

TERMS AND CONDITIONS OF THE MARINE TRANSPORTATION CONTRACT

WHEREAS the Merchant requires the services of a water transportation carrier to carry the general cargo during the Arctic Navigation Season;

WHEREAS NEAS is willing and capable of offering such transportation services to various destination in the Arctic;

THE PARTIES hereby agree to the following:

1. Definitions: In this contract:
 - a) "Arctic Navigation Season" shall mean the period, generally between June and November of each year, during which ships can safely proceed to, remain in and depart from the Northern Canada Vessel Traffic Services Zone established under the *Northern Canada Vessel Traffic Services Zone Regulations*;
 - b) "Charges" shall include all freight, charges, taxes, demurrage, general average contributions and Deadfreight due by the Merchant to NEAS;
 - c) "Deadfreight" shall mean freight payable by the Merchant to NEAS for cargo not delivered on time and/or in readiness to NEAS for carriage on board the contracted voyage;
 - d) "Hague-Visby Rules" shall mean the rules set out in Schedule 3 of the *Marine Liability Act* and embodied in the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, concluded at Brussels on August 25, 1924, in the Protocol concluded at Brussels on February 23, 1968 as well as any subsequent protocols;
 - e) "Lateral Cargo" means cargo carried or intended to be carried between the high-water marks of two Northern communities;
 - f) "Marine Transportation Contract" refers to any marine transportation agreement which covers the carriage of general cargo to, from or between the Northern communities served by NEAS, including where requested delivery services, during the current Arctic Navigation Season;
 - g) "Merchant" shall include, in addition to the individual, company or entity identified in Box 1 of a Marine Transportation Contract, the person shipping and/or receiving the cargo, the owner of the cargo, as well as the party for whom the cargo is being transported. The individual, company or entity identified in Box 1 of a Marine Transportation Contract is deemed to be acting for itself as well as on behalf of all individuals, companies and entity included hereunder as Merchant;
 - h) "NEAS" refers to NEAS Inc., Nunavut Eastern Arctic Shipping Inc. or Nunavik Eastern Arctic Shipping Inc., whichever is identified as carrier in the relevant Marine Transportation Contract;
 - i) "NSDR" refers to a lump sum rate per container including the stuffing, utilization of a NEAS container, marine transportation, delivery to the Merchant's site and return of the empty container to NEAS at the designated terminal on the same voyage;

- j) "Retrograde Cargo" shall mean cargo carried from an Arctic port or a Northern community to a port or Northern community located south of the loading point;
 - k) "Retrograde Cargo Valleyfield Terminal" shall mean cargo carried from an Arctic port or Northern community to the Valleyfield Terminal;
 - l) "Revenue Ton" shall mean either a metric ton of 1,000 kilograms of gross weight or 2.5 cubic meters, whichever produces the highest revenue per piece. The extreme overall dimensions of each piece shall be utilized to determine the volume;
2. Unless otherwise provided for in any other written agreement between the Merchant and NEAS, the terms and conditions contained in this contract shall apply to any carriage accepted by NEAS of any cargo of the Merchant during the Arctic Navigation Season covered by a Marine Transportation Contract issued by NEAS.
 3. The Merchant undertakes to tender for carriage and pay Charges on, and NEAS undertakes to transport, the general cargo described in Box 7 of a Marine Transportation Contract between the Port or Place of Loading indicated in Box 4 of a Marine Transportation Contract and the point of Delivery indicated in Box 5 of a Marine Transportation Contract, including where requested delivery to the site shown in Box 6 of a Marine Transportation Contract, subject to the rate(s), terms and conditions contained in this contract. It is also agreed that the character, conditions and circumstances of the carriage in the Arctic are such to justify the special conditions provided for herein.
 4. Unless otherwise specified the rate(s) shown in Box 8 of a Marine Transportation Contract apply(ies) per Revenue Ton, subject to a minimum charge per shipment of 0.5 revenue ton at the above-mentioned rate. The gross weight shall be the actual weight of the cargo delivered for shipment to NEAS without any deduction whatsoever, including without restricting the foregoing, the weight of the package, packaging materials of every kind and the weight of the container. The extreme overall dimensions of each piece shall be utilized to determine the volume. The said rate(s) include(s) water transportation to, or from, or between (as the case may be) the high-water mark of the community(ies) indicated in Box 5 of a Marine Transportation Contract. The said rate(s) also include(s) the service(s) described in the following item(s) initialed by NEAS;
 - a) Receiving and stevedoring at NEAS' marine terminal of any cargo(es) bound for the Labrador Coast, Nunavik and the Nunavut Territory;
 - b) Retrograde Cargo. Transportation from on beach above the high-water mark of the community(ies) shown in Box 4 of the Marine Transportation Contract to on dock at NEAS' marine terminal. The Merchant shall take the necessary steps to take delivery of his retrograde cargo within fifteen (15) days from the date of discharge, failing which the cargo will be stored at his sole risks and expenses.
 5. When Box 6 of a Marine Transportation Contract is checked off, the Merchant also requires the delivery services outlined in the following terms and conditions.
 - 5.1 The distance between the high-water mark and the site(s) shall not exceed one (1) kilometre.

