notify BLI of any intention to have this cargo unloaded and stored per MOL tariff policy Exhibit (#14).

In addition BLI again contends, MOL knowingly violated Section 41104 (10) by unreasonably refuse to deal or negotiate to minimize expenses being incurred or allow BLI to Move this container to another country that MOL had the ability to move it to. In particular.

On May 28 2013 , BLI communicated with MOL and requested a rate to move this container to Hong Kong to sell to another party, since the original CNEE failed to respond to BLI requests. MOL advised they do not have operation rights to Hong Kong from Xingang and then MOL demanded BLI strip the container soonest (this was the first request MOL made BLI strip the container received 79 days after cargo arrival). If MOL had authorized this transshipment at this time, BLI could have recouped detention charges for MOL and shipping charges to move the container. BLI was advised much later around December 2015 by counsel for MOL that this container was indeed shipped to Hong Kong and disposed of.

BLI contends that MOL again violated 46 U.S. Code 41102 (A) by means of false billing and (C) failing to observe just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property MOL knowingly violated, BLI also contends MOL violated 46 U.S. Code & Section 41104 (4) (D) and for service pursuant to a tariff, engaged in any unfair or unjustly discriminatory practice in the matter of loading and landing of freight..

On May 30, 2013 (MOL-045) MOL advised a rate to move the container to Hong Kong. On May 30th BLI asked MOL to advise the dollar amount of any other fees and total so BLI could arrange authorization. This was followed up with another Email on May 31th to MOL (MOL-50) to advise the other costs and to keep this moving. On June 5th (MOL-50) (after 5 additional days after BLI request) MOL advised detention charges of RMB 37500 (\$6500 for this container)

On June 5th 2013 Kerri Keith called Tony Lucas and requested a reduction in detention charges from the time notice was given on 4/22/13 until 5/29/13. Mr. Tony Lucas verbally declined this request. On July 1, 2013 BLI again followed up (MOL-057) the request for a reduction in detention and on 7/2/13 (MOL-057) asking for an extension of free time.

On July 31, 2013 MOL-056 (31 days after BLI request for a reduction) and (121 days after free-time expired) MOL advised "ON THESE SHIPMENTS WE ARE STICKING TO ONLY THE ALLOWED 14 DAYS" I have tried to please your case because of the issues you are running into related to China's green fence, but was told we will not offer any additional free time as this is outside of our control"

BLI also contends MOL violated the The implied Duty of Good Faith and Fair Dealing SS 205. §205provides:"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."Commentdto§205states:

Good faith performance. Subterfuges and evasions violate the obligation of good faith in performance even though the actor believes his conduct to be justified. But the obligation goes further : bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions : evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

Similarly, the Uniform Commercial Code defines "good faith" as "honesty in fact and

The observance of reasonable commercial standards of fair dealing."U.C.C.§1

The implied duty to act in good faith means an honest, good faith effort to satisfy the condition of the contract. BLI contends MOL failed in the service issue of this contract to minimized damages when it became apparent there was a problem with the consignee. By creating an ambiguous situation on the case of this shipment for their own benefit when free time on this shipment expired, and since MOL wrote the tariff for this shipment MOL should not be allowed to benefit. The court has held in the case of Continental Can Company V. Unite States.

Ambiguity should be turned against the creator of the ambiguously situation “ The tariff having been written by the carrier, is responsible if the tariffs meaning is ambiguous” (Rubber Development Corp vs Booth S.S. Co et al 2 U.S.M.C. 746, 748 (1945) MOL withheld options and failed to negotiate in good faith with BLI. On this point BLI contends MOL again violated 46 U.S. Code 41102 (A) by means of false billing and (C) failing to observe just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property.

BLI also contends MOL created a false impression with the court when MOL Accounts Receivable Department sent a letter on August 10, 2015 to BLI temporary address of 700 Fennel Drive Resaca GA, 30735 demanding payment of US\$87855.60 for Re-export costs to Hong Kong, Detention, Ocean Freight and disposal costs. BLI assumes this figure of US\$87855.60 represents 722 days of detention charges incurred on this container.

This letter was never received at the current address BLI had on file with MOL at the time of this shipment. Again we contend MOL created a false impression on this point to sway the court.

In addition the CNEE was identified in this letter as Tianjin Teda Hai Jie Logistics Co, Ltd is a company BLI or Taylors Resources had never done business with. No official commercial invoice with detailed charges from MOL was received for this transaction at BLI legal address which MOL had on file. MOL also advised BLI was not allowed to import this item due to China's import policy which was not true. After this BLI heard nothing from MOL representatives until about April 14, 2016 from Middlesex County Court demanding payment from BLI in excess of \$114,212.28 in detention, re-export, ocean freight and legal fees for one container. BLI contends from Day One Free-time on this container ended MOL has a responsibility to minimize damages BLI could have been exposed to by immediately notifying BLI of an issue and diligently reminding BLI of the issue and expenses were incurring. **Again BLI contents, MOL knowingly violated Section 41104 (10) by unreasonably refuse to deal or negotiate to minimize expenses being incurred.**

BACKGROUND

A. The first, BLI heard of a problem with this shipment was on April 22, 2013, when MOL wrote to BLI that CNEE did not come to switch D/O although we sent arrival notice via fax & pushed them for many times. We checked the Cnee's agent instead but they have no mind on this shpt. The phone no. on manifest is out of service now. Pls urgently adv shpr to push cnee fm your side. TKs. Thank You Toukta Phonharath Documentation Manager MOL. “This was the first communication BLI Received from MOL there was a problem with consignee picking up this shipment” On May 6th, Mr. Phonharath of MOL again communicated they were still unable to contact the consignee. This was the second communication received from MOL and 14 days after the first communication. During which time detention demurrage charges continued to accrue.

On May 6th 2013 BLI advised Mr. Phonharath “Thank you for the update. I am working on trying to reach the Consignee”

On May 7th 2013 Mr. Phonharath of MOL communicated to BLI (Please assist to advise any contact details you have for the Consignee so your destination office can contact them locally). On May 8th, 2013, BLI advised to Mr. Phonharath (I will let you know) On May 16, 2013 Mr. Phonharath sent an email (Good Evening, Please assist to advise).

On May 28, 2013, BLI communicated to Mr. Phonharath " We have another consignee lined up to take this container in Hong Kong and MOL can have its container back, Can you help us"

On May 29th 2013, Mr. Tony Lucas of MOL advised " It Looks like we are unable to carry China/Hong Kong coastal cargo as we do not have the operation rights". "Perhaps an alternate country?" "But otherwise would suggest to strip the cntr as soon as possible"

If MOL, had authorized re-export of the plastic scrap to Hong Kong, as we requested earlier. We could have recouped the shipping and most detention charges and MOL would not have been out of pocket.

On May 30, 2013^h (MOL-045) MOL advised a rate to move the container to Hong Kong. On May 30th BLI asked MOL to advise the dollar amount of any other fees and total so BLI could arrange authorization. This was followed up with another Email on May 31th to MOL (MOL-50) to advise the other costs and to keep this moving. On June 5th (MOL-50) (5 additional days after BLI request) MOL advised detention charges of RMB 37500 (\$6500 for this container)

On June 5th 2013 Kerri Keith called Tony Lucas and requested a reduction in detention charges from the time notice was given on 4/22/13 until 5/29/13. Mr. Tony Lucas verbally declined this request. On July 1, 2013 BLI again followed up (MOL-058) the request for a reduction in detention and on 7/2/13 (MOL-058) asking for an extension of free time.

On July 31, 2013 MOL 056 (31 days after BLI request) and (108 days after free-time expired) MOL advised "ON THESE SHIPMENTS WE ARE STICKING TO ONLY THE ALLOWED 14 DAYS" I have tried to please your case because of the issues you are running into related to China's green fence, but was told we will not offer any additional free time as this is outside of our control"

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The next communication BLI received from MOL was September 30th 2013 (MOL-059) advising "Please assist to advise, our destination office is still unable to contact the Consignee Thank you Toukta Phonharath"

The next communication BLI made to MOL was on January 7th 2014, requesting a copy of the contract with MOL (MOL-064) a copy was received from MOL on January 8th (MOL-063) Subject Contract.

The Next communication BLI received from MOL was on January 14th, 2014 (MOL-062) advising "I was working with Patricia a while back on an outstanding issue that we would need your help on there was a cntr under B/L 26005510205 (Container in question) that arrived on March 12, 2013, that was never picked up by the consignee. This email went on for the first time to request a letter of Abandonment from BLI. It had not been requested before this date some 308 days after arriving in Xingang. Subject Contract.

The Next communication BLI received from MOL was on January 23, 2014 asking "Hi Ana, Let us know if you have anything for us on this one" (MOL-065) Subject Copy of contract.

The next communication BLI received from MOL was on February 13, 2014 in response to a BLI email advising material had been released to consignee and received confirmation from consignee and therefore could not issue a letter of abandonment. MOL-068 then requested "Dear Kerri, My China office requested if you can provide a copy of the sale contract as evidence of your collection of cargo value from the consignee? **They need such documents to take legal action against the consignee in China.** This email raises the question why did not MOL take action against the consignee before this date and request support from BLI some 320 days after the container arrived. (MOL-068)

Until a letter of August 10, 2015 sent to our old and not current address, of which we finally received a copy of on April 14, 2016 Advising the container was abandoned in Xingang, it was re-exported to Hong Kong, disposed of and a demand for US\$87,855.60 for re-export costs, detention, ocean freight and disposal costs. We would like to comment on this letter below.

First the consignee listed on MOL letter of August 10, 2015 is **Tianjin Teda Hai Jie Logistics Co., LTD.** Not the consignee we shipped the material to **Tianjin Shanghai Jiafu Commercial Trade Co., LTD.** We wonder if MOL even communicated with the correct consignee to begin with

Second the plastic scrap BLI shipped was Mixed Ridged Plastics not banned under the government of China. It had a commercial value and could have easily been sold in Hong Kong. In addition, MOL contends material was garbage, then why was "**No certificate of destruction**" ever provide for this material by MOL to BLI.

Third, if MOL had originally allowed BLI to ship this material to Hong Kong (Which is what BLI requested) which is what MOL initially declined and then decided to do this without notifying BLI, then this matter would not be before the Federal Maritime Commission.

Fourth, if MOL had negotiated in good faith to reduce its detention bill to the time they first notified BLI or at the point free-time expire the material was not picked up by consignee had MOL unloaded the cargo (Which was their right) or demanded a letter of abandonment in a timely manner for this in March 2013 cargo. Then this issue would not be before the Federal maritime Commission today.

On April 14, 2016, MOL filed a lawsuit in the Superior Court of New Jersey for the Middlesex County Law Division seeking recovery of in excess of \$114,212.28 in detention, Ocean Freight, Re-export Costs, Disposal Costs and Legal Fees as well as for additional demurrage charges which, according to MOL's complaint. BLI is requesting reimbursement of US\$67.00 for the filing of this complaint with FMC and attorney fees and expenses of US\$45,000.00 to defend against this lawsuit in Superior Court of New Jersey as well as dismissal or any and all detention, disposal, legal fees and charges of any and all legal action by MOL legal counsel..

The Controversy MOL has asserted in the Complaint it has filed against BLI in the Superior Court of New Jersey, Middlesex Law Division, BLI owes in excess of \$114,212.28 in detention port, ocean freight and legal fees for one container. BLI contends that MOL's failure to not allow BLI to re-export

these goods or MOL not disposing of the contents in this container for two years and counting after they were abandoned.

The customs act as well as the terms and conditions of its bill of lading contracts to sell the goods, and despite MOL's obligation to mitigate its damages, is an unjust and unreasonable practice in violation of Section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c). This is clearly an actual controversy arising directly under the Shipping Act for which the Commission is the appropriate forum for resolving the issue. Concurrently with the hearing of this formal complaint with the Commission, BLI is filed with the Court seeking a referral of this issue to the Commission pursuant to the doctrine of primary jurisdiction.

