

## GENERAL CONDITIONS

**NATURE OF CARRIAGE:** This Contract of Affreightment ("CONTRACT") is not to be construed as a bareboat, demise or time charter, nor as a contract of common carriage.

**SHIPPING DOCUMENTS:** Any other shipping document issued in connection with transportation of cargo under this CONTRACT shall be considered acknowledgement of receipt only, it being the intention of the parties that this CONTRACT contains all the terms and conditions agreed upon by the parties for the transportation and carriage of cargo. The terms and conditions of this CONTRACT shall supersede over any terms and conditions contained in any other instrument between the parties, in which event the terms of this CONTRACT shall prevail.

**M/G'S UNDERTAKING:** M/G undertakes to transport the cargo described herein but is unaware of the contents, weight, quantity, quality and condition of said cargo, and specifically but without limiting the generality of the foregoing, undertakes no duty to ascertain the characteristics of said cargo.

**PLACEMENT AND CANCELLATION:** SHIPPER shall provide M/G proper notice for each requested barge placement for loading, an import vessel's ETA based on 80% of the sailing time from origin (example: sailing time of thirty (30) days requires a 24 day ETA notification). The rates stated herein shall include only one placement of barges by M/G at origin and one placement at destination. Any additional shifting of barges to accommodate loading or unloading or to otherwise accommodate SHIPPER shall be for SHIPPER's account, and if performed by M/G, will be charged at M/G's prevailing rate for such service. If SHIPPER cancels a requested barge less than five (5) days prior to the requested placement date, SHIPPER shall pay a cancellation fee equal to M/G's cost incurred and barge days utilized at the contracted demurrage rate for preparation and relocation of the barge in anticipation for placement.

**COVER HANDLING:** M/G shall tender covered barges in the proper condition for loading. After M/G tenders the barge to SHIPPER for loading, all cover handling charges shall be for the SHIPPER's account.

**RE-CONSIGNMENT AND STOP OFF:** Prior to or while barges are en-route, SHIPPER, upon acceptance of M/G's Fee for services outside the scope of services of this CONTRACT, may re-consign and / or stop off barges to a Destination not provided by the CONTRACT. In the event of such re-consignment and / or stop off, SHIPPER shall remain fully liable to M/G for all of its duties and obligations under this CONTRACT, including but not limited to payment for affreightment, re-consignment and / or stop off fees and demurrage.

**HIGH WATER:** In the event river conditions reach high water surcharge levels as determined by the U.S. Coast Guard, SHIPPER shall have barges unloaded and released back to M/G prior to the start of a high water surcharge period. For any barge not unloaded and released at the time high water surcharges go into effect, all incremental cost associated with said high water surcharges, including but not limited to surcharges applied to related towing, shifting, and in's & out's, shall be for the SHIPPER's account.

**RIVER CLOSURES OR RESTRICTED MOVEMENTS:** During river closures or restricted movements caused by conditions outside of the control of M/G, such as Lock Closures, Ice, Low Water, etc., which limits or prohibits the ability of M/G to engage in normal navigation along the intended route from Origin to Destination, the following actions shall be taken without any liability to M/G. M/G shall notify the SHIPPER of the river closure or restricted movement and continue to move the barges to a fleet nearest the original Destination that normal navigational conditions will allow. SHIPPER will have forty-eight (48) hours from notification to re-consign the barges to a Destination with normal navigational conditions or accept the barges on placement. Barges re-consigned will be follow the RE-CONSIGNMENT AND STOP OFF Clause above. Barges accepted on placement will remain on placement at the CONTRACT's Demurrage Rate until navigation and operating return to normal conditions. Any additional expense incurred by M/G during the river closure or restricted movement shall be for the SHIPPER's account.

**BILLS OF LADING:** Any bill of lading or other shipping document issued in connection with transportation of cargo under this CONTRACT shall be considered acknowledgement of receipt only, it being the intention of the parties that the CONTRACT entered into between M/G and SHIPPER is the only document that contains the terms and conditions agreed upon by the parties for the transportation and carriage of cargo. The terms and conditions of this CONTRACT shall supersede any terms and conditions contained in any bill of lading.