- 5.2 In all cases, and notwithstanding the execution of the present Marine Transportation Contract, should NEAS opt, at its own discretion, not to effect the pick-up and/or delivery services to the inland site(s) of the relevant community so as not to delay the vessel, it shall have the liberty to do so. In such event, NEAS shall incur no liability of any nature whatsoever toward the MERCHANT for not having effected the pick-up and/or delivery services referred to herein.
6. The Merchant may, upon request to NEAS at the time the booking is made and subject to the availability of empty container(s) of NEAS, take possession of one or more empty container(s) of NEAS at its Valleyfield marine terminal to load said container(s) at its place of business or elsewhere outside said marine terminal, the whole with the goal to subsequently return said loaded container(s) to NEAS' Valleyfield marine terminal for carriage by water pursuant to this contract. If the Merchant so takes possession of empty container(s) supplied by NEAS, the following terms and conditions, without restricting the duties, obligations and responsibilities of the Merchant otherwise provided for under this contract, shall apply:
- a) The Merchant shall be responsible for any loss of or damage to a container during the period commencing at the time of its pick-up from NEAS' Valleyfield marine terminal as aforesaid until it is duly returned to NEAS's Valleyfield marine terminal and duly received by NEAS or its authorized representatives;
 - b) To take delivery of an empty container, the Merchant shall first verify the availability of the container reserved with NEAS at 1-888-908-0000 and once the container is confirmed as being available, the Merchant shall obtain, at least 24 hours in advance, an appointment with NEAS to take delivery of the empty container at the Valleyfield marine terminal and also inform NEAS, as the case maybe, of the identity of the inland carrier who will take possession of the empty container;
 - c) The maximum weight of the cargo combined with the weight of the container (i.e. the gross weight) shall not exceed 15 metric tons. The stuffing and securing of the container shall be performed in accordance with the applicable standards and requirements for carriage by water.
 - d) Once the stuffing and securing are completed, the container shall be sealed and returned by the Merchant to NEAS's Valleyfield marine terminal within five (5) days from the time of pick-up of the empty container as per paragraph b) above or earlier in accordance with clause 7 below or any other relevant provisions of this contract. It is expressly understood that NEAS shall be under no obligation or duty to open the container to verify its contents or the stuffing and/or securing of the cargo inside the container. The Merchant shall be responsible for any loss or damage resulting from improper or inadequate stuffing or securing of the cargo in the container and will indemnify and hold NEAS harmless from the consequences thereof. Unless otherwise agreed to in writing, if the container is not returned within the delay specified above, a daily container demurrage charge of \$200.00 shall be payable to NEAS by the Merchant.
7. Lateral or Retrograde Cargo. Cargo must be in readiness for marine transportation and available at the Port of Loading or, as the case may be, at the high-water mark of the relevant community as soon as the vessel arrives otherwise the vessel shall have the option:

- a) To proceed to the next port of call without any penalty or obligation, however Deadfreight shall be payable to NEAS by the Merchant; OR
- b) To wait for cargo and assess (in addition to the freight rate(s)) demurrage charges payable by the Merchant at the rate of \$2,000.00 per hour.