B: Liability of MOL Shipping: The evidence will show that MOL could have significantly reduced detention time on this shipment if MOL had transported this container to Hong Kong as requested, or unloaded and stored the cargo. In addition, if MOL had communicated through the correct updated addresses provide by BLI, then BLI would not have had to defend against this action when MOL counsel filed a civil action in the Superior Court of New Jersey. BLI expects legal fees incurred to exceed US\$45,000.00 before these proceeding are completed.

C: Violations of Federal Maritime Law under 1984 Shipping Act As set forth in the Statement of Facts, MOL transported one shipment at issue from the United States to Xingang China. As the carrier of the goods, MOL became their custodian under Chinese Customs Act. The shipment arrived on March 12, 2013. On March 10, 2013 BLI sent a telex release of the cargo to MOL and the consignee acknowledged receipt. It is unknown when MOL sent a communication to Tianjin Shanhai Jiaful Commercial Trade Co of the container arrival or if MOL ever requested Tianjin Shanhai to abandon the shipment. In its emails covering this shipment, BLI requested MOL to ship this container to Hong Kong, so they may sell the goods in this shipment pursuant to any liens. MOL refused our request until detention charges had reached over US\$6500.

Thus, within 50 days, respectively of this shipment arrival dates, MOL had clear notice that the only parties with an interest in the goods was BLI and had requested they be exported to Hong Kong, which MOL later did. Nor did MOL request BLI to relinquished all of their rights in the cargo until January 2014.

MOL had the ability to re-export this container to Hong Kong May 28th 2013, indeed, in its correspondence to BLI dated August 10, 2015, MOL acknowledged that it had re-export the Container to Hong Kong. MOL had the right as the custodian of the goods to sell them. MOL however, failed to take any steps to dispose of the goods. Rather, it contented itself with sending notices to BLI after two years demanding payment of increasingly higher detention charges. When BLI responded to this notice by reminding MOL it could have re-exported container to Hong Kong back in May 2013. No definite answer was received. Finally, MOL has filed suit against BLI claiming detention and other charges of US\$114,212.28, April 14, 2016.

Equally clearly, BLI as an Exporter not having physical custody of the goods had no right to dispose of the goods in any manner. MOL's actions are not just or reasonable in a number of respects. First and foremost, MOL did absolutely nothing when it had the power to re-export the cargo to Hong Kong

in May 2013. Clearly, a reasonable carrier would have understood that, as the only party with the ability to get rid of the cargo and reclaim its containers, it had a duty to pursue all avenues to accomplish that result, particularly when there was a road map from the shipper showing what MOL had to do.

This is a case where MOL declined BLI request to re-transport the cargo or take steps their own called for. MOL never even made any effort to deal with the cargo, MOL it simply wanted its containers back. Further, MOL cannot claim that it was unsure about whether the cargo had been abandoned by Tianjin Shanghai Jiafu Commercial and BLI did not receive any request to abandon the cargo from MOL. This is clearly unreasonable. Either BLI was already responsible for the pending and additional charges as a party to the MOL's bills of lading, in which case requiring BLI could have signed a standard letter of abandonment in a reasonable time period, or BLI was not responsible for those charges. By MOL simply requesting BLI to sign a standard letter giving up its rights or face a detention claims they engineered a claim for \$114,212.28 which was extortionate.

The requirements for abandonment in maritime law are clear. "[A] valid abandonment occurs through the act of deserting property without hope of recovery or intention of returning to it. *See* 3A Norris, *Benedict on Admiralty* § 134 (7th ed. 1980)" *Nunley v. M/V Dauntless Colocotronis*, 863 F.2d 1190, 1198 (5th Cir. 1989); *see also Jiri Mucha v. Charles King*, 792 F.2d 602, 610 (7th Cir. 1986) ("Abandonment is a voluntary relinquishment of rights ..."). There is no requirement in the law of abandonment that any special form of words or particular documents be used to effect a genuine abandonment. MOL's failure to recognize and act upon BLI's clear predicament of this shipment is, in the circumstances, unjust and unreasonable.

Moreover, MOL had an obligation to mitigate its damages. *Rose International, Inc. v. Overseas Moving Network International, Ltd.*, 29 S.R.R. 119, 191 (FMC 2001) ("Mitigation is a principle used in damages analysis to prevent a party from recovering damages for losses it could have reasonably avoided without an undue risk or burden, and is one applied by the Commission.") The law is clear that an injured party cannot simply wait and let its damages accrue. It must take steps to avoid any extra damages as part of the implied covenant of good faith and fair dealing that is a part of every contract. *See Adair v. Penn-Nordic Lines, Inc.*, 26 S.R.R. 11, 20-21 (I.D. 1991). In contrast, here MOL is simply sitting on its damages and allowing them to multiply beyond any reasonable measure.

MOL certainly would not have suffered any undue risk or burden by attempting to comply with the requirements of the China Customs Act to dispose of the goods in the container at issue or allow it to be re-exported. Or if MOL had unloaded the cargo in Xingang which MOL tariff allowed for. In which case BLI and MOL would not have suffered any significant financial loss.

Finally, the unreasonableness of MOL's practices in this case is highlighted by the enormous magnitude of the difference between the demurrage charges MOL is claiming from BLI and the value of the containers for which those charges are being claimed. MOL itself values its 45 foot high cube containers at \$5,400 each. Again current market prices for used containers are US\$5,400 each.

Thus, MOL could have simply disposed of or destroyed the containers in question and purchased or leased replacement equipment for prices that probably would not have exceeded

\$5,500. As an ocean carrier that buys or leases containers in bulk, MOL undoubtedly can obtain containers even more cheaply than this. How then, can asserting a claim for US\$114,212.28 for the loss of use of s container be considered reasonable?

In sum, the detention and related charges MOL is demanding that BLI pay have accumulated as a result of MOL's own, intentional actions. As the Commission has clearly held, "the practice of billing for detention resulting from carrier fault . . . is unjust and unreasonable." *Plaza Provision v. Maritime Services*, 17 F.M.C. 47, 51 (1973). There is no question that MOL has failed to take the actions it was clearly authorized by Chinese law and its bill of lading to pursue to dispose of the goods and reclaim its container many years ago. It should not be permitted to unjustly benefit from its own unreasonable practices.

D. The Filed Rate Doctrine Does Not Excuse MOL's Actions. MOL may argue that it is required, pursuant to the filed rate doctrine, to collect the detention charges as set forth in its tariff. As the Commission has made clear, however, it is not a derogation of the filed rate doctrine to find a carrier has violated other, substantive sections of the Shipping Act such as Section 10(d)(1). *Total Fitness Equipment d/b/a/ Professional Gym v. Worldlink Logistics*, 28 S.R.R. 534 (FMC 1998). There, the Commission found that "[t]he filed rate doctrine does not function as a carte blanche to justify whatever action the carrier deems is appropriate" *Id.* at 539. Similarly, here, MOL should not be allowed to engage in unjust and unreasonable practices and then hide behind the filed rate doctrine to collect an exorbitant amount of money that is out of all proportion to any legitimate damages it may have suffered.

Moreover, MOL has not filed the detention charges it is seeking to collect from BLI in its tariff published pursuant to the Shipping Act. There are, in fact, no provisions in that tariff regarding detention of charges in China. Rather, it appears that MOL is relying on a local Chinese tariff.

Section 10(b)(2)(A) of the Shipping Act, however, prohibits carriers such as MOL from providing services that are "not in accordance with the rates, charges, classifications, rules and practices contained in a tariff published . . . under Chapter 405 of [the Shipping Act]." 46 U.S.C. §41104(2)(A). In its lawsuit, MOL is attempting to do precisely what the Shipping Act prohibits. Manifestly, it is an unjust and unreasonable practice for a carrier to blatantly violate the Shipping Act in seeking compensation from a shipper at rates not included in its publicly filed tariff.

IV Legal Analysis

Liability of Defendant MOL America MOL's Attempt to Collect Penal Detention Charges Is Also an Unjust and Unreasonable Practice

As can be seen the demurrage charges MOL is seeking to collect from BLI pursuant to its local Chinese tariff provide, with respect to 45 foot high cube containers such as those at issue, for a free time of 14 calendar days and, after that, detention charges apply. In past cases, the Commission has presumed that the first period demurrage charges "represents a compensatory charge" and that charges for the second and subsequent periods "are penal to the extent of the excess of those charges over charges for the first period" *Free Time and Demurrage Charges*.. *New York*, 3 U.S.M.C. 89, 109 (1948); *Midland Metals Corp. v. Mitsui O.S.K. Line*, 15 F.M.C.

193, 199 (1972). Consequently, any charges by MOL for detention in excess of the \$44 daily rate for the first period should be considered penal. When, as is the case here, the consignee cannot take any actions to claim or dispose of the cargo to stop demurrage from running, the Commission has held that the carrier cannot impose the penal element of the detention of its detention charges. *Id.* Because BLI was not the owner or importer of the goods into China, it had no rights to handle or dispose of the goods under the Chinese Customs Act. Therefore, even if MOL were entitled to collect demurrage charges, in whole or in part, from BLI - - which it is not - - it would not be authorized to collect the penal amount of those charges. Thus, to the extent MOL is demanding that penal portion of its demurrage charges, it is also engaging in an unjust and unreasonable practice. (*Id.* at pp. 599- 601. MOL had the ability to unload this container after 15 days per its own tariff and instead chose to wait 41 days to notify BLI and when BLI attempted to move this container to another port that MOL had access to blocked this request.

V. DAMAGES

A. ECONOMIC DAMAGES

1. Plaintiffs have incurred legal expense in defending against MOL action's in the Superior Court of New Jersey Middlesex County Vicinage. It is estimated expenses will exceed US\$45,000.00
2. Plaintiffs have been libeled by MOL contentions that BLI is nothing more than a shell corporation used by Taylors Resources to incur debt and ask for reasonable damages to BLI reputation.
3. Plaintiffs have been libeled by MOL Contentions that BLI shipped a banned plastic scrap to China and it was rejected and had to be disposed of in Hong Kong.
4. Plaintiffs request the refund of ocean freight charges paid to MOL of US\$1292 for failure of service.
5. Plaintiff request dismissal of any and all detention, storage, disposal and ocean freight charges levied by MOL America and any legal fees incurred by any and all legal counsel of MOL America.
6. Plaintiff requests express mail charges, postage charges, Federal Maritime filing fees' New Jersey court fees incurred today of USS\$400.00

Based on the foregoing, plaintiffs' counsel requested that the economist analyze the economic damages (Legal Fees to Date, damage to reputation and loss of business opportunity defending against MOL complaint in Superior Court of New Jersey.

B: Noneconomic Damages

As with any case, the precise amount of general damages is always open to conjecture. However, the amount of general damages awarded is to some extent dependent on the following circumstances:

- 1. The Loss of reputation in the business community.
- 2. The nature and extent of special damages.

VI. DEMAND

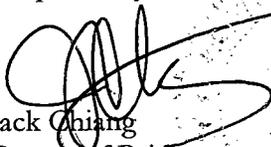
The "Total Exposure" figure is a conservative estimate of the dollar amount to which defendants are exposed should this case proceed to trial. For that reason, plaintiffs are willing, at this time, to accept the total \$45,000 as complete resolution of this matter, dismissal of all and any legal claims by MOL or its Legal Representation and dismissal on any or all detention claims against BLI.

VII. CONCLUSION

BLI suffered both economic and professional damage loss due to say the least the through negligence and failure of service by MOL. Although it is remotely possible that defendants could obtain a defense verdict in this matter, it is more probable that judgment will be rendered against defendants for the final exposure figure, or more. BLI requests the Federal Maritime Commission to consider the evidence presented here and find for BLI under Federal Maritime Status, Uniform Commercial Laws and under the duty of good faith and fair dealing MOL should have demonstrated early in this affair.

