

CIDIP VI

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

» **Full Text**

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NON-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 non-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 If any part of the transport of the Goods is performed by a rail, water or air carrier, the performing rail, water or air carrier shall be subject to the terms and provisions and limitations of liability specified by any pertinent laws applicable to such mode of carriage.

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 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 by lack of capacity of a highway, bridge or ferry; or from riots or strikes.

5.2 The Contracting Carrier may avail himself of the causes 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 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 transcript, 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 Goods may be treated 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 To the extent authorized by applicable law, the Shipper and the Contracting Carrier may agree in writing to increase or decrease the limitation of liability of the Contracting Carrier.

6.3 The Contracting Carrier may have other limitations on liability whenever the applicable law so authorizes. The Shipper is advised to inquire of the Contracting Carrier in this regard, and the Contracting Carrier shall furnish its liability terms on request.

Article 7: Voluntary Acts of the Contracting Carrier: Loss of Limitation of Liability

7.1 Contracting Carrier is not entitled to the benefit of any limitation of liability, otherwise applicable, if it is proved that the loss or damage was caused by any Contracting Carrier's or Performing Carrier's conversion of the Goods to its own use.

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 purpose 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 a Performing Carrier if other than the Contracting 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 provisions of section 9.2 of this Article apply correspondingly unless the notice in writing is given on or before the first working day (as determined in the country of the delivery of the Goods) following the expiration 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 shall be time-barred if a civil action has not been instituted within a period of not less than two (2) years from the date the Contracting Carrier gives the claimant written notice that the Contracting Carrier has disallowed 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 resolution under Article 11, they may also agree to toll this time period, but must expressly do so in writing.

Article 11: Jurisdiction and Resolution of Claims

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, its 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 resolution any differences that may arise or have arisen between them. The alternative dispute resolution 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 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, 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 a party otherwise responsible for the freight charges. If the Contracting Carrier has notified the Shipper 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 a party otherwise responsible for the freight charges.

12.2 If a notice has been given by the Contracting Carrier pursuant to paragraph 12.1 of this Article, and no instructions have been received 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, at the Shipper's expense, all undelivered shipments for which such notice has been given; or

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

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 nor 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 reassign the Goods except upon written amendment of this Bill of Lading by the Shipper 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.

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 are held, in a commercially reasonable manner, at the risk of that party.

Article 16: Severability

16.1 In the event 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 Except as otherwise specified in this Bill of Lading, all issues and questions concerning the construction, validity, performance, enforcement and interpretation of this Bill of Lading shall be governed by, and construed in accordance with, the laws (except the law of conflicts) of the first country in which the first Performing Carrier takes physical possession of all or any part of the Goods. 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 given mechanical or electronic means authorized by applicable law. The parties agree to be bound hereby the same as if they had physically handwritten their signature.

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.