Notwithstanding anything herein contained, transportation of Lateral Cargo, Retrograde Cargo and/or Retrograde Cargo Valleyfield Terminal is conditional to port rotation compatibility i.e. conditional to the vessel (during the intended voyage) calling at the communities concerned and in the order of port rotation published in the sailing schedule in effect at time of the signing of this contract. Furthermore, the Merchant hereby understands and agrees that NEAS shall be under no obligations whatsoever to carry Lateral Cargo, Retrograde Cargo and/or Retrograde Cargo Valleyfield Terminal should the vessel (during the intended voyage) not call at the communities concerned or deviates from the published port rotation.

- 8. For Retrograde Cargo Valleyfield Terminal loaded in a container supplied by NEAS in an Arctic port or Northern community, the Merchant may, with the prior consent of NEAS take delivery of the loaded container at NEAS' Valleyfield marine terminal, once available after discharge from the vessel, and bring it to its place of business or elsewhere outside said marine terminal for the de-stuffing of the container. If the Merchant so takes possession of a loaded NEAS container, the following terms and conditions, without restricting the duties, obligations and responsibilities of the Merchant otherwise provided for under this contract, shall apply:
 - a) The Merchant shall be responsible for any loss of or damage to the container and its contents from the moment it is picked-up from NEAS' Valleyfield marine terminal as aforesaid and for the container, until it is duly returned to NEAS's Valleyfield marine terminal and duly received by NEAS or its authorized representatives;
 - b) The empty container shall be returned by the Merchant to NEAS' Valleyfield marine terminal within five (5) days from the time of delivery of the empty container as per paragraph a) above. If the Merchant does not return the container within the delay specified above, a daily container demurrage charge of \$200 shall be payable to NEAS by the Merchant.
- 9. For northbound cargo, Lateral or Retrograde Cargo, NEAS's container must be de-stuffed in a timely manner by the Merchant to have the empty container available to be returned on the same vessel voyage that has carried out its northbound carriage. Otherwise, a container demurrage charge shall be applied as follows:
 - a) \$200 per container if the container is not returned on the same vessel but returned on a NEAS vessel during the Arctic Navigation Season covered by this contract;
 - b) \$600 per container in addition to the \$200 per container mentioned at paragraph 9 a), for a total amount of \$800 per container, if the container is not returned on the last NEAS vessel of the Arctic Navigation Season following the Arctic Navigation season covered by this contract;
 - c) \$200 per container in addition to the \$800 per container mentioned at paragraph 9 b) for a total amount of \$1,000 per container, if the container is returned on the first NEAS vessel of the following Arctic Navigation Season covered by this contract.

- d) Should the container be returned beyond the first sailing of the following Arctic Navigation Season, the above-mentioned charges at sections 9 a) to 9 c) shall continue to apply until such time the container is redelivered to a NEAS vessel.
- e) Container demurrage shall not end and will continue to apply during the Arctic Navigation Seasons until the next NEAS vessel calls at the community concerned to effect cargo operations following the availability of the empty container in readiness to be returned. The Merchant must advise NEAS' Montreal office in writing as soon as the empty container becomes available for its return.

The Merchant shall be responsible for any loss of or damage to a NEAS container while any such container is in its care, custody and control and, in any event, until such time the container is returned to NEAS as aforesaid.