I hereby declare and swear the above statements are true to the best of my knowledge and belief and understand it is made as evidence in this complaint and court. I swear to these facts this 13th day of October 2016

Respectfully Submitted


 Jack Chiang
 Owner of Bridgewater Landing
 51 Cragwood Rd, Suite 301
 South Plainfield, NJ 07080
 Telephone 732-668-4735 X 403

KERRI J. KEITH
 NOTARY PUBLIC OF NEW JERSEY
 Comm. # 2413530
 My Commission Expires 10/14/2021



Notarized

Sworn to and subscribed
 before me this
 13 day of Oct 2016

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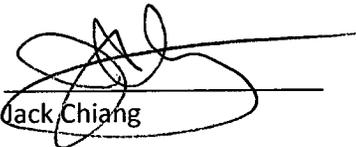
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Certificate of Service

I hereby certify that I have this 13th Day of October, 2016 served a copy of the foregoing Opening Statement upon the following by e-mail, and copies by courier shall follow:

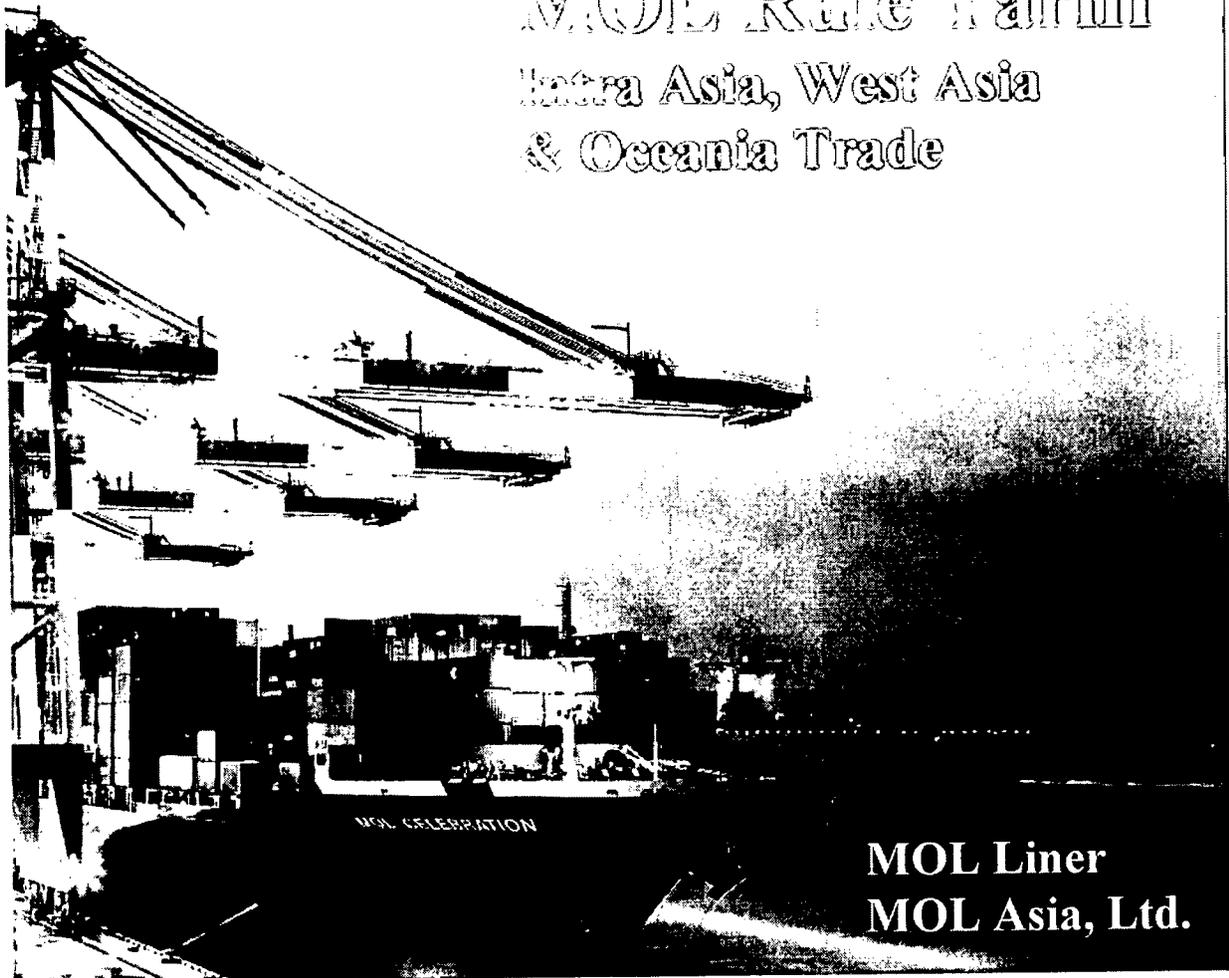
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MOL Mitsui O.S.K. Lines

MOL Rule Tariff
Intra Asia, West Asia
& Oceania Trade



MOL Liner
MOL Asia, Ltd.

27/F, Tower 1, Ever Gain Plaza, 88 Container Port Road, Kwai Chung, N.T., Hong Kong

SECTION 1

1. GENERAL AND NON-FREIGHTING RULES

1.1 GENERAL CONDITION AND AUTHORITY

This Tariff is compiled by **Mitsui O.S.K. Lines, Ltd.** (hereinafter referred as **MOL** or the **Carrier**) who shall be the sole arbiters as regards the interpretation of rates of freight descriptions, terms and conditions incorporated therein.

This tariff and any related documents belong to **Mitsui O.S.K. Lines, Ltd.**, and its group companies, and are used for its Liner Service. Any unauthorized use of this tariff and its related documents by any parties in any manner, whether in part or in its entirety, are strictly prohibited.

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1st Revision

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1.2 GENERAL RULE

1.2.1 GENERAL PREAMBLE

The Tariff covers goods accepted for carriage on board any vessel belonging to, or operated by MOL whether the vessels are fully cellular container ships, combination (combo) ships or conventional ships.

The rules, terms and conditions in this tariff shall apply to all FCL shipments.

All LCL or CFS as mentioned in this tariff are subject to acceptance of carrier in advance.

Freight rates are not contained in this tariff. Details of the carrier's common tariff rates applicable to carriage of the goods within the scope of this tariff are available at the carrier's office in the countries as mentioned in 1.2.2. The tariff also provides terms and conditions for inland operations (where permitted) and feeder services associated with the combined container transport concept (where permitted).

These Tariff Terms and Conditions are subject to the terms and conditions of the Carrier's Bill of Lading applying at the date of acceptance of the goods. They are subject to amendments published from time to time.

1.2.2 GEOGRAPHICAL SCOPE and SUB SCOPES

This tariff applies to the shipments moving between the ports as specified in the Groups listed hereunder. This tariff also applies to the Shipments moving between the ports in the same groups, unless otherwise specified in this tariff.

Group 1 (Countries in Europe/North Africa)

This tariff does not apply. (MOL Europe Tariff Rule shall govern this group.)

Group 2 (Countries in North Asia)

Hong Kong Japan, Korea, People's republic of China, Republic of Taiwan,

Exceptions :

MOL does not accept domestic shipments in each country, and the international shipments moving between following countries;

To/From Japan & Korea,

To/From China & Hong Kong,

To/From China & Taiwan

Group 3 (Countries in South East Asia)

Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam

Exceptions :

MOL does not accept domestic shipments in each country.

Group 4 (Countries in West Asia)

AFGHANISTAN, Bangladesh, India, NEPAL, Pakistan, Sri Lanka,

Exceptions :

MOL does not accept domestic shipments in each country.

MOL does not accept shipments to and from Afghanistan under its through Bill of Lading. It shall be arranged by merchant on their own account and responsibility via Karachi, Pakistan. Empty container is required to be returned to Karachi.

MOL does not accept shipments to and from Nepal under its through Bill of Lading. It shall be arranged by merchant on their own account and responsibility via Kolkata, India. Empty container is required to be returned to Kolkata.

Group 5 (Countries in Middle East)

United Arab Emirates, Bahrain, Iran, Kuwait, Oman, Qatar, Saudi Arabia

Exceptions :

MOL does not accept domestic shipments in each country.

Group 6 (Countries in Oceania)

Australia, New Zealand

Exceptions : Shipments to and from Japan, to which the rule tariff of ANZESC (*) shall also apply. However, in case there is conflict and/or inconsistency between this tariff and tariff of ANZESC, this tariff shall supersede the other.

(*) Australian and New Zealand/Eastern Shipping Conference

1.2.3 TERMINOLOGY AND ABBREVIATIONS

Carrier: Mitsui O.S.K. Lines, Ltd. (MOL)

Carrier Haulage: (where permitted) The inland transport service which is offered by the Carriers under the Terms and Conditions of this tariff and the Carrier's Bill of Lading.

Container: Denotes an item of equipment, so defined by the International Standards Organisation, for the carriage of cargo by the transport services covered by this tariff. These containers are provided by the Carrier, but Merchant supplied containers may also be accepted by the Carrier, subject to the provisions of this tariff.

Container Freight Station (CFS): An installation at which LCL traffic is received from the Merchant by or on behalf of the Carrier for packing into a container and/or at which LCL traffic is delivered by or on behalf of the Carrier to the Merchant after unpacking from a container.

Container Yard (CY): An installation at which FCL traffic and empty containers are received from or delivered to the Merchant by or on behalf of the Carrier.

Date of Availability: Date on which cargo is available for collection by Merchants at a CFS or CY. Date of availability is also used as a commencing point for calculating free storage time at a CFS or CY.

Demurrage: The charge imposed for cargo and/or equipment kept beyond the freetime allowed for taking receipt of cargo in the port/terminal/CY.

Detention (where applicable): The charge the Merchant pays for detaining Carriers' containers/chassis beyond the prescribed freetime period.

Empty Container Depot (ECD): A designated place, other than CY or CFS, from which empty containers may be drawn from the Carrier for Merchant Haulage: to which Merchants may return empty containers to the Carrier under Merchant Haulage. It must be understood that no cargo whatsoever shall be handled, received or delivered at such ECD's.

FCL (Full Container Load): A general reference for identifying container loads of cargo loaded at and/or discharged from Merchants' premises.

FCL/FCL: A container load of cargo, the Merchant being responsible for packing and unpacking the container.

FCL/LCL: A container load of cargo which the Merchant is responsible for packing into the container and the Carrier is responsible for unpacking from the container.

Freight Ton: A unit for freighting cargo according to weight and/or cubic measurement.

Goods: The cargo accepted from the Shipper, including any container, flat, pallet or similar transit appliances not provided by the Carrier.

LCL (Less than Container Load): A general reference identifying cargo in any quantity intended for carriage in a container, where the Carrier is responsible for packing and/or unpacking the container.

LCL/LCL: Cargo in any quantity for carriage in a container, the Carrier being responsible for packing and unpacking the container.

LCL/FCL: A shipment of cargo which the Carrier is responsible for packing into the container and the Merchant is responsible for unpacking from the container.

LCL Service: The charge (or total of charges) payable by the Merchant for:-

- (a) Receipt of export LCL goods at the CFS by the Carrier and for their subsequent storage and handling in accordance with Carriers' instructions.
- (b) Receiving import LCL goods from the Carrier and for their storage and handling before release to the Merchant.
- (c) Associated documentation arising from (a) and (b).

Measurement Ton: A ton of one cubic metre.

Merchant: For cargo carried under the terms and conditions of this tariff and the Carrier's Bill of Lading, means any trader or persons (eg Shipper, Consignee and including anyone acting on the Merchant's behalf), owning or entitled to possession of the goods, or of the Bill of Lading.

Merchant Haulage: Inland transport of cargo in containers arranged by the Merchant. It includes empty container moves to/from handover points in respect of containers released by the Carrier to Merchants. Carriers' responsibility under the Bill of Lading does not include the inland transit legs under Merchant Haulage.

