



# MARINE TRANSPORTATION SERVICES

## GOVERNMENT OF THE NORTHWEST TERRITORIES (herein "GNWT")

### NON-NEGOTIABLE SHIPPING RECEIPT TERMS AND CONDITIONS

#### 1. RECEIPT AND CONTRACT OF CARRIAGE

This Non-Negotiable Shipping Receipt evidences the contract of carriage and shall govern before the cargo is loaded, while onboard, and until after unloading, releasing or delivery, and throughout the entire time the cargo is in GNWT's care, custody or control. No bill of lading will be issued in connection with this shipment. The *Marine Liability Act* S.C. 2001 c.6 and the Hague-Visby Rules contained in the Schedules thereto, and similar legislation of other jurisdictions shall not apply.

The shipper enters into this contract and accepts this Non-Negotiable Shipping Receipt on its own behalf and as agent for and on behalf of the owner and the consignee of the cargo, and each of the shipper, owner and consignee of the cargo agrees to be bound on their own behalf and on behalf of the others, by all the terms and conditions of this Non-Negotiable Shipping Receipt. If either the shipper, owner or consignee of the cargo should not be bound by the terms of this Non Negotiable Shipping Receipt, then the shipper, owner or consignee which are bound shall hold GNWT harmless from any claims by the shipper, owner or consignee not bound and shall indemnify GNWT for any sums that the shipper, owner or consignee not bound, shall recover from employee(s) servant(s) or agent(s) and that GNWT shall have paid.

#### 2. DEFINITIONS

This contract may be performed by tug and barge or scow or other vessel and in this contract of carriage the words "vessel" and "ship" shall include tug and barge and scow and any other vessel and any substituted vessel whether owned, chartered or operated by GNWT and used in the performance of this contract. The term "GNWT" means and includes the Government of the Northwest Territories and their employees, agents, masters, crew and sub-contractors, and the employees, agents, officers, masters and crew of any subcontractors, and every vessel used in the carriage, as well as the owner, operator, officers, and crew thereof. The term "Shipper" when used hereafter includes, jointly and severally, the shipper, owner and consignee of the cargo and any person, firm or corporation having any right title or interest to or in the cargo or documents relating thereto. The term "High Risk Goods" means and includes cargo which is "dangerous goods" as defined in Paragraph 17 hereof. The term "Demurrage Charges" shall be charged at the rate listed in the GNWT "Cargo Rates – All Commodities" which may be obtained from the GNWT Marine Transportation Services office at: Terminal "C", Vale Island, 42003 Mackenzie Highway, Hay River, Northwest Territories, X0E 0R9 or viewed at:

<https://www.inf.gov.nt.ca/en/services/marine-transportation-services>



### **3. DECK CARGO AND EXCLUSION OF LIABILITY**

It is understood and agreed that cargo will be carried in an open scow or on a deck barge, and that the Shipper accepts all risks of open scow or deck carriage, including, without limiting the generality of the foregoing the unseaworthiness or unfitness of any vessel or negligence of GNWT.

Notwithstanding any term herein, GNWT shall not be liable for any loss, damage or delay whatsoever, howsoever and wheresoever arising, of or to cargo even though such loss, damage or delay may be caused or contributed to by the act, omission negligence or default of GNWT including by the unseaworthiness of the ship or failure to supply a seaworthy ship or failure to exercise due diligence to make the ship seaworthy or to man, equip and supply the ship or to make any part of the ship fit and safe for the reception, carriage and preservation of the cargo.

### **4. FREIGHT**

Freight is to be considered earned when cargo is delivered to GNWT for transportation, and is not to be set off, refunded or reduced in any event, ship or cargo lost or not lost. The Shipper shall pay the freight and all other lawful charges accruing on said cargo, and if required, shall pay the same before delivery. If the cargo shipped is not that described in this Non-Negotiable Shipping Receipt, the freight charges must be paid upon the cargo actually shipped, as determined by GNWT with any additional penalties lawfully payable thereon.

### **5. LIEN**

GNWT shall have a particular and general lien upon the cargo, and upon any and all other goods of the Shipper which are in the possession of GNWT from time to time, and shall have the right to sell the same by public auction or private sale or otherwise for all unpaid freight, advance freight and other charges due or to become due from the Shipper including dead freight, demurrage, detention or storage charges, fines and any other lawful claim and for damages, costs and expenses (including costs and expenses of exercising such lien and of such sale), and for interest, if any. The lien may be exercised by GNWT notwithstanding that it may have parted with possession of the cargo and if on sale of the cargo or other goods the proceeds fail to cover the amount for which GNWT has a lien on the cargo or other goods (including the said costs and expenses and interest), as herein provided, GNWT shall be entitled to recover the deficiency from the Shipper.