- 10. Unless specifically agreed to in writing by NEAS prior to shipment, service is not available for bulk cargo, radioactive materials, explosives, for cargo requiring controlled temperature nor for live animals, C.O.D. shipments, artwork, precious metals, jewellery, coins, currencies and other similarly valuable items.
- 11. Illegal substances. The Merchant warrants exercise of the highest degree of care and diligence in preventing un-manifested narcotic drugs and marijuana to be loaded or concealed on board the ship. Non-compliance therewith shall amount to a breach of warrant for the consequences of which the Merchant shall be liable and shall hold NEAS, the master and the crew of the ship harmless and shall keep them indemnified against all claims whatsoever which may arise therefrom and be made against them individually or jointly. Furthermore, all expenses incurred, including fines and legal expenses taxed on a solicitor-client basis, as a result of the Merchant's breach thereof, shall be for the Merchant's account and NEAS shall be fully compensated for lost time at the demurrage rate of \$2000.00 per hour. Should the ship be arrested as a result of the Merchant's non-compliance with the provisions of this clause, the Merchant shall, at its expense, secure its release and at its expense shall put up bail.
- 12. Dangerous goods and/or hazardous waste are subject to the *Transport of Dangerous Goods Act* and Regulations and to the International Maritime Dangerous Goods Code (IMDG) as may be amended from time to time.
 - a) The Merchant undertakes to follow regulations concerning the handling and shipping of dangerous goods and/or hazardous waste which include, but not limited to, completing the proper manifest and having same timely approved, if required, by the governing authorities.
 - b) The Merchant declares all dangerous goods and/or hazardous waste by fax or by email to NEAS at least seven (7) days prior to the projected commencement of the loading of the vessel and provided that his declaration indicates (for each product) the shipping name; the class and division; the subsidiary risk marked in parentheses; the product identification number; the packing group; the flash point in the case of flammable substances; the mass or the volume and the number of parcels along with any other information or documentation required in the *Transport of Dangerous Goods Act* and Regulations.

- c) All products of classes 1 to 9, as well as waste and hazardous cargoes, are subject to a surcharge of 20% above the applicable rate, unless covered by a specific agreement.
 - d) Any delay caused to the vessel due to the Merchant's noncompliance with the above shall be subject to demurrage charges and stand-by charges of \$2,000 per hour and the Merchant shall be responsible for any damage caused by its non-compliance and shall fully indemnify and hold harmless NEAS for its non-compliance.
13. Unless packaging, unitization and/or containerization is performed by NEAS, the Merchant must, prior to delivery to NEAS, export pack all his cargo for water transportation and unitize it in such a way as to allow NEAS to use any method of handling, including handling with a forklift truck. The Merchant must ensure that the rolling stock is in good working condition. The Merchant must ensure that boxes, crates, pallets, bundles, etc. are water/weather proofed, strapped and of sufficient strength and design to safely withstand multiple stacking without sagging. The Merchant must also ensure that the 20' sea containers are built and maintained to ISO standard and have adequate side pockets for safe handling, in loaded condition, with a lift truck. The total weight of the cargo and the container must not exceed 15 metric tons.

The Merchant shall properly and carefully load/stuff, stow and secure the cargo inside the container for the safe reception, carriage and delivery of same.

The Merchant must also ensure that:

- a) Vehicles do not contain anything other than their respective spare tire and jack and that they are stowed and secured in the spaces specifically provided for that purpose.
- b) That the fuel in the vehicle's fuel tank does not exceed one quarter of its capacity.
- c) Boats, canoes, trailers, vans, mobile homes, prefabricated houses, sheds or buildings and other similar articles are delivered to NEAS in an empty condition only and that they are not utilized to carry goods of any kind.
- d) Prefabricated houses and alike are fitted, prior to delivery to NEAS, with adequate lifting lugs. NEAS may also require that they be fitted with an adequate rolling train prior to delivery to NEAS.

Any cargo tendered for shipment must also comply with the aforesaid requirements as otherwise it may not be accepted for transportation, however if so accepted it will be carried at the sole risk of the Merchant, without recourse against NEAS for any alleged act, omission or negligence of the latter.

14. Identification and description of cargo. The Merchant must clearly identify each piece showing the weight, the destination, the consignee's name or notify party, as the case may be. The Merchant must present, at time of delivery, detailed documentation identifying the shipper, the consignee, the booking number and accurately describing the cargo including the weight and measurements for each piece.
15. Maximum weight and measurements. Unless specifically agreed to in writing prior to shipment, the maximum weight per piece of cargo must not exceed 50 metric tons for the M/V AVATAQ and the M/V UMIAVUT and 60 metric tons for the M/V MITIQ and the M/V QAMUTIK in

connection with rolling stock, and 15 metric tons in connection with non-rolling stock. Any piece of cargo with overall measurement exceeding 20 meters in length, or exceeding 4 meters in width, or exceeding 5.5 meters in height shall be considered a dimensional piece.