**CLEANING AND ACCEPTANCE:** M/G shall tender barges which are suitable for the cargo to be carried. The

commencement of loading of the barges shall constitute SHIPPER's acceptance of the condition and suitability of the barges for the carriage of the intended cargo. Rates do not include the cleaning expense that results from cargo or debris left aboard the barge in excess of that removed by normal cleaning (including working surfaces, gunnels, decks, covers, etc.) by SHIPPER or by its agents at both loading port and unloading port, and rates do not include the expense for the lawful disposal of such cargo and debris. Any and all charges (including disposal charges and necessary transportation expenses) encountered by M/G for removal and disposal of cargo or debris shall be in addition to the freight rate and shall be for SHIPPER's account and be payable to M/G in the same manner as the freight rate stated herein.

**SHIPPER'S WARRANTY:**SHIPPER at its sole cost and expense shall obtain and provide all certificates, permits, surveys, inspection reports and all other documents required under applicable federal regulations to lawfully load, carry, transport and discharge the cargo named herein.

SHIPPER warrants that the cargo will be as described on the face hereof; and if any cargo is different than that described, then SHIPPER agrees to release, defend, indemnify and hold harmless M/G from and against all claims or liability for loss, damage, expense, cost, injury, death, fine or penalty ("Claims/Liability") arising out of or in any way connected with or in consequence of the breach of this warranty. Unless otherwise agreed in writing by M/G, SHIPPER is prohibited from loading, shipping or transporting aboard M/G's equipment any perishable cargo or "hazardous cargo" or "hazardous materials or substances" as those terms are defined by the U.S. Coast Guard or other regulatory agency having jurisdiction over the transportation of such cargoes; and SHIPPER warrants that the cargo described on the face hereof does not constitute perishable or hazardous cargo, or contain "hazardous materials or substances," and SHIPPER agrees to release, defend, indemnify and hold harmless M/G from and against all Claims/Liability arising out of or in any way connected with or in consequence to the breach of this warranty. In the event M/G agrees to carry and transport "hazardous cargo" or "hazardous materials and substances," then SHIPPER at its sole cost and expense shall obtain and provide all certificates, clearances, permits, inspection reports and all other documents required under applicable federal regulations to lawfully load, carry, transport and discharge said cargo; and SHIPPER shall release, defend, indemnify and hold harmless M/G from and against all Claims/Liability resulting from SHIPPER's failure to obtain said certificates, clearances, permits, inspection reports and all other documents to authorize the lawful movement of said "hazardous cargo" or "hazardous materials and substances" aboard M/G's equipment. SHIPPER further warrants that all cargo loading, cargo discharge and barge cleaning/washing activities shall be conducted in strict compliance with all applicable safety, health and environmental laws and regulations, including but not limited to the barge's Vessel General Permit and EPA regulations pertaining to cargo spillage and/or wash water discharge/runoff from the barge. SHIPPER agrees to release, defend, indemnify and hold harmless M/G from and against all claims or liability for any Claims/Liability arising out of or in any way connected with or in consequence of the breach of this warranty. All of SHIPPER's release, defense and indemnity obligations shall exist even without the negligence of SHIPPER, and even though such Claims/Liability shall result in part from the fault or negligence of M/G or from the unseaworthiness of any barge or vessel.