Multiple Bills of Lading FCL: The term used to describe a series of Bills of Lading issued on a part cargo basis, covering all the goods in a single container.

Terminal: The wharf, dock or berth at which containers are loaded into or discharged from the carrying vessel.

Terminal Handling Charge: A charge payable by Merchants for:-

- (a) The Carrier receiving and storing export containerised cargo/cargo for containerisation at the Terminal and presenting it to the loading of sea carriage.
- (b) The Carrier receiving import containerised cargo and arranging its storage at the Terminal and movement in Terminal from sea carriage.
- (c) Associated documentation / cost from (a) and (b) above.
- (d) Handling empty containers at the terminal and the depot.
- (e) Trucking empty containers between the terminal and the depot.
- (f) Storing/Marshalling loaded/empty containers at the terminal and the depot.

Weight Ton: A ton of 1000 kilos.

LIST OF ABBREVIATIONS

Ad Val.	Ad Valorem
B/L	Bill of Lading
BAF	Bunker Adjustment Factor
bdle(s)	Bundle(s)
CAF	Currency Adjustment Factor
cbm	Cubic Metre
CFS	Container Freight Station
CY	Container Yard
ea.	Each
FEU	40 Foot Equivalent Unit
FP	Flashpoint
fob	Free on Board
frt. ton	Freight Ton
IMDG	IMCO International Maritime Dangerous Goods (Code)
IMO	Inter-Governmental Maritime Organisation
incl.	Including
ISO	International Standards Organisation
m	Metre
M	Measurement
max.	Maximum
min.	Minimum
n/e	Not Exceeding
NOE	Not Otherwise Enumerated
NOS	Not Otherwise Specified
OP	Out port
pft	Per Freight Ton
pkg(s)	Packages
TCSP	Through Container Service Port
Teu	20 Foot Equivalent Unit
THC	Terminal Handling Charge
W	Weight
W/M	Weight/Measurement
%	Percent
ECHC	Empty Container Handling Charge(R1)
YAS	Yen Appreciation Surcharge(R1)
PSC	Port Service Charge(R2)
EHC	Equipment Handling Charge(R2)
TSL	Terminal Security Levy(R2)
MSL	Marine Security Levy(R2)
TQC	Tasmanian Quarantine Charges(R2)
GST	Goods and Service Tax(R2)

Note: All LCL or CFS as mentioned in rule subject to acceptance by MOL or its agent locally.
(R1) May applies to the shipments to/from Japan from/to origin/destination countries where applicable as defined separately.
(R2) May applies to the shipments to/from ports in Group 6.

1.3 BILLS OF LADING

1.3.1 GENERAL TERMS

The tariff terms and conditions are subject to those of the Carrier's Bill of Lading, applying at the date of acceptance of the goods. Non-negotiable Way Bills are issued at **MOL's** discretion.

1.3.2 BILL OF LADING DESCRIPTION

(a) FCL/FCL and FCL/LCL Shipments

In the case of Merchant packed containers, the Bill of description of the cargo will be along the following lines: '..... container(s) No(s) said to contain'

Carrier's Bill of Lading may however state that a specific number of packages has been received for shipment provided that an Inspector, approved by the Carrier, has attended the place at which the container was packed for the full duration of the packing. When completed he must affix his seal to the container doors or other closure points and issue his formal Certificate detailing the marks, numbers, quantity and description of the packages loaded and confirming the accuracy of the load and the count. The Inspector's fees for this service are for the account of the Merchant and must be paid direct to the Inspector.

(b) LCL and Uncontainerable Shipments

When Shippers wish the number of items or pieces contained in individual packages (bundles, bales, cartons, cases etc.) to be shown, Bills of Lading will be issued for '..... Packages said to contain.....items/pieces'.

1.3.3 COMBINED SHIPMENTS UNDER ONE BILL OF LADING

(a) Combined shipments from one shipper to one consignee of:

- (i) FCL/FCL and FCL/LCL from different inland places of acceptance, or
- (ii) FCL containers and LCL cargo, or
- (iii) FCL and/or LCL and Uncontainerable cargo may be effected under a single B/L subject to the following conditions:

(b) Shipment is effected from one port of loading

(c) FCL/FCL and FCL/LCL

This cargo at each place of acceptance must be FCL. Individual places of acceptance of the containers will be recorded in the Bill of Lading. All containers/cargo covered by the Bill of Lading must be for delivery at one and the same CY and/or CFS.

(d) FCL Combined with LCL

Containers/cargo must be delivered to the Carriers' CY/CFS at one port of loading and will be released at one port of destination.

(e) FCL and/or LCL Combined with Uncontainerable Cargo

FCL or LCL cargo must be delivered to the Carriers CY/CFS and breakbulk cargo delivered alongside the vessel at one Port of Loading. The cargo will be released at one port of destination.

(f) Wheresoever available, Carrier Haulage for the FCL cargo may be offered.

(g) The individual numbers of FCL containers and the separate measurements/weights of LCL and Uncontainerable cargo will be indicated clearly in the B/L together with the places of acceptance if different. The LCL cargo will not be subject to minimum ocean freight charge (but for Hitchment Bills of Lading - refer); it will however be subject to minimum LCL service charge. The B.B. cargo will not be subject to minimum ocean freight charge (but for Hitchment Bills of Lading - refer).

(h) The facility of Multiple Bills of Lading i.e. covering part cargoes in an FCL container, will be available at Carrier's discretion on:-
FCL/FCL and FCL/LCL shipments from different places of acceptance.

In all other respects the tariff provisions will apply as though separate Bills of Lading had been issued from each place of acceptance.

1.3.4 HITCHMENT (LINKED) BILLS OF LADING COVERING MORE THAN ONE PORT OF LOADING <Applicable only to the shipments from Japan. >

The following arrangement applies for shipments from Japan only, subject to prior request by the shipper, and prior acceptance by the carrier. :-

If requested by Shippers and at the discretion of the carrier, Cargo from Different Loading Ports and destined for one port of destination, may be included in one Bill of Lading subject to the following conditions:-

(a) The Bill of Lading is dated and released only after the total Bill of Lading quantity has actually been loaded on board.

(b) The Bill of Lading must include full details, Container Numbers, Weight/Measurement as appropriate and a clear indication of individual places of Acceptance/Ports of shipment at which each parcel has been Accepted/Shipped.

Only one Shipper and one Consignee to be shown in the Bill of Lading.

CAF and all the other charges should be stipulated separately.

All the Tariff provisions shall apply as though separate Bills of Lading had been issued from each place of acceptance/port of loading. In respect of minimum ocean freight on LCL and BB cargo the following will apply:-

(a) Hitchment B/L with LCL or Uncontainerizable (Uncon) cargo but with no FCL, LCL (or Uncon) minimum freight will be charged per each place of acceptance/port of loading where the quantity loaded is below minimum freight level

(b) Hitchment B/L with LCL or BB cargo and FCL
One Hitchment Bill of lading may cover:-

(i) LCL (or Uncon) minimum quantity loaded at one port, and FCL loaded at another port. A minimum would apply on the LCL (or BB) cargo (LCL cargo also subject to minimum LCL Service charge).

(ii) LCL (or BB) minimum quantity plus FCL loaded at one port, and further consignment loaded at another port.

The minimum would not apply on the LCL (or BB) cargo (but LCL cargo subject to minimum LCL Service charge).

Cargo accepted for shipment from one port cannot be combined in the same container with cargo accepted for shipment from other Ports. FCL, LCL, and Uncon Cargo can be accepted in one hatchment Bill of Lading. Delivery of FCL and LCL Cargo must be at one and the same CY and/or CFS.

1.3.5 DATING

Received for shipment Bills of Lading will be issued and dated not earlier than the date of acceptance of the goods by the Carrier.

Shipped Bills of Lading ('shipped on board' endorsements) will be issued and dated not earlier than the date of commencement of loading of the ocean or feeder vessel.

1.3.6 MULTIPLE BILLS OF LADING

1.3.6.1 Definition

When Bills of Lading cover part cargoes in one container, the full series of Bills of Lading for all the cargo in the container is known as 'Multiple Bills of Lading'.

1.3.6.2 General Conditions

Freight for all B/L within a multiple set must be either prepaid or collect.

Each set of multiple Bills of Lading will be under clause as:

'One ofpart cargoes in this container.'

No individual Bill of Lading will be subject to minimum freight.

1.3.6.3 Special Conditions FCL/FCL

Each set of Bills of Lading will show one and the same Shipper, one and the same place of acceptance, one and the same place of delivery and one and the same Consignee.

Multiple Bills of Lading shown 'to order' may be issued in respect of FCL/FCL shipments on the understanding that Consignees, when declared, will be one and the same (not necessarily one and the same notify party). However, in the event that different Consignees are declared the contents of the container(s) will be regarded as LCL cargo.

1.3.6.4 Special Conditions FCL/LCL

When goods have been packed into the container not in the presence of an Inspector in accordance with rule 1.4.2 on page 13, each set of Bills of Lading will be under clause of:

'The Goods detailed herein are said to comprise part of the contents of the container indicated. If the Carrier is required to deliver the goods to more than one Merchant and if all or part of the total cargo within the container consists of bulk goods or unappropriated goods or is or becomes mixed or unmarked or unidentifiable, the holders of Bills of Lading relating to goods within the container shall take delivery thereof (including any damaged portion thereof) and bear any shortage thereof in such proportions as the Carrier shall in his absolute discretion determine, and such delivery shall constitute due delivery hereunder.'

Each set of Bills of Lading must show the same Shipper the same place of acceptance and the same place of delivery, except as noted below.

Multiple sets of Bills of Lading covering FCL/LCL movements can be issued when the individual consignments are destined for different places of delivery providing the Container is unpacked at one CFS. Freight and other charges will be levied on the basis of the final destination. For cargo where oncarriage is to an area which does not take a transport additional, an additional charge of no less than \$20 W/M not subject to CAF/BAF, will be charged on case by case basis. Exact quantum of an additional charge will be offered by local MOL office upon inquiry.

If no oncarriage service exists between the point where the container is unpacked and the outport(s), the Line will advise the Merchant who must either accept responsibility for all costs the Carrier incurs in arranging transport to the outport(s) or arrange to collect the cargo himself from the CFS and pay any storage charges involved (without the benefit of free time).

1.4 CONSOLIDATION BY CARRIER - LCL/FCL

A single Merchant must give the instructions to consolidate (hereafter called: 'The Controlling Merchant').

1.4.1 THE CONTROLLING MERCHANT MUST NOTIFY THE CARRIER.

- (a) Which consignments are involved.
- (b) Who is responsible for delivering them to the C.F.S.
- (c) What action is required if there are goods in excess of the quantity that can be packed into the container.
- (d) Who is responsible for paying L.C.L. Service Charges and any other charges due for C.F.S., documentary of official (e.g. Customs) services.
- (e) Who is responsible for paying ocean freight.
- (f) To whom the Bills of Lading should be released.

1.4.2 THE CONTROLLING MERCHANT IS RESPONSIBLE FOR:-

- (a) Payment of any freight or charges due but unpaid at the time delivery is offered.
- (b) For surrendering to the carrier either the appropriate B/L properly endorsed to his favour or Delivery Orders to his favour for the complete contents of the container.

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SECTION 2

2. TERMINAL OPERATIONS AND INLAND HAULAGE ARRANGEMENTS

2.1 TERMINAL OPERATIONS

2.1.1 ACCEPTANCE OF GOODS BY THE CARRIER

Following their handing over and acceptance, Goods will normally move by the vessel for which the cargo is booked.

For documentary purposes the date of acceptance of the goods shall be taken to be the day on which the last item of cargo in the Bill of Lading lot was received for shipment by the Carrier. The name of the consignee or notify party must be declared otherwise consignments cannot be accepted for carriage.

