

SCHEDULE K

GENERAL CONDITIONS OF CARRIAGE

THIS CONTRACT GIVES YOU RIGHTS AND RESPONSIBILITIES. THIS CONTRACT LIMITS THE LEGAL RESPONSIBILITY OF THE CARRIER. PLEASE READ IT CAREFULLY.

The Hague-Visby Rules on the water carriage of goods do not apply to this contract.

This contract is not covered by any bill of lading.

The persons who are part of this contract

1. This contract applies to the person who is named as the shipper on the booking note, any person who owns the goods described on the booking note and any person who receives the cargo described on the booking note at the place of delivery. In this contract, all of these persons are called the Shipper.
2. This contract also applies to Nunavut Sealink and Supply Inc. In this contract, this is called the Carrier

The Types of Goods Covered under this contract

In this contract:

Cargo means goods presented by the Shipper for transport by the Carrier and goods received for transport by the Carrier for carriage to or from Nunavut communities under scheduled voyages covered in this Agreement. Cargo does not include live animals or gold, silver, precious stones or other high value cargo unless it is declared to and accepted by the Carrier.

Lateral Cargo means goods received for transport by the Carrier between Nunavut communities for carriage on scheduled voyages covered by this agreement.

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Retrograde Cargo means goods received for transport by the Carrier at Nunavut communities for carriage on return voyages from scheduled voyages covered by this Agreement;

What the Shipper needs to do before the goods are carried

3. The Shipper needs to contact the Carrier and reserve space for the cargo
4. The Shipper needs to give the Carrier the information requested on the booking note form.
5. After the Carrier tells the Shipper space for the cargo is reserved, the Shipper must pay the price that the Carrier charges for transporting the cargo before the Carrier will accept the cargo for transport. In this contract, this price is called the Freight. If the Shipper wants extra time to pay Freight, the Shipper must apply to the Carrier for credit. The Carrier will decide for itself if it wants to give the Shipper extra time to pay Freight and on what terms. The Carrier has agreed to carry cargo shipped by the Government of Nunavut on Freight credit terms.
6. If the size or weight of the cargo when it arrives at the Carrier's marine terminal is different than the size or weight given by the Shipper on the booking note, the Carrier has the right to ask the Shipper to pay adjusted Freight. If the difference in size or weight is so much that the cargo cannot be loaded on board the planned vessel safely or would shut out other booked cargo, the Carrier will choose for itself to transport the cargo on a later voyage or to return the cargo to the Shipper at the Carrier's marine terminal. The Shipper will pay any terminal storage charges before the cargo is returned to the Shipper.
7. If a Shipper reserves space for cargo but does not get the cargo to the carriers' marine terminal before the cut off date, or delivers for transport less cargo than booked, the Carrier may charge the Shipper an extra fee for unused cargo space on the scheduled carrying vessel. This fee is called dead freight.
8. The Shipper has to arrange and pay for getting the cargo to the Carrier's marine terminal before the cut off date that the Carrier gives the Shipper. If the cargo is late getting to the Carrier's marine terminal and there is another voyage to the delivery port planned for the season, the Carrier will try to fit the cargo on a later voyage. If there is not enough capacity for the cargo on the vessel's next voyage, the Carrier will tell the Shipper and the Shipper has to arrange and pay for taking the cargo away from the marine terminal or pay for its storage until the next available vessel or next

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season. If the Shipper chooses to take the cargo away from the marine terminal, the Carrier will refund the freight, less any terminal storage charges, and any dead freight.

Even if the Carrier already has confirmed space for the Cargo with the Shipper, or accepted Cargo for transport, the Carrier is allowed to refuse or delay accepting the Cargo at the Carrier's marine terminal, or refuse or delay loading of Cargo if the Carrier cannot operate or faces serious difficulties in operating, because of natural disasters, war, public violence, damage to port areas, severe port congestion, strikes, lockouts or labour disputes, or any happening which is not the fault of the Carrier or which did not arise from something the Carrier did or did not do.

