

CIDIP VI

Inter-American Specialized uniform through bill of lading for the international carriage of goods by road

» **Full Text**

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NEGOTIABLE

TERMS AND CONDITIONS

Article 1. Scope of Application

1.1 Pursuant to the undertakings specified in Article 3 hereof, this Bill of Lading shall be deemed to be a negotiable through bill of lading governing transportation of the Goods by road (in whole or in part) by a single Performing Carrier or successively by separate Performing Carriers, from the point of their pickup in the first country in which the first Performing Carrier takes physical possession of all or any part of the Goods as shown in this Bill of Lading to the last point of delivery in another country.

1.2 This Bill of Lading shall not govern transportation of Goods, in whole or in part, through other modes.

1.3 A negotiable bill of lading shall be understood as that which serves as title to the Goods and may be made out to a named person or to the bearer. The original may or may not be endorsable. It shall be issued as an original plus numbered copies. Each of the copies should be marked "non-negotiable copy."

Article 2. Definitions

2.1 For purposes of this Bill of Lading, the following words and phrases shall have the following meanings:

2.1.1 Contracting Carrier: The term "Contracting Carrier" means the person who contracts to transport, either directly, or indirectly by the use of Performing Carrier(s), the Goods, as evidenced by this Bill of Lading. The "Contracting Carrier" may or may not also be a Performing Carrier.

2.1.2 Performing Carrier: The term "Performing Carrier" means any person who performs any part of the transport of the Goods, including the "Contracting Carrier" if applicable.

2.1.3 Consignee: The person named in this Bill of Lading to whom the Goods may be lawfully delivered. The "Consignee" may or may not also be the Receiver.

2.1.4 Shipper: The person who enters into the contract of carriage with the Contracting Carrier as evidenced by this Bill of Lading. The "Shipper" may or may not also be the Consignor, the Consignee, or the Receiver.

2.1.5 Goods: Any commodity or article that is transported, including containers, pallets, or like dunnage supplied by the shipper.

2.1.6 Person: The term "person" includes individuals, corporations, partnerships, or other business entities recognized by law in the country in which they are organized.

2.1.7 Receiver: The person(s), if other than the Consignee, named in this Bill of Lading to whom the Performing Carrier is instructed to make physical delivery of the Goods.

2.1.8 Consignor: The person(s) named in this Bill of Lading to provide or make available to the Contracting Carrier the Goods for transport.

2.1.9 Writing: Includes, but is not limited to, a written document, a telegram, telex, telephonic facsimile (fax), electronic data interchange, or a document created or transferred by electronic means.

Article 3: Undertakings

3.1 Contracting Carrier agrees to transport the Goods by road, with due care, in accordance with Articles 5, 6 and 7, from the designated point of pickup to the designated place(s) of delivery using other Performing Carriers and/or modes of transport as necessary for interline and/or interchange purposes.

3.2 Shipper agrees to pay Contracting Carrier in accordance with Article 4 of this Bill of Lading.

3.3 Any Contracting Carrier, Performing Carrier, Shipper, Consignor, Consignee, or Receiver shall be liable for the acts or omissions of their respective agents, representatives, or any other person of whose services they make use for the performance of their obligations or the exercise of their rights under this Bill of Lading.

Article 4: Price or Freight Charge

4.1 Shipper or Consignee shall be liable for the payment of the freight and all other lawful charges, except that collect shipments may move without recourse to Shipper when Shipper so stipulates, by signature or endorsement in the space provided for that purpose on the face of this Bill of Lading. Nevertheless, Shipper shall remain liable for transportation charges where there has been an erroneous determination of the freight charges assessed, based upon incomplete or incorrect information provided by Shipper.

4.2 Nothing herein shall limit the right of Contracting Carrier either to extend credit or to require the prepayment or guarantee of the charges at the time of shipment or prior to delivery. If the description of Goods shipped or other information on this Bill of Lading is found to be incorrect or incomplete, the freight charges must be paid based upon the Goods actually shipped.