**LOADING AND UNLOADING:**It is SHIPPER's obligation to arrange for and/or load, stow and unload the cargo into and from the barge in a safe and workmanlike manner. SHIPPER warrants that M/G's equipment shall have safe berth at points of loading and unloading, free of wharfage, dockage, and port charges. It is SHIPPER's obligation to present cargo for shipment in a condition suitable for barge transportation. SHIPPER shall load only lawful cargo, suitable for transportation in barges, of the type and tonnage identified on the face of this CONTRACT. SHIPPER shall load M/G's barge as near as practical to maximum draft specified by M/G without exceeding the maximum. Proper loading, stowage and unloading of the barge shall be SHIPPER's responsibility and accomplished at SHIPPER's sole expense and risk. SHIPPER shall comply with M/G's instructions regarding the height of load, weight of load, draft of barge and other such instructions as M/G may deem desirable for safe transportation. SHIPPER shall load the barge so that the cargo is evenly distributed throughout the hopper hold; SHIPPER shall not "center load" or "end load" a barge. SHIPPER shall distribute cargo in barges to ensure an even draft. SHIPPER shall ensure that all working surfaces (covers, decks, gunnels, etc.) shall be free of cargo and debris at the conclusion of loading and at the conclusion of unloading. If barges are not so loaded and unloaded, then SHIPPER shall, at its expense, make such corrections as necessary to meet M/G's requirements, in which event the barge shall be subject to demurrage charges provided herein from time of placement of barge until acceptance of barge by M/G. Any additional cost or expense or loss or damage incurred by M/G as a result of improper loading or improper unloading shall be for the account of the SHIPPER.

**MOVEMENT OF CARGO:**All decisions concerning the transportation of cargo under this CONTRACT will be at the sole discretion of M/G and will not subject M/G to liability of any kind. M/G will have the absolute sole discretion to determine which towers will move the cargo, when the cargo will be moved, which barges will be used (subject to SHIPPER having the right to reject a barge prior to loading if the barge is not suitable for transporting the cargo) and

what routes will be taken. Because M/G may require assistance in the performance of this CONTRACT, the parties agree that, if M/G procures the use of any vessels not owned by M/G (including without limitation barge(s)), all of the limitations, conditions, protections, rights, defenses and immunities of whatsoever nature provided to M/G shall also extend to such other vessels and their owners, charterers, masters, crews, operators and underwriters.

Barges shall move only at the convenience of M/G, either as a single unit or with one or more other barge units. M/G is not bound to transport the cargo by any particular craft or in time for any particular market or otherwise than with reasonable dispatch. M/G shall have the right to shift or interchange the tow from one to another towing vessel as it (in its sole discretion) may find convenient or expedient. M/G shall have the right to transfer the cargo described herein from the barge into which the cargo was originally loaded to one or more other barges, and M/G shall have the right to tie off the tow at any point and for any purpose. M/G shall also have the right to procure towage from vessels not owned, chartered or operated by M/G. M/G shall also have the right to employ leased or chartered barges for the performance of this CONTRACT. M/G is free to "buy-in", from another carrier, some or all of the transportation service that M/G has agreed to provide herein. In the event M/G arranges for another carrier to carry some or all of the cargo, SHIPPER agrees to submit claims for cargo loss and/or damage to the actual carrier and any other party whose fault may have contributed to such loss or damage. M/G's liability shall be contingent and limited to the amount that M/G would have paid pursuant to the provisions of this CONTRACT entitled "M/G'S LIABILITY" had M/G been the actual carrier, less any amounts collected or that are capable of being collected from the actual carrier or others.

M/G shall also have the right to deviate from its normal route and to call at any port in any order M/G chooses, including those ports outside its normal route. In the event delivery of the cargo to destination cannot be accomplished due to SHIPPER not stipulating a destination prior to or after barge is loaded, inaccessibility of the offloading facility, waterway conditions, delay caused by SHIPPER or any other reason beyond the reasonable control of M/G, delivery of the cargo shall be deemed complete upon delivery of the barge to an accessible barge fleet selected by M/G in its sole discretion in reasonable proximity of the point of inaccessibility. Until such time that the barge can be delivered to a Destination and unloaded, all cost to maintain the barge at a proper draft and trim condition shall be for the account of the SHIPPER.

**PAYMENT OF FREIGHT:** The entire amount of the freight shall become earned, due and payable to M/G when the barge is placed for loading, and shall be payable in cash or check and without discount, cargo lost or not lost, cargo damaged or not damaged, in whole or in part, at any stage of the voyage. M/G shall have a lien against the cargo for payment of freight, demurrage and for all other charges due under this CONTRACT, which lien shall survive delivery of the cargo. All freight, demurrage and other charges shall be subject to an interest charge of 1½% per month beginning 30 days after date of invoice. Without prejudice to M/G's other rights herein, M/G shall have the right to cancel this CONTRACT and withdraw its equipment in the event of SHIPPER's nonpayment of freight and other monies due 30 days after date of invoice or in the event of any other default of SHIPPER.