9. The Shipper needs to package general cargo strongly so the cargo can be safely carried by sea and the packages can be palletized or stacked up to 3.7 metres (12 feet) feet high.
10. The Shipper must properly mark or label each package, crate, barrel or other unit of the cargo so the Carrier can know what it needs to unload at each destination port and the name of the person it needs to deliver the cargo to.
11. If the Shipper stuffs the cargo into shipping containers, the shipping containers must meet ISO standards for international shipping containers and the containers must allow the use of forklifts or other reasonable equipment to take the cargo out of the containers at delivery port. The Shipper is responsible to properly tie down and brace the cargo inside the shipping container so the container is safe to be transported by sea. Bracing and dunnage needs to be clean and free from fungus, insects and rodents. The Shipper must load the container so the cargo inside, the delivery port and names of persons taking delivery of the cargo match the information which the Shipper gives to the Carrier in the booking note.
12. Before the Carrier agrees to accept frozen or refrigerated cargo for transport, the Shipper must tell the Carrier the range of temperatures to keep the cargo and confirm with the Carrier if the carrying vessel has power sources suitable for any refrigerated containers which the Shipper plans to use. If the Carrier agrees to accept frozen or refrigerated cargo for transport, the Shipper must arrange to have the cargo arrive at the Carrier's marine terminal within required temperature limits.
13. If the cargo includes explosives, chemicals, or other things that are covered by the *Transportation of Dangerous Goods Act 1992* or the

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International Maritime Dangerous Goods Code, the Shipper must do everything required by the *Transportation of Dangerous Goods Act 1992* and its regulations and the IMDG Code, which includes giving the Carrier full information about the type of cargo and properly packaging and labeling the cargo. The Carrier may charge additional Freight for transporting such cargoes. The Carrier has the right to refuse to accept any dangerous or hazardous cargo for transport if the Carrier believes reasonably the Shipper has not done everything that the Shipper is required to do before handing over that type of cargo for transport.

14. The Shipper is responsible to pay the Carrier and the Carrier's contractors and employees for any government seizure, fines, claims by other Arctic Re-supply Users, legal expenses, delay, or any other damage or loss to the Carrier or its contractors or employees caused by Shipper's wrongful or negligent acts in allowing illegal substances such as drugs, diseased plant or animal material or waste products to be hidden or present in the Cargo, or in handing over contaminated Cargo unfit for transport. The carrier has the right to refuse any cargo that it has reason to suspect is illegal or does not have the correct documentation.
15. Where the Cargo is construction equipment, prefabricated building sections, or other types of heavy or large size cargo, the Shipper must properly prepare the cargo for ocean transport, such as fitting weather tight coverings for sensitive equipment, marked lifting points or lugs and skids. When booking such cargo, the Shipper must warn the Carrier about unusual cargo features such as off center points of balance. The Carrier has the right to refuse cargo that is too bulky or heavy for its vessel's handling equipment.
16. The Carrier can consolidate non-containerized cargo with other Arctic Re-supply Users' cargo. If the Carrier does this, it will separate packages and units for different Shippers at the discharge port.

The Carrier's responsibility

17. The Carrier agrees to take responsibility for the cargo from the time non-containerized cargo leaves railcars or truck tailgates at the Carrier's marine terminal or from the time Shipper stuffed containers arrive at the Carrier's marine terminal, until the time cargo is transported above high water mark at destination ports, and for Retrograde or Lateral Cargo, at all times when the Cargo is under the operational control of the Carrier. The things the Carrier are responsible for and the excuses and defences of the

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Carrier during the time it takes responsibility for the cargo are described in this contract.