Article 5: Basis of Liability

5.1 Contracting Carrier shall be liable for the actual loss of or damage to the Goods and for delay in delivering or failure to deliver the Goods occurring while the Goods are in the Contracting Carrier's charge, as defined in Article 8 of this Bill of Lading, unless, subject to Article 5.2, the Contracting Carrier proves that the loss, damage, delay, or failure is due to any of the following causes:

5.1.1 Force majeure, act of God, or public enemy, as recognized and interpreted under applicable law;

5.1.2 Inherent vice or defect of the Goods, including natural shrinkage of the Goods;

5.1.3 Act or omission of the Shipper, the Consignor, the Consignee, or the Receiver;

5.1.4 Force of law or act of government; or

5.1.5 Contracting Carrier compliance with respect to instructions that have been expressly entered on this

Bill of Lading by the Shipper, Consignor, Consignee, Receiver or on their behalf;

5.1.6 Faulty or impassable highway, or from lack of capacity of a highway, bridge, or ferry. Nor shall Contracting Carrier be liable for riots or strikes.

5.2 Contracting Carrier may avail himself of the causes of exoneration listed in Article 5.1 only if his negligence did not contribute to the loss of, or damage to, or delay in the delivery of, the Goods.

5.3 All rights and obligations of the Contracting Carrier under this through bill of lading shall also apply to the Performing Carrier against whom a claim is made. Similarly, whenever a provision of this through bill of lading obligates or entitles the Shipper, Consignor, Consignee, or Receiver to submit a written document, make a claim, or take any similar action against the Contracting Carrier, it may be validly taken against or addressed to the Performing Carrier and shall have identical effects against the Performing Carrier.

5.4 In the event of joint carriage, the Contracting Carrier and the delivering Performing Carrier shall be jointly and severally liable to all persons entitled to recover under this Bill of Lading regardless of the place in which the loss of or damage to the Goods or the delay in delivering or failure to deliver the Goods occurs or is caused. The Contracting Carrier and/or the delivering Performing Carrier is/are entitled to recover from any other Performing Carrier that was in physical possession of the Goods at the time of their loss, damage, delay, or non-delivery for the amount required to be paid for the loss, damage, delay, or non-delivery, as evidenced by a receipt, judgment, or decision, and the amount of its expenses reasonably incurred in defending the claim.

5.5 Delay in delivery occurs when the Goods have not been delivered within the time expressly agreed upon in writing. In the absence of such written agreement, Contracting Carrier is responsible to deliver the Goods with reasonable dispatch, according to circumstances in each case.

5.6 Subject to the provisions of Articles 8 and 15 hereof, if the Goods have not been delivered within thirty (30) calendar days following the date of delivery expressly agreed upon in writing, the Goods may be treated as lost. In the absence of such an expressly agreed upon delivery date, if the Goods have not been delivered within sixty (60) calendar days following the date on which the first Performing Carrier took physical possession of the Goods, the claimant may treat the Goods as lost.

Article 6: Limits on Contracting Carrier Liability

6.1 In no case shall the liability of the Contracting Carrier for any loss or damage to the Goods exceed the actual value of the Goods, at the time and place determined by the applicable law, plus the freight and other costs if paid.

6.2 The Shipper and the Contracting Carrier may agree in writing to increase the limitation of liability of the Contracting Carrier. Nevertheless, if the Bill of Lading lists a declared value for the Goods, the carrier's liability may not exceed that amount, even if lower.

6.3 The Carrier may have other limitations on liability whenever the applicable law so authorizes.

Article 7: Loss of Limitation of Liability

7.1 The Contracting or Performing Carrier shall lose the right to limitation of liability if it has caused the

damage, loss, or delay by committing fraud or through gross fault.

Article 8: Period of Responsibility

8.1 The responsibility of the Contracting Carrier for the loss, damage, delay in delivering or failure to deliver the Goods under this Bill of Lading covers the period from the time the Contracting Carrier takes charge of the Goods to the time of delivery.