**TAXES, TOLLS & USER CHARGES:** SHIPPER shall be responsible to pay all transportation or other excise taxes on freight and any taxes, dues or other charges on the cargo. Should any wharfage charge, waterway toll, port charge, user tax, user charge or any equivalent of the same be levied or charged relating to the transportation to be performed hereunder or to the equipment or fuel used in performing such transportation, then the cost of such toll, charge, tax or equivalent shall be for the account of SHIPPER and payable to M/G in the same manner as the freight rate stated herein.

**FORCE MAJEURE:** Neither M/G nor SHIPPER shall be liable for failure to perform or for delays in performance resulting from or occasioned by: (a) allocations, expropriations, requisitions, priorities, restraints or other acts of governmental or civil or military or naval authorities, (b) political boycotts, (c) acts of God or acts of the elements, (d) unscheduled river or lock outages or closures, (e) floods or high water, (f) ice, (g) defects, failures or breakages in hull, machinery, equipment or appliances, (h) acts of war, invasion, hostilities, interferences of public enemies or belligerents, (i) civil strife, riots or civil commotions, (j) sabotage, vandalism, or malicious mischief, (k) pirates or robbers by land or water, (l) strikes, lockouts, labor disputes or disturbances, (m) fire or explosion from any cause or wheresoever occurring, (n) epidemics, pestilence or quarantines or embargoes, or (o) for any other cause whatsoever beyond the reasonable control of the respective parties, whether of the kind enumerated or otherwise. In addition, in the event the U.S. Coast Guard interprets and enforces current or future regulations in such a manner as to require any equipment modification or certification by ABS or other classification society or to require equipment load-line designation, then M/G shall be excused and shall not be liable for any failure to perform or for any delays in performance of its duties or obligations under this CONTRACT. When it becomes known to either party that any one of the foregoing conditions of force majeure exists, then that party shall immediately notify the other party in writing of the occurrence of force majeure.

**M/G'S LIABILITY:**M/G is not responsible by any reason whatsoever for damages or losses of any type or nature except as provided herein. M/G shall only be liable for loss of or damage to cargo that is caused solely by lack of due diligence on the part of M/G to provide a seaworthy barge at the commencement of loading. SHIPPER acknowledges that it shall have no right to file a claim for any other losses of any kind. In no event shall M/G be liable to SHIPPER for special, indirect, consequential, punitive or incidental damages whether arising under this CONTRACT, any other contract, warranty, tort or any other theory of liability, even if M/G has been advised of the possibility of such damages.

Neither M/G nor its equipment shall be responsible or liable for personal injury, illness or death of any person, cargo loss, damage or contamination (or for any expense in connection therewith) caused directly or indirectly by or arising or resulting from: (a) act, neglect or default of the master, mariner and/or pilot in the navigation or management of any vessel; (b) perils, dangers and accidents of the sea, of rivers or of other navigable waters; (c) any force majeure event as defined in this CONTRACT; (d) collisions or strandings; (e) act or omission of the SHIPPER or owner of the cargo, their agents or representatives; (f) saving or attempting to save life or property on the water; (g) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the cargo; (h) any latent defect in the shipment; (i) shrinkage, expansion, or other change in the cargo due to natural causes; (j) insufficiency of packing; (k) insufficiency or inadequacy of marks; (l) the physical act of loading or unloading; and (m) any other cause arising without the actual fault or privity of M/G. M/G shall have no liability for loss of or damage to cargo howsoever arising (i) prior to completion of prior loading and removal of the barge from the loading facility to safely navigable water, (ii) after the barge has been placed for unloading at destination, or (iii) while the cargo is in possession or under control of another carrier. M/G shall have no liability for spontaneous combustion from inherent vice of cargo, rust, oxidation, corrosion, discoloration, denting, marring or scratching of any cargo,