2.1.1.1 Cargo Receiving Period

Subject to prior written request by merchant, the carrier may agree to receive shipment before the start of advertised receiving period for the intended vessel at the terminal where designated by the carrier. The merchant shall agree that the carrier shall not be responsible for any damage and loss of cargo during storage of such shipment.

And, when the carrier so agrees and if cargo is delivered before the start of the advertised receiving period for the intended vessel, then storage charges will be levied as follows until the official receiving period commences:-

LCL Goods will be stored at Merchant's risk, with rent and other charges being for Merchant's account

FCL Goods will be stored at Merchant's risk and at the charges as applied for demurrage in Section 2 (rule 2.1.5) without the benefit of free-time

The above system also applies when shipment is delayed at Merchant's request.

2.1.1.2 Cargo Stopped in Transit

If for any reason cargo is stopped in transit by the Merchant, the Merchant must give prompt instructions for their alternative delivery at his expense. If the Merchant fails to do so the Goods will be removed and stored at the Merchant's sole risk and expense, and in the case of FCL Goods, will in addition become liable to the charges for demurrage of FCL goods specified in Section 2 (rule 2.7) without the benefit of free-time.

2.1.2 DELIVERY OF GOODS BY THE CARRIER

2.1.2.1 Dangerous or Obnoxious Cargo

The Merchant must take delivery of FCL or LCL Dangerous or Obnoxious Goods at the time notified by the Carrier. If the Merchant fails to remove or accept delivery at such time, the Carrier will be entitled to make such arrangements, at the Merchant's risk, as the Carrier considers necessary depending on the nature of the Goods. The Merchant will reimburse the Carrier for all costs so incurred.

2.1.2.2 LCL Cargo

Storage charges incurred (if any) will be for account of the cargo. Details of Free Storage Time allowed and the charges levied at each port shall be in accordance with the custom of the port/CFS or as otherwise shown.

2.1.2.3 Delayed Acceptance of FCL Goods from Container Yards (except Dangerous or Obnoxious Cargo)

If the Merchant does not take delivery of FCL cargo from a Container Yard within the free storage time appropriate to the port concerned, he will be liable for demurrage/storage charges as indicated in Section 2 (rule 2.7).

If after the expiry of free storage time, as defined, the Merchant has failed to remove or accept delivery of the Goods, the Carrier shall be entitled, after having advised the Merchant, at the Merchant's risk, to unpack the Container and place the Goods into a warehouse. The Merchant will be responsible for all transfer, unpacking and storage charges.

2.1.2.4 Split Deliveries

If at his discretion the Carrier accepts a Consignee's request for a Bill of Lading quantity to be split into less than Bill of Lading lots, all additional costs will be for Consignee's account. This facility is available only for LCL Goods.

2.1.3 TERMINAL HANDLING CHARGES

The Terminal Handling Charge (THC) is payable by the Merchant:-

- (a) For receiving and handling an export container at the Terminal and presenting it to the vessel/feeder for loading on sea carriage.
- (b) For receiving an import container from the vessel, its handling and delivery at the Terminal.
- (c) For attending to associated documentation / cost from above.
- (d) Handling empty containers at the terminal and the depot.
- (e) Trucking empty containers between the terminal and the depot.
- (f) Storing/Marshalling loaded/empty containers at the terminal and the depot.

Terminal Handling Charges have been earned from the date on which the cargo is received by the Carrier and irrespective of the terms of sale between buyer and seller are payable:

- (a) Unless other specific arrangements are made between the buyer/seller, Export THC must be prepaid in the country of origin/port of loading prior to issuing the Bill of Lading, irrespective of whether ocean freight and associated destination charges are on a freight collect basis.
- (b) Import THC must be paid prior to release of the cargo.
- (c) THC's may be paid in a freely remittable currency (see rule 3.2.3) other than the currency quoted in the tariff.

Bills of Lading will show whether import THC has been paid or is due.

Rules 3.3.1 and 3.3.2 cover notice of changes/implementation in the levels of charges.

Note : For shipments moving from Japan to the following countries/to Japan from the following countries, in lieu of Terminal handling charge, following charge shall apply.

Empty Container Handling Charge:

Hong Kong, Singapore, Malaysia, Taiwan, Philippines, Thailand, Indonesia, Vietnam, Cambodia, Myanmar, Ports in South China

CY Charge:

Ports in North PRC, Central PRC and Fujian Province

Quantum of applicable THC is available at MOL's local office in the countries as mentioned in 1.2.2. or found on the Local Charge Tariffs as separately and electronically published on MOL's web site.

2.1.4 LCL SERVICE CHARGES (Applies ONLY to the shipments from Japan)

The LCL Service Charge (LCL SC) is payable by the Merchant:

- (a) For the Carrier receiving export LCL cargo at the CFS from the Merchant and for their subsequent handling.
- (b) For handling of import LCL cargo by the Carrier at the CFS and its subsequent release to the Merchant.
- (c) For attending to associated documentation.

Basis of Application:

Where LCL SC are shown:

- (a) 'Per 1000 kilos or per cbm' the basis for charging shall be the same as used for calculating the ocean freight.
- (b) 'Per 1000 kilos' only then this basis applies irrespective of the basis on which ocean freight is charged.

LCL SC have been earned from the date on which the cargo has been received at the CFS on behalf of the Carrier and irrespective of the terms of sale between buyer and seller are payable:

- (a) Export LCL SC must be prepaid in the country of origin/port of loading prior to issuing the Bill of Lading, irrespective of whether ocean freight and associated destination charges are on a freight collect basis.
- (b) Import LCL SC must be paid prior to release of the cargo.
- (c) LCL SC's may be paid in a freely remittable currency (see rule 3.2.3) other than the currency quoted in the tariff.
- (d) Minimum LCL SC per Bill of Lading - One ton weight or measurement as applicable, unless otherwise indicated.

Bills of Lading will show whether import LCL SC has been paid or is due.

Rules 3.3.1 and 3.3.2 cover notice of changes/implementation in the levels of charges.

2.1.5 DEMURRAGE AND STORAGE GENERAL

2.1.5.1 Demurrage

Is the charge imposed for equipment including its storage kept beyond the freetime allowed for taking receipt of cargo in the port/terminal/CY. It normally commences following the freetime period given after the cargo date of availability.

As defined in rule 2.1.1.1, demurrage also applies to the export shipments delivered but detained for loading prior to the commencement of the official receiving period, and when the shipment is delayed at Merchant's request.

Full details of these times and charges for individual ports/areas will be found at the Local MOL Office adjacent to such ports/areas.

If after a period of seven days from the expiry of free storage time as defined above, the Merchant has failed to remove or accept delivery of the cargo, the Carrier shall be entitled, at the Merchant's risk to unpack the container and place the cargo into a warehouse. The Merchant will be responsible for all transfer, unpacking and storage charges.

2.1.5.2 Phased Delivery Demurrage Freetime

Where these freetimes are shown, they apply for the number of containers concerned on one or more Bills of Lading shipped in one vessel and discharged at one port for delivery to, or to the order of, one Consignee or Notify Party at one place of delivery.

2.1.5.3 Increases/Reductions to Demurrage Charges

Increases/reductions will apply immediately from the effective date notified.

The revised charges will apply from the effective date to cargo and/or equipment already on Demurrage.

2.2 CARRIER (WHERE PERMITTED) AND MERCHANT HAULAGE - GENERAL RULES

These Rules and Conditions are additional to the General Rules and Conditions set out in Section 3 of this Tariff, and those applicable to cargo accepted under the Carriers Combined Transport Bills of Lading. For definitions of terms used refer to Section 1.

2.2.1 BORDER COSTS, TAXES ETC.

Irrespective of how transport is performed, those including, but not limited to Border Costs or Taxes, Inspection or quarantine costs etc are always for account of the cargo. Merchants are responsible for providing all documents including special documents e.g. Health Certificates, Certificates of Origin, Licences, etc arising from routing of cargo across Borders. Merchants will be responsible in the event of any delay incurred in providing such documents, for all costs incurred (e.g. detention charges where applicable).

2.2.2 CUSTOMS' CLEARANCE

Customs Clearance or any related arrangements shall be done by the Merchant at their sole responsibility and account.

2.3 CARRIER HAULAGE (WHERE PERMITTED) GENERAL RULES

The following rules apply when the Carrier (where permitted) undertakes at the Merchant's request, the inland transport of containers moving under Combined Transport Bills of Lading.

Carriers' Inland Haulage Tariffs only include the normal costs for performing the transport (see rule 2.3.3 covering additional services and charges). Stuffing and un-stuffing of the cargo will be at the expense of the merchant.

2.3.1 TRANSPORT CHARGES

2.3.1.1 FCL Containers

Inland Charge will be levied for the transport of a container between the Place of Acceptance/Delivery shown in the Combined Transport Bill of Lading and the Container Yard/Terminal.

2.3.1.2 LCL Cargo

LCL carrier haulage may not be offered by the carrier, unless otherwise specified in other part of rule 2.3.

2.3.1.3 Inland Haulage Charges (where applicable) – Payment

Where applicable, Inland Haulage Charges have been earned and are payable from the time that the Merchant gives and the Carrier accepts instructions to undertake Carrier Haulage (where permitted).

At the Merchant's option they may be paid:

- (a) Together with the ocean freight, or
- (b) For the charges incurred in the country of export, separate from the freight but in any event within such period as the carrier may specify, or
- (c) For charges incurred in the country of import separate from the freight but in any event within such period as the Carrier may specify.

Bills of Lading will indicate whether any Inland Haulage Charges incurred are due or have been paid.

Merchants are referred to Rule 3.3.1 for details of notice of changes in the levels of rates.

2.3.1.4 Quotations

The MOL Inland Haulage Tariffs will be maintained on a 'refer' basis.

The effect of a 'refer' tariff system is that any enquiry received from a Merchant for a rate is answered by an indication of what that rate might be. The rate does not become a firm and binding quotation until a firm booking is made by the Merchant for a particular consignment to a specified place. The reason for this is that the costs of inland haulage services can increase at extremely short notice.

2.3.1.5 Equipment Freetime & Detention Charge

Containers delivered by the Carrier for packing (exports) or Unpacking (imports) under Carrier haulage must be made available for receipt by the Carrier in accordance with the MOL's Equipment Interchange Agreement, or the rule of Equipment Free Time and Detention charge, Waiting Time Charge, and any other charges as set forth by MOL.

Detail of the Equipment Free Time, Detention Charge and Waiting Time Charge are available at Local MOL office adjacent to the location where carrier haulage is arranged.

2.3.2 CHANGES IN RATES AND CHARGES

2.3.2.1 Standard Procedures

- (a) No inland tariff amendments (up or down) will be applied retrospectively.
- (b) The Local MOL Office will give both the dates of announcement and implementation in their notice of change.
- (c) Tariff increases/reductions are to be applied in accordance with rule 3.3.2 except as noted below:-

Detention Charges (where applicable)

Increases/reductions will apply immediately from the effective date notified.
The revised charges will apply from the effective date to equipment already on Detention/Waiting Time.

Waiting Time Charges (where applicable)

Increases/reductions will apply immediately from the effective date notified.
The revised charges will apply from the effective date to equipment already on Detention/Waiting Time.

2.3.2.2 AREAS WHERE CARRIER HAULAGE AVAILABLE/NOT AVAILABLE

Carrier Haulage is offered to Merchants at Carrier's sole and individual discretion within the following countries, subject to Carrier's agreement and feasibility on service and charge.

Group 1 (Countries in Europe / North Africa):

This tariff Shall not apply.(MOL Europe Tariff Rule shall govern.)

Group 2 (Countries in North Asia)

Hong Kong Japan, Korea, People's republic of China, Republic of Taiwan,
Exceptions: None

Group 3 (Countries in South East Asia)

Brunei, Cambodia, Indonesia, Laos, Malaysia, Singapore, Thailand, Vietnam
Exceptions: Carrier's Haulage is not offered in Philippines

Group 4 (Countries in West Asia)

Bangladesh, India,
Exceptions: Carrier's Haulage is not offered in Afghanistan, Myanmar, Nepal, Pakistan and Sri Lanka.