8.2 For the purposes of this Article, the Contracting Carrier is deemed to be in charge of the Goods:

8.2.1 From the time the Contracting Carrier or Performing Carrier has taken physical possession of the Goods from:

8.2.1.1 The Consignor; or

8.2.1.2 An authority or third party from whom, pursuant to law or regulations applicable at the place of taking in charge, the Contracting Carrier, or a Performing Carrier if other than the Contracting Carrier, must take possession of the Goods for transport;

8.2.2 Until the time the Contracting Carrier, or a Performing Carrier if other than the Contracting Carrier, has delivered the Goods:

8.2.2.1 By handing over physical possession of the Goods to the Consignee or Receiver;

8.2.2.2 In cases where the Consignee or Receiver does not receive the Goods from the Contracting Carrier, or from a Performing Carrier if other than the Contracting Carrier, by placing them at the disposal of the Consignee or Receiver in accordance with this Bill of Lading or with the law or with the usage of the particular trade applicable at the place of delivery; or

8.2.2.3 By handing over physical possession of the Goods to an authority or other third party to whom, pursuant to law or regulations applicable at the place of delivery, the Goods must be handed over.

Article 9: Notice of Loss or Damage to Goods

9.1 The parties shall be entitled to verify and make a record of the condition of the Goods at the time of delivery.

9.2 If loss of or damage to the Goods is apparent at the time of delivery, unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing to the Contracting Carrier not later than the next working day (as determined in the country of the delivery of the Goods) after the day when the Goods were delivered, such delivery is prima facie evidence of the delivery by the Contracting Carrier of the Goods as described in this Bill of Lading.

9.3 If loss or damage to the Goods is not apparent at the time of delivery, the corresponding provisions of section 9.2 of this Article apply, unless the written notice is given on or before the first working day (as determined in the country of the delivery of the Goods) following a period of fifteen (15) calendar days after the day when the Goods were delivered to the Consignee.

9.4 Unless the Contracting Carrier is given written notice of the delay in delivery of the Goods (as defined in section 5.5 of this Bill of Lading) not later than the next working day (as determined in the country

of the delivery of the Goods) following the day on which delivery should have been made, it shall be rebuttably presumed that timely delivery was made.

Article 10: Time Limitations for Filing Claims and/or Suits for Loss, Damage, or Delay in Delivery or Failure to Deliver the Goods

10.1 Any action under this Bill of Lading shall be time-barred if the final statement of the claim, stating the nature and main particulars of the claim, has not been given to the Contracting Carrier in writing within nine (9) months after the date when the Goods were delivered or within such shorter period as may be prescribed by applicable law. The limitation period commences on the day after the day on which the Performing Carrier has delivered the Goods or part thereof or, where the Goods have not been delivered, the date of delivery as expressly agreed upon and, in the absence of an expressly agreed upon delivery date, the date on which the first Performing Carrier took physical possession of the Goods.

10.2 Any action under this Bill of Lading must be instituted within a period of two (2) years from the date the Contracting Carrier gives the claimant written notice that the Contracting Carrier has disallowed all or any part of the claim specified in the notice, or within such longer period as may be prescribed by applicable law. If the parties pursue alternative dispute settlement under Article 11, they may also agree to toll this time period, but must expressly do so in writing.

Article 11: Jurisdiction and Settlement of Disputes

11.1 Actions based on this Bill of Lading may be instituted, at the option of the plaintiff, before the courts of the jurisdiction:

11.1.1 In which the defendant has its domicile or habitual place of residence or principal place of business, or in which the branch, agency, or affiliate through which this Bill of Lading was issued is located;

11.1.2 In which the Contracting Carrier took charge of the Goods, as defined in Article 8;

11.1.3 In which the place designated for delivery of the Goods is located; or

11.1.4 In which the loss, damage, delay in delivery, or failure to deliver occurred.

11.2 The parties may agree to submit to alternative dispute settlement any differences that may arise or have arisen between them. The alternative dispute settlement proceeding may be *ad hoc* or institutional.

Article 12: Undelivered Goods

12.1 If, through no fault of the Contracting Carrier, the Goods cannot be delivered, the Contracting Carrier shall use its best efforts to immediately notify the Shipper or Consignor and the Consignee or Receiver, as named on this Bill of Lading, that delivery cannot be made and request instructions. Notification may be made by telephone, but must be confirmed in writing. Until the Contracting Carrier receives instructions from the Shipper, Consignor, Consignee, or Receiver, the Contracting Carrier may store the Goods in a commercially reasonable manner in a facility of the Contracting Carrier, subject to a reasonable charge for storage made known to the Shipper or Consignor or to a party otherwise responsible for the freight charges. If the Contracting Carrier has notified the Shipper or Consignor and the Consignee or Receiver of this intention, the Goods may be removed and stored in a commercially reasonable manner in an appropriate facility, subject to

a reasonable charge, at the expense of the Shipper or Consignor or a party otherwise responsible for the freight charges.