To the extent M/G shall be liable for loss or damage to cargo as provided above, such liability shall be limited to the fair market value at destination on the day of casualty of the lost or damaged portion of the cargo, or the reasonable cost of repair or reconditioning of the cargo, or \$500.00 per ton, whichever is less. M/G shall not be liable for delay in the delivery of the shipment to destination or for any diminution in market value of the cargo. M/G shall not be liable or responsible for lost profits or for any other consequential damages or special damages under any circumstances. Nothing in this CONTRACT shall operate to limit or deprive M/G of any statutory protection or exemption from, or limitation of, liability. Further, as a condition precedent to recovery against M/G, any and all claims against M/G must be submitted in writing with M/G within six months after delivery of the shipment, or in the case of failure to make delivery, then within six months after time for delivery has elapsed; and all lawsuits against M/G shall be instituted and served within one year and one day from the date of delivery of the shipment, or in the case of failure to make delivery, then within one year and one day after time for delivery has elapsed, otherwise M/G shall be discharged from all liability in respect of all loss, damage, contamination or expense to cargo carried hereunder.

**SHIPPER INDEMNITY:** Notwithstanding any other provision of this CONTRACT, SHIPPER shall release, protect, defend and indemnify M/G, its parent, subsidiary and affiliated companies, and the owner of each barge provided hereunder, as well as each barge *in rem* from and against all claims, losses and liabilities for property damage and/or personal injury, illness or death of any person, caused or occasioned in whole or in part: a) by the fault, neglect or strict liability of SHIPPER; b) by the breach of contract and/or breach of any expressed or implied warranty by SHIPPER; c) while the barge is in the care, custody or control of SHIPPER and/or any consignee and/or any loading or unloading facility or fleet; and/or d) in any way arising out of the loading or unloading of the barge, including but not limited to the opening/closing of barge covers and/or actual or alleged failure to properly clean such barge and/or remedy spillage of cargo. The foregoing defense and indemnity shall be owed in all instances even if caused in whole or in part by the unseaworthiness of any vessel and/or the negligence or fault of M/G.

**BARGE DAMAGE LIABILITY:** Shipper is responsible for the actions of their chosen stevedore, terminal operator and/or their agents. Barge damage claims that result from the actions of Shipper's contractor(s) and/or agent(s) will be pursued through the offending party. However, should this process fail to satisfy Carrier's claim, Shipper will be financially accountable for the damage, as well as barge days lost during the dispute and repair process. The term "Barge Damage" is described as, but not limited to, damage to the barge hull, barge hopper, coamings or barge covers as caused by a crane, bucket, clamshell, backhoe or any other equipment or procedures used in the loading or unloading process.

**GENERAL AVERAGE:**In the event of accident, danger, damage or disaster, before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, M/G is not responsible by statute, contract or otherwise, the SHIPPER, consignee or owner of the cargo shall contribute with M/G in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo. General

average shall be adjusted, stated, and settled according to the York-Antwerp Rules 1994, as amended, at the Port of New Orleans or last port of discharge, at M/G's option. The general average in each instance shall be prepared by average adjusters selected by M/G. Contribution in general average shall be limited to the carrying barge, cargo and pending freight.

**M/G INSURANCE:** During the duration of this CONTRACT, M/G shall maintain an insurance policy protecting itself against damage to its barges under Hull & Machinery Insurance and an insurance policy protecting itself against liability for loss, damage or injury including liability for loss or damage to cargo while aboard its barges under Protection & Indemnity Insurance. M/G will not provide all-risk cargo insurance. M/G shall have the benefit of SHIPPER's cargo insurance.

**SHIPPER INSURANCE:** SHIPPER shall procure and maintain, or shall cause its vendors, contractors and subcontractors to procure and maintain, USL&H Insurance and state workers compensation insurance, as applicable, covering SHIPPER's responsibilities with respect to all workers at docks and fleets at all origins and destinations and other locations operated by SHIPPER and/or its vendors, contractors and subcontractors; and Comprehensive Marine Liability Insurance (in any combination of primary and excess coverage) covering SHIPPER's operations at all origins, destinations and other locations operated by SHIPPER or its vendors, contractors and subcontractors, including contractual liability, in an amount not less than \$10-million per occurrence. All such policies shall contain waivers of insurers' subrogation rights against M/G and its parent, subsidiaries, and contractors as additional insured. The above policies shall be considered primary to any other insurance maintained by M/G.