Group 5 (Countries in Middle East)

Exceptions: Carrier's Haulage is not offered in any countries in Group 5.

Group 6 (Countries in Oceania)

Australia, New Zealand,
Exceptions: None

2.3.3 ADDITIONAL SERVICES AND CHARGES

Carrier's Inland Haulage Tariffs (where applicable) only include the normal costs for performing the transport with equipment generally used for this kind of operation on the shortest possible route during normal working days and working hours; such charges are minimum charges.

Should for any reason:

- (a) The Merchant require the Carrier to use other equipment, choose routing other than that normally used, ask for any kind of additional services or require transportation beyond normal working and working hours, or
- (b) By reason of the nature of the contents of the container(s), the Carrier incurs any additional costs for and during the movement of such container(s).

Then the cost of such additional services/charges will be for the Merchant's account on a cost recovery basis.

2.3.4 MULTI-STOPS

Multi-stop facilities can only be offered under agreement of carrier and real service level. All involved real/additional cost shall be account of and recovered from Merchant. Applicable charges and quantum are available at the local MOL's office adjacent to the location, and may vary without notice.

2.3.5 PACKING/UNPACKING OF CARGO INTO/FROM CONTAINERS – MERCHANT'S RESPONSIBILITY

The Merchant has sole responsibility for the packing/unpacking of the cargo, into/from the Container and the Carrier shall be under no liability for loss or damage to the cargo, or for any personal injury or loss or damage to any property arising out of such operations. In the case of road transport, the driver is not authorised to act in any way on behalf of the Carrier. If, for any reason, the driver takes part in the packing/unpacking operation, he does so solely on behalf of the Merchant.

No supervision or advice as regards the packing/unpacking of cargo into/from Containers shall be given by or on behalf of the Carrier, or accepted by the Merchant, unless agreed in writing between them, and even then such advice shall in no way extend, alter or affect the Carrier's or Merchant's liabilities.

The Merchant is responsible for ensuring that the appropriate seal, as supplied by the Carrier, is properly affixed to the loaded container before it leaves his premises. The Merchant should satisfy himself on taking delivery that the seal on the container is intact.

2.3.6 CONDITION OF CARRIERS EQUIPMENT

Refer to Rule 2.6.2

2.3.7 FUTILE TRIPS

Where by prior arrangement with the Merchant the Carrier presents the Container by road, rail or by inland waterway for the packing/unpacking of the cargo by the Merchant, and through no fault of the Carrier, the Merchant is unable to pack/unpack the cargo, then a charge will be levied as set forth by the carrier.

2.3.8 RE-DIRECTION

When the Carrier agrees to re-direct a container from the originally specified Place of Acceptance/Delivery to another place, the Merchant will reimburse the Carrier for all costs so incurred in addition to the appropriate Inland charge.

2.3.9 CHANGE OF PLACE OF INLAND DELIVERY

Subject to Carrier's agreement, the place of inland delivery may be changed, and transport will be made under the Terms and Conditions of the Carriers Combined Transport Bill of Lading. Inland Charges due or already paid by the Merchant will be adjusted to reflect the changed position.

2.3.10 CHANGE FROM CARRIER TO MERCHANT HAULAGE

Subject to Carrier's agreement, Merchant Haulage may be substituted for Carrier Haulage (where permitted).

Under such circumstances the Combined Transport Bill of Lading will terminate at the Container Yard.

Inland charges due or already paid by the Merchant will be adjusted and Merchant Haulage Terms and Conditions will apply.

2.4 CARRIER HAULAGE AND DETENTION RULES APPLICABLE TO COUNTRIES IN GROUP 2,3,4,5 & 6

2.4.1 ROAD HAULAGE

2.4.2 DETENTION AND WAITING TIME

When the freetime is exceeded at Merchants' premises, the following will be charged as appropriate:-

Detention Charge

Applicable when containers or container/trailers are detained.

Waiting Time Charge

Applicable when container/trailer unit with prime mover and driver are detained.

Alternatively, the Carrier at his sole discretion, may at the Merchant's responsibility leave the container/trailer unit combination at Merchant's premises, provided that adequate off-street parking facilities are available. Container/trailer units left at Merchant's premises beyond the free time period is subject to Detention Charge.

2.5 MERCHANT HAULAGE - GENERAL RULES

2.5.1 CONTAINER SEAL

The Merchant is responsible for ensuring that the appropriate seal is properly affixed to the loaded container before it leaves his premises.

The Merchant should satisfy himself on taking delivery that the seal on the container is intact.

2.5.2 CARGO PACKING/UNPACKING

No supervision or advice as regards the packing/unpacking of cargo into/from Containers shall be given by or on behalf of the Carrier, or accepted by the Merchant, unless agreed in writing between them, and even then such advice shall in no way extend, alter or affect the Carrier's or Merchant's liabilities.

2.5.3 CHANGE FROM MERCHANT TO CARRIER HAULAGE (WHERE PERMITTED)

Subject to Carrier's agreement Carrier haulage (where permitted) may be substituted for Merchant Haulage. Under such circumstances the terms and conditions of the Carriers Combined Transport Bill of Lading will apply.

Transfer charges due or already paid by the Merchant will be adjusted to reflect the new place of delivery and Carrier Haulage Terms and Conditions (where applicable) will apply.

2.6 MERCHANT HAULAGE - EQUIPMENT HANDOVER

2.6.1 RELEASE OF EQUIPMENT TO MERCHANTS

The Carrier will, by arrangement, release containers to the Merchant at the specified handover points.

2.6.2 EQUIPMENT HANDOVER CONDITIONS

The Carrier undertakes to ensure that equipment (Container(s) and/or trailer) is in suitable condition for its intended use at the time it is handed over to the Merchant. It is the Merchant's responsibility to satisfy himself as to the condition of the equipment.

When equipment is loaned to the Merchant it is on the following terms:

- (a) The Merchant acknowledges receipt of the equipment in apparent good order and condition.
- (b) When the Merchant's prime mover or prime mover and trailer or other carrying vehicle is used the equipment must be suitable for the weight, size and other characteristics of the load involved.
- (c) The Container must at all times be firmly secured to the trailer or other carrying vehicle either by twistlock or by another method agreed by the Carrier.
- (d) In no circumstances may the container be removed from the trailer or other carrying vehicle without prior agreement from the Carrier.
- (e) The Carrier's equipment must not be used except for the carriage of cargo booked with the Carrier for overseas transportation by him.
- (f) The Merchant is responsible for any damage to or loss of the equipment. Any repair will be made by the Carrier and he will be reimbursed by the Merchant.
- (g) The Merchant undertakes to ensure that containers from which the cargo has been unpacked are left in a clean and cargo-worthy condition
- (h) The Carrier has the right to inspect the container before accepting redelivery.

The Merchant will reimburse the Carrier for any cleaning costs, and other consequential expenses incurred by the Carrier arising from the Merchants failure to redeliver the container in a suitable condition. If the Merchant does not have the necessary special cleaning and/or disposal facilities, the Carrier may, by arrangement following delivery, agree to undertake the necessary work at the Merchant's expense.

The Carrier will ensure that the container presented for loading is clean and complies with all regulations (both international and national) governing the transport of the commodity to be moved.

The above conditions are incorporated in the Hand-over Agreement under which the Carrier leaves his equipment together with the following additional provisions:-

- (i) The Merchant shall provide such information as the driver may require satisfying himself that the equipment or load is safe and roadworthy and that the carriage thereof would not infringe any statutory provision or regulations for the time being in force.
The driver shall not be obliged to move any load until he is satisfied accordingly.

(ii) (Driver's responsibility)

Save for completing any of the Carrier's prescribed forms relating to hand-over of equipment and giving a receipt in the Carrier's prescribed form, the driver is not authorised to act in any way for the Carrier, but these conditions do not preclude the driver providing assistance with the packing/unpacking or tilt lashing of containers in accordance with normal road haulage practice at the place of acceptance or the place of delivery and without charge to the Merchant.

The Carrier accepts no responsibility for any such assistance, and the Merchant agrees that in giving any such assistance the driver shall be treated in all respects as the agent of the Merchant.

2.6.3 EQUIPMENT HANDOVER POINTS

2.6.3.1 Countries in the Group 2,3,4,& 6.

The CY or carrier's facility where containers may be drawn from and returned to shall be specified by MOL at its sole discretion. Exact locations are available at Local MOL office adjacent to the location where Containers are drawn from or returned to.

2.6.4 RETURN OF EQUIPMENT

Equipment must be returned to the Container Yard at which it was handed over to the Merchant. If, however, only the container (i.e. without trailer) is handed over, such container may, at the discretion of the Carrier be returned to another Container Yard.

2.6.5 INLAND COSTS

All costs incurred between the time the equipment is handed over to the Merchant and the time it is returned to the Carrier will be for Merchant's account.

2.6.6 TRAILERS

Unless otherwise agreed by the carrier, Carrier trailers cannot be provided for lease, loan or hire.

2.6.7 TEMPERATURE CONTROLLED CONTAINERS

Merchants will be responsible for the monitoring and control of temperature controlled containers in periods of free time or detention.

Where Carriers, at their sole option, hand over active refrigeration machinery, including generator sets or refrigerator chassis, all additional costs will have to be passed on to the Merchant.

2.6.8 MERCHANT SUPPLIED CONTAINERS

Detention Charges under MOL Inland Haulage Tariffs are not applicable except when carriage of the Merchant supplied container is effected on a trailer supplied by MOL.

2.6.9 FCL COMBINED UNLOADING/LOADING

- i) These arrangements apply only where the same Carrier/Container Operator carries the container(s) in both the import and export movements, the cargo controlling party is the same in both directions and provided that the container(s) may be used/interchanged between trades.
- ii) The Contract of Carriage for the import movement, together with the Terms and Conditions of the relevant tariff will terminate when the container(s) are handed over at the Carrier's Equipment Handover Point. The export Contract of Carriage will commence upon receipt of the container(s) at the Carrier's Equipment Handover Point.
- iii) Prior to the physical despatch of the container(s) from the Carrier's Equipment Handover Point, Merchants MUST obtain the Carrier/Container Operators agreement to an unload/reload arrangement. In the absence of this agreement, Terms Conditions and charges will apply to the export and import movements separately.
- iv) When the Consignee/Controlling party of a full import container is also the Exporter/Controlling party of a full export container, free time as stated in Section 2.7 will be extended by 24 hours.

Where containers are retained beyond the allowed free time period, equipment detention will apply MOL Inland Haulage Tariffs.

- v) Merchant haulage inland transport charges can be found in the appropriate
- vi) Existing tariff rules for equipment handover places should apply.
- vii) Terminal Handling Charges will apply according to the Trade concerned, and the port of entry/exit.
- viii) The Carrier's equipment must not be used for any other purpose than for the carriage of goods booked with the Carrier for overseas transportation by him.
- ix) The above rules may apply to Merchant owned/leased containers, which are suitable for transportation in the Carrier's vessels.

The above rules apply subject to operational acceptance based on real situation.

2.7 EQUIPMENT FREETIME & DETENTION CHARGE & MOL DEMURRAGE AND DETENTION TARIFF

Containers released by the Carrier for packing (exports) or unpacking (imports) under Merchant haulage must be returned to the Carrier in accordance with the Equipment Interchange Agreement between the carrier and Merchant or its agent, which specifies Equipment Free time and Detention charge applicable.

Detail of the Equipment Free Time and Detention Charge may be changed due to cost variance and shall be published in separate tariff, or acquired through Local MOL office adjacent to the location where Containers are released or returned.