Any piece of cargo exceeding the aforesaid maximum weight and/or measurement shall be subject to special written arrangements with NEAS prior to shipment. Notwithstanding the foregoing, pieces exceeding the aforesaid weight and/or maximum measurements will be subject to extra handling charges and/or heavy lift charges that will be provided for in the relevant duly executed marine transportation contract and, in any event, will be subject to the availability of the required equipment.

16. The Merchant undertakes to ship via NEAS all the cargo indicated in the aforementioned item 3 otherwise the Merchant shall pay NEAS Deadfreight equal to 80% of the revenue that would have been generated by the deficient cargo. Cargo received by NEAS in excess of the volume stated in item 3 herein shall be carried at the same rate(s), terms and conditions contained in this contract however subject to the availability of space.
17. The Merchant must obtain an appointment from NEAS at 1-888-908-0000 at least 24 hours prior to delivery. It is essential that the Merchant delivers all his cargo to NEAS' Valleyfield marine terminal in readiness for marine transportation (or at any other designated port on the St. Lawrence River) at least 48 hours prior to commencement of the loading of the vessel otherwise NEAS will be under no obligation whatsoever to carry the cargo and will be within its right to collect Deadfreight from the Merchant.
18. Pursuant to section 43(2) of the *Marine Liability Act* and Article VI of the Hague-Visby Rules, and as this Marine Transportation Contract is not being covered by a bill of lading, it is expressly agreed that the Hague-Visby Rules do not apply to this contract of carriage. However, but without restricting the terms and conditions herein and under reserve of section 250 of the *Canada Shipping Act, 2001*, the delay for suit as indicated in paragraph 6 of Article III of the Hague-Visby Rules, as well as the rights and immunities as indicated in sub-paragraphs 1 through 4 and paragraph 6 of Article IV and Article IV (bis) of the Hague-Visby Rules, are incorporated herein by reference and shall be deemed to form part of these presents unless otherwise stipulated.
19. NEAS has the right to employ any ship or means of transport whatsoever, and whether or not belonging to NEAS; to tranship the cargo; to employ any route in its absolute discretion, whether or not such route is the intended, advertised, most direct or customary route; to carry the cargo to or to retain the cargo at any places whatsoever in any order, backwards or forwards and whether in or out of the intended, advertised, direct or customary route, and to discharge and store the cargo at any such place whatsoever. Without limitation of the foregoing, the rights and liberties of NEAS under this clause may be exercised to bunker, even if unnecessary for the voyage, or for any other related or unrelated purpose whatsoever, at any time, once or more often, with or without notice to the Merchant, and the exercise thereof shall be deemed to form part of the contract voyage or transit and shall not constitute a deviation therefrom. The ship shall not be obliged to force ice, or to follow ice-breakers, and shall have liberty to sail with or without pilots, to tow and to be towed, to assist ships in any circumstances, and to deviate for any purpose whatsoever and to dry-dock, even with cargo on board. NEAS is not liable for any loss, damage or delay, directly or indirectly caused by or arising from walkouts, labour disturbances, trade disputes, strikes, riots, or stoppage of labour, or anything done in contemplation or furtherance thereof, whether on or at land, railroads, docks or ships, whether

NEAS be a party thereto or not. If, because of breakdown or damages to hull, machinery or equipment, grounding, detention by average, accidents to ship or by any other cause preventing the full working of this or any other ship in the same or associated ownership or management, or for any other related or unrelated reason, whether or not enumerated in this Marine Transportation Contract, it is considered by NEAS, or its agents or the Master of the ship, impossible, commercially unfeasible, unsafe or inadvisable to proceed to the port of loading, or after the ship's arrival to take on cargo, the voyage contemplated by this contract of carriage shall be considered frustrated on the grounds of force majeure. If, for any of the foregoing reasons, or because of lateness of season, port congestion, ice, stage of water, possible disruption of the St. Lawrence Seaway or any other waterway, interdict, blockade, prohibition of importation, directives by, or delays imposed by governments or persons purporting to be clothed with the authority of government or underwriters, or any similar cause or any other cause, within or without NEAS's control, it is considered by NEAS, or its agents, or the Master of the ship, impossible, unsafe, or inadvisable to proceed to the port of discharge or to remain there, NEAS shall have entire liberty to jettison the cargo, to modify the itinerary of the ship, to change the designated port of discharge, or to proceed towards any port appearing to be suitable according to the circumstances, and to discharge the cargo there or at the port of shipment, and such jettison or discharge shall constitute delivery and performance under this contract, all at the expense and risk of the Merchant.