18. The Carrier will take reasonable steps to keep, care for, load, transport, discharge and deliver the cargo under this contract during the whole time the Carrier takes responsibility for the Cargo
19. The responsibilities and defences of the Carrier apply to Cargo that is loaded on deck and under deck.
20. The Carrier agrees to receive, temporarily store, load, stow and deliver dangerous goods and explosives to meet the requirements of the *Transportation of Dangerous Goods Act, 1992*, the IMDG Code, and standards of safe Canadian industrial practice. If certain types of dangerous goods or explosives cannot by law be handled at the Carrier's regular marine terminal or port of loading, the loading will be done at places permitted by law. The Carrier will tell the Shipper at the time of booking the alternate places to receive such cargo for transport and tell the Shipper about any additional Freight for handling charges.
21. The Carrier does not provide heated or ventilated cargo space. The Carrier is not required to accept bookings for un-refrigerated perishable goods if the Carrier believes the Cargo could be damaged from lack of ventilation or low temperatures. The Carrier has the right at any time before loading or during the voyage to refuse to load or to remove and dispose of perishable Cargo that the Carrier reasonably believes has become spoiled or infested. The Carrier has the right, after giving notice to the person receiving the Cargo, to discharge perishable Cargo immediately after the vessel arrives at discharge ports even if the Cargo could be damaged by weather conditions.
22. If the Carrier agrees to transport refrigerated containers, the Carrier must supply power to operate container refrigeration plant from the time the refrigerated containers arrive at the Carrier's marine terminal to the time of offloading at the discharge ports of the refrigerated containers, with sufficient reserves of power and fuel for reasonably foreseen delays during the voyage. The Carrier is not responsible for providing power to refrigerated containers during transfer between the carrying vessel and above high water mark.
23. The Carrier agrees to use due diligence:
 - a) to make the carrying vessel seaworthy;

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- b) to secure that the vessel is properly manned, equipped and supplied; and
 - c) to make the holds, refrigerating and cool chambers and all other parts of the vessel in which goods are carried fit and safe for their reception and carriage.
24. The Carrier agrees to take reasonable steps to follow the scheduled order of ports. The Carrier has the right to transship the Cargo. The Carrier has the choice to change port rotations, discharge a part cargo and return to the same port to complete discharge or change the order of discharge of Cargo during any one voyage if reasonably necessary to avoid being trapped in ice, to use the whole cargo space efficiently or for the safety of the carrying vessel.
25. To service intended discharge ports, the Carrier will use all reasonable efforts to select carrying vessels whose capacity and ice class will permit them to complete voyages to planned ports under ice and weather conditions forecast for the season and the voyage. The Carrier agrees to use all reasonable efforts to transship Cargo or use substitute carrying vessels of a higher capacity or ice class if forecasted or actual ice and weather conditions for planned voyages worsen over a shipping season. The carrying vessel is not required to force ice. Where icebreaking assistance is arranged for voyages to certain discharge ports named by agreement between the Carrier and the Government of Nunavut, the Carrier agrees to follow icebreakers in conditions within the carrying vessel's and icebreaker's permitted combined ice class capacity and where prudent under Arctic navigation.
26. If the Carrier foresees that an intended discharge port will be icebound beyond the vessel's ice class capacity or ice or weather conditions will prevent the safe completion of a voyage to or from any intended discharge port, the Carrier will give notice to the Government of Nunavut and to the senior administrative officer or other responsible municipal officer at the intended discharge port. These parties will consult with a view to agreeing on an alternate way to transport the Cargo by water to the intended discharge port or to an alternate discharge port. The carrying vessel may sail to a convenient open place to await the Government of Nunavut's instructions. Instructions will be provided by the Government of Nunavut within two days of the Carrier giving notice under this clause. By this contract, the Shipper gives the Government of Nunavut the power to agree on the Shipper's behalf for delivery to an alternate discharge port. If this type of agreement is made, delivery to an alternate discharge port of all Cargo in an undamaged condition is complete performance of the

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Carrier's responsibility to deliver to the originally planned discharge port on that voyage. The consultation is to avoid the Cargo being returned to the loading port or being shut out of the Arctic for the season. The Carrier will give notice to Shippers about the location of the alternate discharge port.

27. The Shipper understands the Carrier has to use lighters to transfer the cargo from vessel to shore at Nunavut discharge ports. The Carrier may use any reasonable floating vessel or amphibious vehicle as a lighter. The Carrier may use any reasonable method to shift cargo from lighters to above the high water mark.