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SECTION 3

3.1 RATES OF FREIGHT - BASIS OF APPLICATION

3.1.1 DESCRIPTION OF GOODS

Shippers must provide sufficient description of the goods in order that they may be correctly stowed, rated and charged. Information should be supplied in a form laid down by the Carrier and which may vary area by area. Merchants should consult and MOL's agent offices for detailed information.

The Carrier reserves the right to open any container and to inspect the contents to check description, weight and/or measurement.

3.1.2 WEIGHT OF GOODS

The gross weight of all goods must be accurately determined and declared. In particular Merchants must declare the weight of any individual pieces or packages to a container which exceed 10,000 kg.

The combined weight of a container and its contents must not exceed the permitted gross weight indicated on the container. Where any container exceeds this limit, the Carrier reserves the right, with or without notice to the Merchant, to unpack as required at Merchant's sole risk and expense.

3.1.3 BASIC MEASURING AND WEIGHING RULES

The cubic measurement, where required for freighting purposes, is obtained by multiplying the three extreme dimensions of each individual package or piece of cargo.

Where weight is required for freighting purposes, the gross metric weight of each individual piece or package, inclusive of any packing material, will be used.

For all freighting purposes, the weight and measurement of pallets, skids and runners will be disregarded. Sworn/Measurers may officially be appointed by MOL where and when necessary, and subject to change without further notice.

3.1.4 OCEAN FREIGHT TARIFF CURRENCY

US Dollar (USD)

Japanese Yen (JPY) (See remark)

Remark: Carrier may set freight rate in Japanese Yen, only for the shipments from Japan and of which freight is paid in Japan.

3.1.5 FREIGHT UNITS

The units used for freighting are:-

(a) Per weight and measurement

Weight ton (1000 kilos).

Cubic Metre

(b) Per container (See remark)

20 ft Container

8'x 8'6"x40' ft Container (Standard 40ft container)

8'x9'6"x40' ft Container (Hi-Cube 40ft container)

45 ft Container

(Remark): Carrier may charge higher freight or premium as set forth in rule 3.4 of this tariff, or from time to time for special containers including, but not limited to Temperature controlled container, Open top container, Flat rack container, Insulated container (Not temperature controlled), Tank Container, owned by the carrier, or shipper.

3.1.6 FREIGHT GOVERNED BY VALUE

The fob value and weight/measurement of the goods must be declared in the manner prescribed by the Carrier and substantiated by commercial invoices submitted at the time of acceptance, except in Hong Kong, Korea and Singapore/Malaysia where export licences, declarations, permits may be required.

The value for freighting purposes shall be calculated separately for each individual unit, piece or package.

3.1.7 INDICATIVE CALCULATION – OCEAN FREIGHT

1. Basic Freight (FRT)	a
2. Transport Additional(Where applicable)	b
3. CAF on 1 and 2 (where applicable)	c
YAS (only applies to the shipments to/from Japan, except from/to Korea)	cc
4 BAF/FAF	d(**)
5. Any Other Ocean Freight Charges	e
6. Total Ocean Freight and Charges	f = a + b + c + d + e
	f2(***) = a + b + cc + d + e

* This indicative calculation is only relevant when used in accordance with MOL rates, rules and conditions.

(**) BAF/FAF also apply to OOG charge and/or for lost space(TEU) as defined in Section 3.4.2.

(***)f2 : Applicable where YAS applies

3.2 PAYMENT OF FREIGHT

3.2.1 GENERAL PRINCIPLES

Freight may be prepaid in exchange for Bills of Lading, or paid on arrival of the cargo at destination on presentation of the relevant documents, but before release of the cargo (except where listed otherwise).

Cargo will not be released until all the relevant documents have been presented and the freight and charges due have been paid. In circumstances where freight is not paid upon release of the cargo, MOL reserves the right to collect the full amount due (freight and surcharges) in local currency at the rate of exchange ruling at the time of the invoice.

Exception: Provided that the Merchant agrees with the contents of MOL's Credit agreement, and duly signs on written agreement, MOL may extend credit allowance as specified in MOL's Credit Agreement.

3.2.1.1 Transport additional

This section Applies only to the shipments from/to countries in Group 6

Transport Additional freight must be paid with the Ocean Freight, except when the latter is on a freight paid on arrival at destination basis, in which case it can be prepaid.

3.2.2 CARGO ON WHICH FREIGHT MUST BE PREPAID

The Carrier may, at its discretion, limit the term of payment to Prepaid only for the cargoes listed in 3.2.2.1 and 3.2.2.2.

3.2.2.1 Cargo shipped between all areas listed

Dangerous cargo for which the statutory regulations in the Carrier's country, or the countries through or to which the goods may be transported, stipulate shipment on deck only. Livestock, Refrigerated Goods, Returned Goods (unless the original shipper requests the return)

3.2.3 CURRENCIES IN WHICH FREIGHT MAY BE PAID

Freight and charges may be paid on shipments from all areas in the tariff currency. In addition freight and charges may also be paid in the currencies as specified in 3.2.3.1., provided however that the carrier may suspend to accept payment in any or some of such currencies as listed therein:-

3.2.3.1 Currencies accepted for payment of freight and charges
In the freely remittable currency of:-

(A) For payment of Ocean freight and charges.

Australia, New Zealand, Hong Kong, Japan, Malaysia, Singapore,
Korea (To and from South Korea and local charges only)
Philippines (To and from Philippines and local charges only)
Taiwan (To and from Taiwan and local charges only)
Thailand (To and from Thailand and local charges only)

(B) For payment of local charges only;

People's republic of China

India

Pakistan

United Arab Emirates

Vietnam – Only for Local Documentation Fee for the shipments moving between
Vietnam and countries in Group 2 and 3.

3.2.4 RATES OF EXCHANGE

When any part of the ocean freight and associated charges is paid in a currency stipulated in rule 3.2.3. Other than US\$ Conversion will be made from the US\$ at the appropriate buying/selling rates quoted locally as follows:

3.2.4.1 Basic Rules

For Prepaid Freight

Two (2) working days (Saturdays, Sundays and recognised/gazetted public holidays excluded) before the date on which the ocean vessel is advertised and scheduled to arrive at the port of loading concerned, or the working day before payment if earlier.

For Freight Payable on arrival at Destination

Seven (7) working days (Saturdays, Sundays and recognised/gazetted public holidays excluded) prior to the date on which the ocean vessel is advertised and scheduled to arrive at the port of discharge concerned, or the working day before payment if earlier.

Conversion of charges Quoted in a National Currency

Merchants may want to pay in USD or a third currency. The charges will be converted from the National Currency to USD or alternatively, from one National Currency to a third currency through the USD at the appropriate exchange rates which apply on the date of payment of the ocean freight and associated charges, defined above.

Currency and Bunker Adjustment Factors

All rates are subject to CAF, YAS (where applicable) and BAF, FAF, details of which are regularly published and also available from MOL or its Agents.

3.3.1 ALTERATIONS IN RATES AND CHARGES

Increases – With Notice

Ocean freight and associated charges are subject only to the exceptions detailed. Rates for the items listed below are subject to increase with current and 30 Calendar days notice. Thus increases will take effect on or after the first day of the 30th day after the date of announcement of the increase, based on Bill of Lading date (Example - if an announcement was made in June 30th, the effective date of the increase would be 1st August). The carrier, however, may reserve the right to increase those freight and charges with less than 30 calendar days notice.

Ocean Freight
Optional Destination Fees
Change of Destination Charges

Increases - Without Notice

The Carrier reserves the right to increase the rates and charges in respect of the items listed below without notice.

Container Demurrage Charges
Container Detention Charges (where applicable)
Transport Additional
LCL Service Charges
Terminal Handling Charges
Inland Haulage Rates and Charges
Over Weight container charges
Any other charges

3.3.2 IMPLEMENTATION PROCEDURES – REDUCTIONS AND INCREASES (Also introductions and withdrawals of Surcharges including CAF & BAF)

Reductions

Through Cargo pre-carried to the ocean port wholly by sea or initially by sea;
Reduction to apply to cargo on MOL through Bills of Lading dated on or after the date of implementation.

Cargo moving overland (whether or not on through documents) to connect with the ocean vessel, also local ocean port cargo;
Reduction to apply to cargo loaded in ocean vessels advertised and scheduled to sail from the individual port concerned on or after the date of implementation.

Increases

Through Cargo pre-carried to the ocean port wholly by sea or initially by sea;
Increase to apply to cargo on MOL through Bills of Lading dated on or after the date of implementation.

Cargo moving overland (whether or not on through documents) to connect with the ocean vessel and local ocean port cargo);
Increase to apply to cargo loaded in ocean vessels commencing to load at the individual port concerned on or after the date of implementation.

3.3.3 CONTINGENCIES

Adjustments to freight and charges may be made without notice in the following circumstances:-

- (a) The imminence or existence of any war (whether declared or not) hostilities or war-like operations (whether the countries of the Carriers or any of them are belligerents or not) the imposition of sanctions or the taking by any Government of any measure (whether by international agreement or not).
- (b) The actual or threatened suspension of, or restriction of, any navigation route by piracy or alike events.
- (c) Labour troubles or disturbance or congestion in a loading or discharging terminal.
- (d) Any other exceptional contingency, including currency and bunker price fluctuations outside the control of the Carriers (see rule 3.2.4.1)

3.4 FREIGHTING – NON STANDARD EQUIPMENT

3.4.1 SPECIAL EQUIPMENT

The provision by MOL of the following types of special container,

Dry Bulk Open Top
Flat Rack Open Side
Insulated Containers (Non-Temperature Controlled)

Will be subject to Special Equipment Premiums (SEP's), of which exact quantum being available at MOL's local office upon inquiry. SEP's may vary by origin port, destination port and time of shipment, and change without notice

Notes

SEP will be payable by the freight payer.

For FCL/FCL, FCL/LCL and LCL/FCL shipments, the Carrier will only supply special equipment at the specific request of Merchants.

In respect of LCL/LCL cargo SEP is applicable where it is evident the cargo can only move in the containerised form in special containers.

Tank (Liquid) Containers MOL should not supply these containers.

3.4.2 OUT-OF-GAUGE CARGO

Cargo presented for shipment of which one or more of the dimensions exceed the limitation as specified hereunder will be considered as Out of Gauge(OOG) Cargo. OOG Cargo will be subject to OOG charge per container and/or per lost space(TEU) of which exact quantum being available at MOL's local office upon inquiry. OOG charge is subject to BAF and/or FAF. OOG charge may vary by origin port, destination port and time of shipment, and may change without notice.

Any additional cost involved with handling, extra care of the cargo and all relevant cost involved with OOG cargo should be charged to Merchant with at least cost recovery level.

**Length: cargo stowed in 20 ft containers: 5metres
cargo stowed in 40 ft containers: 11 metres**

Width : 2.4 metres

**Height: 2.27Meters/20' Flat Rack container
2.00Meters/40' Flat Rack Container
2.30 metres/Open Top Container (both 20' & 40')**

**Weight: cargo stowed in 40 ft Flat Rack containers: 24.0 ton
cargo stowed in 20 ft Flat Rack containers: 20.0 ton**

3.4.3 FITTINGS WITHIN CONTAINERS

MOL may provide fittings within containers above customary container lashing points but the cost will be for Merchant's account; they will not be rented, leased or repurchased by the Carrier. Examples include:

Shelving

Frames for unpacked Engines

Kennels, Pens etc for the carriage of Livestock

Plastic Sheets / Nylon Ropes / 'S' Hooks / Silica Gel / Oil Paper / Plastic Tape) for

Hangertainers

The labour cost of 'packing' containers or all other fittings will also be for Merchant's account. Cost and charges are published through MOL local offices and its agent, and it will be changed based on cost variance.

3.4.4 DANGEROUS CARGO

MOL may accept carriage of Dangerous cargo together with clear indication on item and requested package level from Merchant. Restriction on vessel acceptance is segmented by commodity, IMO class, safety on operation. Carrier is authorized to unload and abandon the cargo anytime in order to keep safety on sailing / storage and any of extra cost would be on Merchant's account.