20. Delay- NEAS is not liable for any direct, indirect, consequential or economic loss or damage, including loss of profits or market, sustained through delay, irrespective of whether the relevant cargo was lost or damaged. If, however, it should be adjudged that such liability attaches to NEAS, it shall be limited to the amount of the freight paid for the carriage of the cargo carried pursuant to the Marine Transportation Contract that is subject of the claim, and which shall in no circumstances exceed the amounts of limitation of liability mentioned at sub-clause 25a).
21. Both to blame collision. If the ship contacts, collides or nearly contacts or collides with another ship or object as a result of the negligence of the other ship or object and any act, neglect or default of the Master, mariner, pilot or the servants of NEAS in the navigation or in the management of the ship and loss or damage is caused by such contact, collision or narrowly-avoided contact or collision, the Merchant shall indemnify NEAS against all loss or liability to the other or non-carrying ship or object of their owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the Merchant, paid or payable by the other or non-carrying ship or object of their owners to the Merchant and set off, compensated, recouped or recovered by the other or non-carrying ship or object of their owners as part of their claim against the carrying ship or NEAS. These provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the ships or objects involved in the contact, collision or narrowly-avoided contact or collision are at fault in respect of the contact, collision or narrowly-avoided contact or collision.
22. General Average and Salvage. General Average is to be adjusted at any port or place and is to be settled according to the York-Antwerp Rules 1974, as amended 1994, or the Rules of Practice for the Great Lakes at NEAS's option. The Merchant hereby declares himself to be familiar with the said Rules. In the event of accident, danger, damage, or disaster, before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to gross negligence or not, for which, or for the consequences of which NEAS is not responsible, by statute, contract or otherwise, the Merchant shall contribute with NEAS in General Average to the payment of any sacrifices, losses or expenses of a General Average nature which may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo.

In addition to the circumstances dealt with in the York-Antwerp Rules, it is agreed that if NEAS has used diligence in the stowage of the cargo and if the prosecution of the voyage is thereafter imperilled in consequence of the disturbance of stowage, the cost of the handling, discharge, re-loading and re-stowing of the cargo shall be allowed in General Average even if not necessary for the purpose of effecting repairs to the ship expenses incurred in the circumstances contemplated by both Article 13 and Article 14 of the International Convention on Salvage, 1989 are deemed to be in the nature of salvage. If a salving ship is owned or operated by NEAS, or by others in associated ownership or management, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as NEAS or its agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the Merchant to NEAS before delivery. The Merchant agrees not to demand delivery short of destination for the purposes of avoiding General Average contributions. In the event that NEAS agrees that the cargo or part thereof may be forwarded to original destination by another ship, ships or conveyances, rights and liabilities in General Average shall not be hereby affected, it being the intention to place the parties concerned as nearly as possible in this respect as they would have been in the absence of such forwarding and with the adventure continuing by the original ship.