Shipper's responsibility at delivery

28. The Shipper agrees to be ready itself or to give to the Carrier the name and address or telephone number of a responsible person to take delivery of the Cargo from the Carrier above high water mark at discharge ports.
29. The Carrier agrees to give two days prior notice to Shippers or Shippers' named persons to take delivery, of the estimated actual time of beginning of unloading of the carrying vessel at discharge ports.
30. In discharge ports without a warehouse, the Shipper is responsible for taking delivery of Cargo from the Carrier as soon as the Cargo is landed above the high water mark.
31. Where the Shipper keeps a Carrier's shipping container after the Cargo is landed, the Shipper is responsible to deliver the shipping container back to the Carrier at the usual wharf or landing place above the high water mark in an undamaged condition, fair wear and tear excepted. The Shipper agrees to pay the Carrier a fee for keeping back the shipping container until the time the Shipper returns the shipping container to the Carrier. This rate is shown in the Carrier's list of fees.

Defences and Limits of Liability of the Carrier

32. The Carrier is not responsible for loss of or damage to the cargo caused by reasons which are listed in article 4 of the Hague-Visby Rules. These reasons are listed as part of this contract. These reasons apply during the whole time the Carrier is responsible for the Cargo under this Contract.
33. The Carrier's contractors, agents and employees have the same defences and limits of liability that the Carrier has under this contract. The wording of article 4*bis* of the Hague-Visby Rules applies to the Carrier's contractors, agents and employees. The modified wording of this article is

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included as part of this contract.

34. The Carrier is not responsible for any loss or damage to the Cargo or loss to the Shipper caused by delay, unless the damage resulted from an act or omission of the Carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
35. Unless the Carrier intentionally or recklessly destroys or damages the Cargo as described in paragraph 34, the amount of money the Carrier has to pay is limited to:
 - \$2,600 per package or unit of Cargo lost or damaged; or
 - Where the cargo is a motor vehicle, \$3.60 per kilogram of the motor vehicle lost or damaged, up to the lesser of the amount of the damage, the value of the Motor vehicle or \$72,000.
36. The Carrier has the right to abandon, destroy or damage cargo without responsibility to pay the Shipper if this is necessary to save the vessel and the rest of the cargo. The Carrier only has this right when a situation of danger as described in the York Antwerp Rules 1994 arises and the Carrier gives notice within a reasonable time to the Shippers of General Average. General Average will be adjusted in Canada under the York-Antwerp Rules 1994. The providing of security for General Average is subject to any agreement between the GN and Carriers as amended from time to time. The Carrier agrees that it will not demand any security for Shippers' contribution to General Average or seize or lien any Cargo or begin any legal proceeding in rem against the Cargo as security for Shippers' contribution to General Average if there is no applicable agreement in force between the Carrier and the Government of Nunavut concerning a system to fund Shippers' contribution to General Average. If the situation of danger leading to a notice of General Average was caused or contributed to by the Carrier for which the Carrier has no excuse or defence under this contract, the Shipper may claim against the Carrier to credit or return to the Shipper any Shipper's contribution to General Average. This type of claim must be made by following the steps described in Clause 42 of this contract.

Making claims under this contract

37. If damage to cargo is foreseen before the carrying vessel reaches a discharge port, or cargo is seen to be damaged at the time of discharge, the Shipper and Carrier agree to co-operate to make a joint inspection and keep records of the damage.