Dangerous cargo will be subject to DG charge. In addition, dangerous cargo which is transhipped at Singapore will be subject to PSA surcharge.

DG Charge and PSA surcharge may vary by origin port, destination port and time of shipment, and may change without notice. Exact quantum will be available at MOL's local office upon inquiry.

PSA rule and condition is obliged under shipments with transhipment at Singapore to and from ports in Area group 2/3/4/5/6.

Acceptance of PSA Group 1/1S commodities will be solely at MOL's discretion, and when accepted, weight restriction on PSA group 1/1S commodity is applied on all vessels.

IMO Class 1 cargo is not applicable for tariff on above statement as the commodity nature is explosive and the carrier has to bear the higher risks. Acceptance will be reviewed per *each* real case together with condition on port of loading / discharge, package level and any operational restrictions.

3.4.5 OVER WEIGHT CONTAINERS

MOL may apply over weight container charge or heavy lift charge in order to compensate the lost capacity by heavy cargo. Amount and implementation method will be announced based on real calculation of lost capacity.

MOL also reserves the right to refuse containers within payload but over weight limitation by law locally. Any extra cost, penalties and expenses shall be under Merchant's account.

3.5 FREIGHTING –STANDARD EQUIPMENT

3.5.1 GENERAL PRINCIPLES

Except where otherwise specified, rates of freight for each piece or package must be charged per 1000 kilos or per cubic metre. Items marked 'W' or items marked 'M' must be charged on the gross weight or on the gross weight or cubic measurement as indicated.

The rates for LCL or other cargo rated on a per freight ton basis W/M will be charged on the weight or measurement on service area agreed

From Japan only: whichever produces the higher amount of freight

3.5.1.1 MINIMUM FREIGHT – LCL CARGO (This section shall apply only to the shipments from Japan)

Minimum freight per LCL cargo will be subject to written mutual agreement together with local office of MOL and its agent.

3.5.2.1 UNCONTAINERABLE CARGO (This section shall apply only to the shipments to & from Group 6 (Australia and New Zealand, but not applies to South Pacific Countries)

Any cargo which has to be loaded breakbulk, i.e. separately from the Container/ flatrack on which it may or may not finally be stowed, may be accepted for shipment by Container vessels, subject to prior agreement by MOL. Such shipments are to be considered as break-bulk cargo and freighted as such.

Delivery/acceptance to/from alongside the vessel will be for account of the merchant at his risk and expense. LCL Service Charges will not be applied to such shipments.

Normal pre/post shipment charges for conventional break-bulk cargo, however, will apply. Special Equipment Premium is not applicable.

3.6 FREIGHTING - ADDITIONAL CHARGES

3.6.1 NON-STANDARD LIFT CHARGES (NSL's)

FCL/FCL Shipments No NSL charges are applicable. FCL/LCL or LCL/FCL For individual pieces/packages over 10,000 kilos gross shipments weight shipped, one half the NSL charges listed below will apply.

LCL/LCL and for individual pieces/packages over 10,000 kilos Uncontainerable gross weight shipped, the full NSL charges listed below Shipments apply.
CAF and BAF NSL charges are not subject to CAF or BAF.

Scale of Non-Standard Lift Charges

Over & Up to

Metric tons

10 - 15	USD 71.75
15 - 20	USD 89.75
20 - 25	USD 106.50
25 - 30	USD 123.20
30 - 35	USD 139.90
35 - 40	USD 153.25
40 - 45	USD 166.65
45 - 50	USD 180.00
50 - 55	USD 189.20
55 - 60	USD 198.30
120 - 125	USD 294.95
125 - 130	USD 298.60
130 - 135	USD 304.05
135 - 140	USD 307.70
140 - 145	USD 313.25
145 - 150	USD 316.80
150 - 155	USD 318.70
155 - 160	USD 320.55
160 - 165	USD 322.25
165 - 170	USD 324.15
170 - 175	USD 325.90
175 - 180	USD 327.75
180 - 185	USD 329.55
185 - 190	USD 331.45
190 - 195	USD 333.25
195 - 200	USD 335.10

Over 200 mt Refer

(For Uncontainerable Cargo below 15 tons per piece/package, USD 71.75 applies.)

3.6.2 CHANGE OF DESTINATION (COD)

Change of destination for cargo is at Carrier's discretion and subject to accessibility in stow and other operational considerations. In all cases the ocean freight and other charges will be adjusted to those in force for the final destination.

Changes of destination may only be requested and paid for by the holder of the original Bill of Lading or the controlling Merchant where Multiple Bills of Lading are present. The following fees apply:-

Change between Terminals

FCL Delivery If the COD involves a change of ocean vessel discharge port, the actual expenses incurred by the Carrier, subject to minimum charges of USD 200 per B/L, for all cargo. Any additional handling and administration cost generated will be on Merchant's account.

3.6.3 CHANGE OF DELIVERY STATUS

Change of Delivery status can be granted at Carrier's discretion, from FCL to LCL and from LCL to FCL, provided requests are received in good time before the arrival of the cargo at the port of destination. All Ocean Freight, Terminal Handling Charges, LCL Service Charges and Inland Haulage Charges, will be applied and adjusted to accord with the revised delivery status.

Change from LCL/LCL to LCL/FCL FCL/LCL to FCL/FCL: The LCL service charge at the destination port will not be collected and the total ocean freight on the container will be adjusted to the appropriate FCL freighting. If the ocean freight on the container is less than the FCL freighting, the Merchant requesting the change of delivery will be required to pay the difference.

Change from FCL/FCL to FCL/LCL: The appropriate LCL service charge will be applied in full.

Change from LCL/FCL to LCL/LCL: The appropriate LCL service charge will be applied in full. If the ocean freight calculated on an LCL basis is more than the freight actually charged, the Merchant requesting the change of delivery will be required to pay the difference. If the ocean freight calculated on an LCL basis is less than the actual freight charged, no adjustment will be made.

3.6.4 PACKAGES OF VALUE EXCEEDING THE CARRIER'S NORMAL BILL OF LADING LIABILITY

If Merchants desire the Carrier to be responsible for a value in excess of the statutory limitation prescribed in the Carrier's Bill of Lading, they must state to the Carrier in writing, in time to permit special reception and stowage, the value, gross weight and measurement and a full description of the goods and they must obtain the Carrier's agreement to accept the increased liability.

The increased liability will only be assumed by the Carrier upon payment of 1% ad valorem on the full declared value of the goods, this payment to be in addition to the ocean freight.

3.7 MERCHANT SUPPLIED/OWNED CONTAINERS

3.7.1 GENERAL REQUIREMENTS

Subject to the following conditions, Merchant supplied/owned containers may be accepted by the Carrier.

- i) Merchant supplied/owned containers must comply in all respects with both ISO and/or other National legislative Safety Standards, and must be suitable for carriage in vessels operated by the Carriers. Merchants must hold, and may be required to produce to the Carrier, current certificates showing that the container is in every respect fit and suitable for the carriage of the commodities in question. Merchants may also be required to produce evidence of ownership or lease prior to acceptance.
- ii) In no circumstances will Carriers make any contribution towards container hire when Merchants choose to effect shipment in Merchant owned or Merchant leased containers.
- iii) Except as otherwise agreed, Merchant supplied/owned containers will be freighted on a per container basis, including any empty return or positioning moves (see 3.7.2.3 (b) below).
- iv) Unless otherwise agreed, Merchant supplied/owned containers will be subject to all Tariff terms, conditions and ancillary charges, including, but not limited to, Terminal Handling Charges, pre and post shipment additional, Currency and Bunker Adjustment factors, Out of Gauge Surcharges, and Inland charges, etc. Merchant containers will, however, not be subject to any tariff special equipment container premiums.
- v) See separate additional rules for Merchant supplied containers for Livestock, Liquids in Liner Bags, Dry Bulk, and Tank containers, as specified in this Tariff.
- vi) In respect of Merchant supplied/owned temperature controlled containers, the Carrier will not be responsible for any consequence arising or resulting from any defect and/or breakdown of the temperature control apparatus of the container.
- vii) This rule will be under constant review and is subject to change without notice.

3.7.2 FREIGHTING

3.7.2.1 Out-of-Gauge Cargo in Merchant Supplied Containers

Subject to OOG rules 3.4.2

3.7.2.2 Non-Standard Lift Charges

Not applicable unless otherwise recorded, unless with Out-Of-Gauge cargo applies. MOL is entitled to collect at least based on cost recovery level.

3.7.2.3 Tank Containers

Quotations will only be given for each complete separate movement, either loaded or empty, calculated in accordance with the following:-

- 40' x 8' up to 8'6" configurations
- 20' x 8' up to 8'6" configurations
- 40' x 8' x 4'3" configurations
- 20' x 8' x 4'3" configurations

(a) Port Additional

The appropriate Tariff additional for movements before or after the ocean movement will be charged as shown in the Ocean Tariff.

(b) Conditions

To benefit from the freighting above for empty (return or positioning) movements, the Merchant must provide a certificate reading either:-

'We hereby certify that Tank Container No. is moving empty to (port of discharge) and will return in a loaded condition by latest (date) from (port of loading) to (port of discharge).';
or

'We hereby certify that Tank Container No. moved in a loaded condition to (port of discharge) by (Vessel) on (Date), as evidenced by the attached copy Bill of Lading.'

If at any time (and whether or not any allowance for expansion of the liquid has been agreed between the Carrier and the Merchant) it appears the liquid/gas is or may become a danger to any person or property, the Carrier may, without liability, discharge from the tank as much of the contents as he considers necessary to avert such danger. The Merchant will reimburse the Carrier for all expenses and losses incurred as a result of this.

When Carriers are requested to connect Tank Containers to vessels' power supply, for Heating, charge shall apply in accordance with mutual written agreement between Carrier and Merchant prior to loading / acceptance of the booking.

Carriers offering this facility cannot accept responsibility for damage to the tank container or the cargo, as a consequence of any failure of the connection to or equipment within the tank container.

3.7.2.4 Glass Plate and Sheet

For the loaded shipments **moving under the scope of this tariff**, the freight will be assessed in accordance with mutual written agreement between Carrier and Merchant prior to loading / acceptance of the booking

3.8 ADDITIONAL SERVICES AND CHARGES

The Carrier may provide additional services at the request of Merchants, including:-

- (a) Work arising from Customs, Quarantine, Health or other Official Bodies' requirements.
- (b) Special apparatus and/or additional labour.
- (c) Work arising from any oversight, error or omission by the Merchant.

All the direct and subsequent cost and expenses shall be borne by the merchant. And MOL or its subsidiary, Agent shall not be held responsible for any damages, penalties arising as a result of such additional services.

3.9 TRANSPORT ADDITIONAL

(Applicable to the shipments to/from countries in Group 6 of Rule 1.2.2.)

Transport Additional cover receiving/delivery costs at loading/discharging port, transshipment costs between loading/discharging port and the transshipment port, together with the transfer costs at the latter.

Applicable quantum may vary without notice and details of the Transport Additional are available at the carrier's office in Asia and Oceania.

Reference should also be made to Tariff Section 2 for THC and LCL S/C.

Application

Except where may be shown otherwise, Transport Additional will be applied on the same basis as the Base Rate, or per 1000 kilos, or per cbm.

The Transport Additional tariff applies to General Cargo unless recorded to the contrary.

Dangerous Cargo

Standard Transport Additional is applied for standard dry cargo. Dangerous cargo will have different level as to reflect the actual cost.

Refrigerated Cargo

Where local services accept refrigerated cargo, Transport Additional will be charged reflecting the actual cost of transfer at the transshipment port and local freight

3.10 OTHER ACCESSORIAL CHARGES

At the locations where shipment is received, stored, delivered and/or Bills of Lading and other documents are received, issued, accessorial charges may apply.

Applicable charges and quantum are available at the local MOL's office adjacent to the location, and may vary without notice.

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