23. This Marine Transportation Contract is non-negotiable.
24. This Marine Transportation contract shall be governed by and construed in accordance with Canadian Maritime Law and is deemed to have been concluded in Montreal, Province of Quebec. Any dispute arising out of or in relation to this Marine Transportation Contract shall be subject to the exclusive jurisdiction of the Federal Courts of Canada.
25. The liability of NEAS and the vessel shall be limited as follows:
 - a) Subject to clause 20 of the present Contract, neither NEAS nor the vessel shall in any event be or become liable for any loss or damage to or in connection with the cargo in an amount exceeding \$2,600 per package or unit, or where the cargo is a motor vehicle, \$3.50 per kilogram of the motor vehicle lost or damaged up to the lesser of the amount of damage, the value of the motor vehicle or \$72,000.
 - b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the vessel in accordance with this contract or should have been so discharged.
 - c) The value of the cargo shall be fixed according to the commodity exchange price, or, if there is no such price, according to the current market price, or, if there be no exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
 - d) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in this contract as packed in such article of transport shall be deemed the number of packages or units for the purposes of this paragraph as far as these packages or units are concerned. Except as aforesaid, such article of transport shall be considered the package or unit.
 - e) the limitations of liability provided for in paragraphs a) to d) shall apply even if the loss or damage was caused by the fault of NEAS, or by the fault of those for whom it is liable, whether by positive act, imprudence, negligence (gross or otherwise) or want of skill,

including, without prejudice to the generality of the foregoing, loss or damage occasioned by the unseaworthiness of the ship, by floods, falling or collapse of wharves, piers, warehouses or elevators, by things it owns or which are under its care, by theft, pilferage, heating, freezing or effects of climate or temperature, none of which shall be deemed to be a fundamental breach of contract.

- f) By agreement between NEAS, master or agent of NEAS and the Merchant, other maximum amounts than those mentioned in sub-paragraph a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.
- g) Neither NEAS nor the vessel shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been misstated by the Merchant.
- h) Unless agreed in writing to the contrary, which contract will not be capable of intervening subsequent to the issuance of the Marine Transportation Contract, no carriage with declared value shall be affected by NEAS.

26. Notice of loss and time bar. Unless notice of loss of, or damage to, the cargo and the general nature thereof be given in writing to NEAS at the Destination indicated in Box 5 of the Marine Transportation Agreement before or at the time of the removal of the cargo into the custody of the Merchant or its servants or agents or, if the loss or damage be not apparent, within three days of such removal, delivery in good order by NEAS of the cargo as described herein shall be presumed. In any event, NEAS shall be discharged from all liability for loss of, or damage to, or in relation to the cargo, howsoever arising, including liability for any delay in delivery, non-delivery, or misdelivery thereof, whether such liability be in contract, tort, bailment or otherwise, unless suit is instituted within one year of the delivery of the cargo or the date when the cargo should have been delivered, whichever is the earlier, pursuant to paragraph 6 of Article III of the Hague-Visby Rules.

27. Freight and lien. Freight, whether prepaid or not, is to be considered earned when the cargo is delivered to NEAS for transportation and is not to be refunded or deducted in any event, should the cargo or ship (including a barge) be lost or not lost, or if there be a forced abandonment or interruption of the voyage at a port of discharge or elsewhere. In the event of the cargo or a part thereof being forwarded by ships of the same carrier or otherwise, the cost of shipping and/or forwarding shall be payable by the Merchant. NEAS shall have a lien upon the cargo and a right to sell the same by public auction or otherwise, for all sums due pursuant to this Marine Transportation Contract or any other contract between NEAS and the Merchant and for damages, costs and expenses (including the costs and expenses of exercising such lien and of such sale), and for interest thereon. If the proceeds of such sale fail to cover the amount for which NEAS has a lien as herein provided, the Merchant shall be jointly and severally liable for the difference. All freight and other charges shall be paid before delivery of the cargo without any set-off, counterclaim, deduction or stay of execution.

28. Without restricting any other provision of this contract, NEAS shall be at liberty to proceed with its vessel at the port or place of loading and/or unloading or so near thereto as the vessel may safely get and lie always afloat.