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38. All claims under the contract need to be made under the Sealift Claims Handling Rules, effective June 1, 2010 as amended from time to time. The Sealift Claims Handling Rules and claims forms which the Shipper and Carrier need to complete are available at: www.gov.nu.ca/sealift.
39. If a Shipper believes cargo is damaged, the Shipper must give notice of claim to the Carrier within thirty (30) days of the discharge of the Cargo for hidden damage, or within ten (10) days of discharge for damage which can be seen on the outside of the cargo. If the Shipper believes that the cargo has been lost by the Carrier, the Shipper must give notice of claim to the Carrier within thirty (30) days of the date lost cargo was scheduled to be discharged.
40. The Carrier must send to the Shipper the Carrier's decision whether to pay or settle the Shipper's claim within one hundred and eighty (180) days of the date the Cargo related to the claim was discharged or if the Cargo related to the claim was lost, the date that Cargo was scheduled to be discharged.
41. *Claims for damage \$2,600 or less*
If the Carrier rejects the Shipper's claim, or offers to pay an amount that the Shipper does not agree with, and the Shipper's claim is for a total of \$2,600 or less, the Shipper must apply for arbitration under the Sealift Claims Handling Rules and pay the arbitration fee within forty five (45) days of the Shipper receiving the Carrier's reply to the Shipper's notice of claim. If the Shipper does not apply for arbitration within forty five (45) days under the Sealift Claims Handling Rules, the Shipper loses any right to claim against the Carrier.
42. *Claims for damage of more than \$2,600 and all claims relating to General Average*
If the Shipper's claim is for more than \$2,600, or the claim relates to General Average under clause 36, the Shipper must begin a lawsuit in the Federal Court or the Nunavut Court of Justice within one year of the date of discharge of the Cargo related to the claim, or within one year of the date lost Cargo related to the claim was scheduled to be discharged. This contract time limit does not apply to claims between the Shipper and the Carrier for contribution or indemnity under Part 2 of the *Marine Liability Act*. If a claim is started in the Federal Court, the Shipper and the Carrier agree that both will request the Federal Court that all pre-trial hearings will be heard in Nunavut or by video- or teleconference access to any Carrier or Shipper in Nunavut and to request that the trial of the action will be heard in Nunavut.
43. If the Sealift Claims Handling Rules are no longer in place as a result of agreement between the Government of Nunavut and the Carrier, the time limits for the Shipper to give notice of claim under clause 39 and clause 42 apply to all types of claims for any amount of money.

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44. This Contract is governed by Canadian Maritime Law.

**PART OF ARTICLE IV WORDING AND MODIFIED ARTICLE IV bis WORDING
OF HAGUE-VISBY RULES INCLUDED AS PART OF THIS CONTRACT**

Altered wording in italics

Rights and Immunities

1. Neither the carrier nor the *vessel* shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the *vessel* seaworthy, and to secure that the *vessel* is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the *vessel* in which goods are carried fit and safe for their reception, carriage and preservation.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the *vessel* shall be responsible for loss or damage arising or resulting from

- (a) act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the *vessel*;
- (b) fire, unless caused by the actual fault or privity of the carrier;
- (c) perils, dangers and accidents of the sea or other navigable waters;
- (d) act of God;
- (e) act of war;
- (f) act of public enemies;
- (g) arrest or restraint of princes, rulers or people, or seizure under legal process;
- (h) quarantine restrictions;
- (i) act or omission of the shipper or owner of the goods, his agent or representative;
- (j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
- (k) riots and civil commotions;

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- (l) saving or attempting to save life or property at sea;
- (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
- (n) insufficiency of packing;
- (o) insufficiency or inadequacy of marks;
- (p) latent defects not discoverable by due diligence;
- (q) any other cause arising without the actual fault and privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the *vessel* arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) *Wording in first clause of Article 5(a) not included in this contract.*

- *Neither the Carrier nor the vessel shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding \$2,600 per package or unit; or*
- *Where the Cargo is a motor vehicle, \$3.60 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 the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the cargo

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manifest as packed in such article of transport shall be deemed the number of packages or units for the purpose 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.

(d) Not included as part of this contract

(e) Neither the carrier nor the vessel shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) *Not included as part of this contract*

(g) By agreement between the carrier, master or agent of the carrier and the shipper 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.

(h) Neither the carrier 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 knowingly mis-stated by the shipper *Additional phrase not included as part of this contract*

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the vessel or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ARTICLE IV BIS

Application of Defences and Limits of Liability *Modified words in italics*

1. The defences and limits of liability provided for *in this Agreement* shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

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2. If such an action is brought against a *contractor*, servant or agent of the carrier, such *contractor*, servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke *under this Agreement*.
3. The aggregate of the amounts recoverable from the carrier, and such *contractors*, servants and agents, shall in no case exceed the limit provided for *in this Agreement*.
4. Nevertheless, a *contractor*, servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the *contractor*, servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.