12.2 If the Contracting Carrier has given notice pursuant to paragraph 12.1 of this Article and has received no instructions within fifteen (15) working days from the date of such notice or such other period required by law, the Contracting Carrier may:

12.2.1 Return to the Shipper or Consignor, at the latter's expense, all undelivered shipments for which such notice has been given; or

12.2.2 Sell the Goods as provided by applicable local law, apply the proceeds to the freight and storage charges and other related expenses, and remit any balance to the Shipper or Consignor.

Article 13: Salvage Retention

13.1 If the Consignee or Receiver refuses to accept delivery of the Goods, the Contracting Carrier may require that the Goods be stored in a commercially reasonable manner until the rights of the parties can be determined.

13.2 Unless otherwise agreed, the Consignee or the Receiver shall retain the damaged Goods and shipping containers until the final determination of the claim. The said retention shall not, however, constitute acceptance of the Goods or waiver of the right to make a claim for loss, damage, or delay.

13.3 Unless otherwise agreed by the parties, once a claim has been determined and paid, the Contracting Carrier shall have the right to take possession of the damaged Goods as salvage. The Contracting Carrier shall take possession of the salvage within thirty (30) days from the date Contracting Carrier was requested in writing to remove the salvage from the Consignee's or Receiver's premises.

Article 14: Diversion or Reconsignment

14.1 Neither the Contracting Carrier nor any Performing Carrier shall divert or reconsign the Goods except upon written amendment of this Bill of Lading by the Shipper or Consignor, with the consent of the Contracting Carrier, which shall not be unreasonably withheld. Any expenses incurred as a result of diversion or reconsignment shall be borne by the Shipper or Consignor.

14.2 The right of the Shipper or Consignor to dispose of the Goods in transit shall cease as soon as the right of the Consignee to the Goods begins, that is to say, from the moment when the Shipper or Consignor negotiates the Bill of Lading or transfers title to the rights arising out of it. Nevertheless, if the Consignee rejects the Bill of Lading or the Goods, or if the Consignee cannot be located, the Shipper or Consignor shall recover his right to dispose of the Goods. If the the Contracting Carrier or the Performing Carrier, as the case may be, obeys instructions from the Shipper to dispose of the Goods without demanding presentation of the original Bill of Lading, it shall be liable.

Article 15: Stoppage in Transit

15.1 If the Goods are stopped in transit at the request of the party entitled to so request, the Goods shall be held, in a commercially reasonable manner, at the risk of that party.

Article 16: Severability

16.1 In the event that any phrase, clause, sentence, or other provision contained in this Bill of Lading violates any applicable statute, ordinance, or rule of law, the same shall be ineffective to the extent of such violation, without invalidating any other provision of this Bill of Lading.

Article 17: Governing Law

17.1 All questions relating to the validity, execution, fulfillment, or interpretation of, or liability, arising from this Bill of Lading shall be governed (except for the conflict-of-law rules) by the law of the country of final destination of the freight, where the Goods were, or should have been, delivered as agreed. This Article may be unenforceable in some countries.

Article 18: Signatures

18.1 The parties agree that any signature on or by this Bill of Lading may appear handwritten, printed on facsimile, perforated, stamped in symbols, or registered in any other mechanical or electronic means authorized by the applicable law. The parties agree to be bound by the same as if they had physically handwritten their signatures.

18.2 The Contracting Carrier's signature hereon constitutes issuance of this Bill of Lading.

Article 19: Governing Language

19.1 This Bill of Lading is written in the English, French, Portuguese, and Spanish languages, all of which versions shall be equally authentic. In case of doubt as to its translation, the competent court should consult the official original versions adopted on February 8, 2002, by the Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI), held at the Headquarters of the Organization of American States in Washington, D.C.