**FORUM SELECTION:** The terms and conditions of this CONTRACT, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the general maritime law of the United States of America. Any controversy, dispute, claim, demand, or lawsuit arising out of this CONTRACT shall be brought in and decided by the United States District Court for the Eastern District of Louisiana.

**NOTICES:** All notices shall be in writing and furnished to the other party by facsimile or by e-mail at the address set forth on the front side of this CONTRACT.

**ATTORNEY FEES:** If recourse to a court of law or other legal process, or retention of an attorney, by M/G becomes necessary to enforce any terms or conditions of this CONTRACT or the collection of any freight, demurrage and other charges due and payable to M/G, SHIPPER shall be responsible to pay all reasonable costs and attorney fees incurred by M/G.

**CONFIDENTIALITY:** SHIPPER shall not disclose the terms of this CONTRACT to any person or party without the written consent of M/G.

**NOTICE OF DAMAGE:** In case of actual or apprehended cargo loss or damage, SHIPPER shall provide to M/G immediate written notice of such loss or damage and will provide M/G an opportunity to jointly survey the cargo prior to disposition of the cargo. No salvage sale or other disposition of the cargo will be made by SHIPPER without first giving advance written notice and full disclosure to M/G of the proposed disposition.

**GROSS INEQUITY:** Any gross inequity that may result from unusual economic conditions not in effect at the time of the execution of this CONTRACT may be corrected by mutual agreement. In case of a claim of gross inequity, each party shall cooperate with and furnish the other with any pertinent information requested. Gross inequity shall mean any circumstance resulting in unusual economic conditions adversely affecting barge transportation contemplated by this CONTRACT. Any agreed upon rate adjustment(s) resulting from a gross inequity shall remain in effect for the duration of the unusual economic condition(s) that triggered the rate adjustment.

**DEFAULT:** No default of either party in the performances of any of its covenants or obligations hereunder, which, except for this provision, would be the legal basis for termination of the CONTRACT by the other party hereto, shall give the non-defaulting party a right to terminate unless and until the defaulting party shall fail to correct the default within ten (10) days after written notice of such default is given to the defaulting party by the non-defaulting party. Notwithstanding anything in this CONTRACT to the contrary, there shall be no cure period for any default in payment of amounts due hereunder or for any default by SHIPPER in complying with any environmental or hazardous materials provisions of this and, in such case M/G shall have the immediate right to enforce each and every right afforded it under the CONTRACT and/or at law against SHIPPER.

**HIMALAYA CLAUSE:** Because M/G requires persons and companies to assist it in the performance of the work and services undertaken by it in connection with the carriage of cargo described herein, it is expressly agreed between

M/G and SHIPPER that any person or equipment employed by M/G in the performance of all or any of the services undertaken by M/G hereunder shall each be a beneficiary of this CONTRACT and shall be entitled to all rights and immunities, limitations of value and limitations of liability that are offered to M/G under this CONTRACT and/or any pertinent statute of the United States.

**HEADINGS; TERMS:** Section and paragraph headings in this CONTRACT are included merely for convenience of reference and shall not be construed as forming any part of the terms of this CONTRACT. The words of the CONTRACT, whether singular or plural, shall be construed as either the singular or plural according to the circumstances as required to give effect to the meaning of the CONTRACT.

**SEVERABILITY OF PROVISIONS:** If any provision or provisions of this CONTRACT shall be held to be illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**ACCEPTANCE OF CONTRACT TERMS:** SHIPPER's acceptance of a barge placement by M/G pursuant to this CONTRACT shall be deemed to constitute SHIPPER's acceptance of all terms of this CONTRACT whether or not signed by SHIPPER.