29. All lightering, top-offs and ship-to-ship transfers are at the risk and for the account of the Merchant and NEAS shall not be responsible for any prejudice which may arise even though caused by the negligence of NEAS.
30. It is expressly agreed that NEAS shall be at liberty to sub-contract any or all services provided for in this Marine Transportation Contract and in the event of any such sub-contract, the responsibility of NEAS vis-à-vis the Merchant, for any loss or damage to cargo while such cargo is in possession of such sub-contractor, shall not, without prejudice to any of the terms and conditions of this contract, be greater or more onerous than the responsibility of any such sub-contractor vis-à-vis NEAS. Any such sub-contractor shall benefit from every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatever nature applicable to NEAS or to which NEAS is entitled hereunder.
31. Period of responsibility. NEAS shall not be liable for any loss or damages to cargo during the period following the delivery of the Cargo, for any cause whatsoever. Any operations of lightering, ship-to-ship transfers made at the port of loading or at the port of delivery are excluded from NEAS's period of responsibility. When a cargo is delivered to Northern communities where it is not possible to berth, or in the case of the carriage of lateral cargo, NEAS shall not be liable for any loss or damages to cargo related to the operations of loading and/or the operations of discharge during ship-to-ship transfers or lightering. In any event, if it should be adjudged that such liability attaches to NEAS, it shall be limited to the amounts mentioned at sub-clause 25a) of the present Contract.
32. Carriage on deck. Cargo, whether packed in containers or not, may be carried on deck or under deck without notice to the Merchant unless it is specifically stipulated in the Marine Transportation Contract that the containers or cargo will be carried under deck. If carried on deck, NEAS shall not be required to note, mark or stamp any statement of such on-deck carriage on the Marine Transportation Contract. NEAS shall not be liable for any loss or damages to cargo resulting from the inherent risks of carriage of cargo on deck. If, however, it should be adjudged that such liability attaches to NEAS, it shall be limited to the amounts mentioned at sub-clause 25a) of the present Contract. Such cargo carried on or under deck shall participate in general average and shall be carried subject to terms, conditions, exceptions, exclusions, limitations, liberties and defences of the present Contract.
33. Delivery to Northern communities without port infrastructure. Subject to clause 31 of the present Contract, NEAS' responsibility, in connection with northbound and lateral shipments, ends, and delivery by NEAS is considered effected, as soon as the cargo is landed on the beach above the high water mark of the destination community.
34. Inward charges/beyond charges from connecting carriers. NEAS will not protect nor be responsible for any transportation charges whether they be collected from a carrier delivering cargo to NEAS or whether they be prepaid for a carrier effecting transportation from or beyond any of NEAS' points/ports of discharge.
35. If Box 9 of a Marine Transportation Contract has not been completed, the Merchant understands that cargo marine insurance is not included in the rate(s) and it is entirely up to the Merchant to secure such insurance coverage. Where instructed, NEAS undertakes to procure insurance for and on behalf of the Merchant on reasonably acceptable all-risk terms with customary exclusions and limitations of liability generally available in the industry. The Merchant represents

that it has obtained independent professional advice from qualified insurance brokers and other professionals regarding the marine insurance policy to be procured on their behalf by NEAS, and acknowledges that in relation to such marine insurance, NEAS is not acting as an insurance broker or professional qualified to give any advice, nor is it giving any such advice in relation thereto.

36. All rates are subject to a surcharge of \$0.22 per revenue ton for each increase of 1% in the price of fuel in Montreal after May 1st of each year.
37. Mode of payment. Charges shall be deemed fully earned by NEAS as soon as the cargo is delivered to NEAS for shipment. These Charges shall be payable by the Merchant immediately upon receipt (by whatever mean chosen by NEAS, including by fax transmission) of the invoice from NEAS. Any late payment shall bear interest at a rate of 1.5% per month (19.56% per annum) and the Merchant shall also be responsible to reimburse to NEAS all costs reasonably incurred by them (including lawyers' fees) to effect recovery of the Charges from the Merchant.
38. Taxes and services fee. Applicable federal, provincial taxes as well as the Canadian Coast Guard marine services fee (CCGMSF) shall be payable by the Merchant to NEAS. The extra cost for the marine services fee shall be 0.4% of the freight.
39. The Merchant's failure to comply with any of his obligations under this Marine Transportation Contract shall unequivocally relieve NEAS from its responsibility to carry the shipment(s) and Deadfreight shall be payable to NEAS by the Merchant.
40. The parties to this contract have expressly agreed that the said contract be written in English only. *Les parties à ce contrat ont expressément convenu que ledit contrat soit rédigé en anglais seulement.*