### **6. SAILING**

GNWT is not and does not hold itself out to be a common carrier in connection with this shipment and does not bind itself to dispatch its ships at advertised times or at any particular times, nor does GNWT guarantee the sailings, passage or arrivals of any ship.

GNWT does not undertake and shall not be liable to carry cargo in the order in which it is received from shipper and shall not be responsible to the Shipper for delay in delivery of cargo, including, without limiting the generality of the foregoing, delay from one season to another, or for loss or damage to such cargo while so delayed.



GNWT does not undertake and shall not be liable to transport cargo by any particular vessel, nor in time for any particular market, nor any particular water or other route between the point of shipment and the point of destination.

## **7. METHOD OF DELIVERY**

Delivery of the cargo shall be completed once the cargo has been placed on ground or dock at the landing area or, at the option of GNWT, cargo may be discharged and stored afloat or ashore for the Shipper, at the expense and risk of the Shipper, and if stored on GNWT premises, GNWT may charge and recover Demurrage Charges.

Where any ship is provided to the Shipper, its servants, agents, or contractors for towing, yarding, storage of cargo, loading, unloading or any other purpose, the Shipper, its servants, agents or contractors shall keep the ship safely afloat at all times and the ship and its contents are and are deemed to be in the care, custody and control of the Shipper and Shipper accepts all risk and liability for loss or damage howsoever caused, to the ship or other property of GNWT and to the property of the Shipper and to the property of third parties in connection with the ship, for the period commencing at the earlier of the time the ship is let go from GNWT's towing vessel or released by GNWT's master and ending at the later of the time the ship is reaccepted by GNWT's master or made fast to GNWT's towing vessel, The cargo of the Shipper onboard shall be and shall be deemed to be delivered to the Shipper at the time the ship is let go or released. GNWT may charge and recover Demurrage Charges for the ship for such period from the Shipper and for any period that a towing vessel is required to standby.

Except in those places where GNWT maintains such facilities), the Shipper shall provide and maintain safe and proper berths and moorings for GNWT's ships where GNWT's ships can safely get and lie, always safely afloat for the loading and delivery of the cargo.

Upon any provision of the ship to the Shipper, as above, or otherwise, for handling, loading, stowing and unloading the cargo, by the Shipper GNWT shall be relieved of any obligation to handle, load, stow care for or unload the cargo.

If GNWT delivers the cargo to any other carrier for carriage by land, air, or otherwise, it does so as agent for the Shipper and the Shipper agrees to be bound by the stipulations and conditions of such transfer, shipping receipt or bill of lading as may be used on such transfer or by such carrier for like transfer or carriage. The receipt from a connecting carrier shall be evidence of the condition of the cargo when delivered to such connecting carrier. The responsibility of and obligations of the carriers cooperating in any through billing shall be separate and distinct and not joint, several or in common, each carrier being responsible for loss or damage on his section of the through route only, and no carrier shall be held liable for duties and/or obligations of any other or connecting carrier.

## **8. DESCRIPTION OF CARGO**

Notwithstanding any written description in this Shipping Receipt, GNWT is not responsible for any description of weight, measure, gauge, quality, condition, brand, contents and value of cargo, or for any discrepancies between shipping marks as described and the actual marks on the cargo or for any difference between the contents of the packages and description of same in the Non-Negotiable Shipping Receipt and those actually delivered.



## 9. LIBERTIES

GNWT and the ship shall have the following liberties in connection with the carriage of the cargo shipped under this Non-Negotiable Shipping Receipt and GNWT shall not be liable in damages or otherwise as a consequence of the exercise, neglect, non-exercise or attempted exercise of any other of the following liberties:

- (a) To Lighter the Cargo: GNWT shall be at liberty to lighter or otherwise carry cargo to or from the ship;
- (b) To Discharge, Land, Store, Transship and Forward Cargo: In the case of accident, or should the ship put into a port of refuge, or for any cause, not commence or proceed or continue in the ordinary course of her voyage, or if the ship is prevented from entering any port or place or is likely to be delayed thereat owing to lateness of season, ice, stage or shallowness of water, strikes, lockouts or labour trouble (whether GNWT or its employees are parties thereto or not), injunction, interdict, prohibition or importation, blockade, war, riots or other disturbances, uncertainty of the weather or any other cause, GNWT shall be at liberty to proceed to the nearest convenient port or place and there lighter, discharge of the cargo or any part thereof or, with or without watchmen, to store afloat in the ship or otherwise, or ashore, or transship or forward the same to destination by land, water or air, all at the risk of the Shipper its agents or representatives, who shall pay all extra freight charges and expenses incurred under this clause in lightering, discharging, landing, storing, transshipping or forwarding of the cargo;
- (c) To Postpone Shipment or Delivery Date: If GNWT shall determine in any particular case that it is not possible, practicable or convenient to ship or deliver cargo (of which impossibility, impracticability or inconvenience GNWT shall be the sole and conclusive judge) GNWT shall be at liberty to postpone the shipment or delivery of the cargo to a later date or until the next shipping season, and if the shipment or delivery of cargo is carried over to the next shipping season the Shipper shall pay reasonable storage charges on such cargo;
- (d) To Dispose of Perishable Cargo: If GNWT is of the opinion (of which it shall be sole and conclusive judge) that perishable cargo has perished or is about to or is liable to perish, it shall be at liberty to dispose of the same in any manner, or to sell the same to any purchaser at such price as GNWT considers fair, and GNWT shall be only accountable to the Shipper for such money as it shall actually receive for the said perishable cargo;
- (e) To Discharge Day or Night: GNWT shall be at liberty to discharge cargo day or night, holidays included, as fast as ship can deliver, or at any rate, and without regard to weather conditions;
- (f) To Deliver to Wharfinger: If the consignee is not on hand to receive the cargo, then it may be delivered to the wharfinger or to any other responsible person who will take charge of said cargo, or may be deposited at a usual or convenient place for delivering cargo and in every such case, the transit of said cargo shall be deemed to have ended and delivery to have been made;
- (g) To Discharge and Reload: GNWT shall be at liberty at any intermediate port to shift or discharge any cargo for the purpose of discharging or stowing other cargo at such port;



- (h) To Tow and Assist: The ship shall have liberty to tow and to be towed and to assist vessels under all conditions;
- (i) To Deviate: The vessel shall have liberty to deviate in its voyage, and any deviation howsoever arising (including the carriage of cargo beyond its destination) shall not be, and be deemed not to be an infringement or breach of this contract;
- (j) Air or Land and Water Transport: GNWT shall have liberty to transport the cargo by air or land as well as by water;
- (k) Return of Trailers, Containers, etc.: GNWT shall have liberty to load, handle, stow, carry, take custody of, discharge and deliver trailers, containers, vehicles, receptacles, pallets, skids and similar items for return to the owner thereof or the Shipper of the Cargo.

## **10. NOTICE AND SUIT**

Notice of claim hereunder must be made in writing and delivered to GNWT at its office in the City of Yellowknife, Northwest Territories. within thirty (30) days after discharge of cargo or if cargo be not delivered, within thirty (30) days after cargo would have been delivered in the ordinary course and unless such notice be given as aforesaid GNWT or the ship shall not be liable for any claim howsoever arising, whether from negligence or otherwise. In any event, GNWT and the ship shall be discharged from all liability to the Shipper of the cargo unless suit is brought within one year of the date of this Shipping Receipt.

## **11. COOPERAGE**

The Shipper of the cargo shall bear and pay all the costs of all mending, baling and cooperage of and repairs to or replacement of packages, boxes, crates, wrappers, bags or barrels as GNWT shall determine may be necessary or advisable.

## **12. EXPLOSIVES**

If the shipper ships explosives without previous full written disclosure to GNWT or its agents, of their nature, it shall be liable for all loss or damage caused thereby, and such cargo may be warehoused or destroyed at the risk and expense of the Shipper and without liability to compensate the Shipper.

## **13. GENERAL AVERAGE**

- (a) The Shipper of the cargo shall pay salvage and any special charges incurred in respect of such cargo and shall contribute with GNWT in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril. If a salving vessel is owned or operated by GNWT, salvage shall be paid for as fully as if the said salving vessel belonged to strangers. Such deposit as GNWT may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, or Shipper of the cargo to GNWT before delivery. General average is to be adjusted and payable according to York-Antwerp Rules, 1994 and any subsequent modification or amendments thereof and it is agreed that jettison of deck cargo for the common safety shall be allowed as general average. Notwithstanding Rule 10 (b) of the



York-Antwerp Rules, it is expressly agreed that the cost of handling, discharging, and restowing cargo shall be admitted as general average when reasonably necessary for the safe prosecution of the voyage, as well as under the circumstances set forth in the said Rule.

- (b) In the event of accident, danger, or damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, due to negligence or not, for which, or for the consequence of which, GNWT is not responsible by statute, contract or otherwise, the cargo, Shipper of the cargo shall contribute with GNWT in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be incurred and shall pay salvage and special charges incurred in respect of the cargo.

#### **14. OTHER PROTECTIONS OR LIMITATIONS**

Nothing in this Non-Negotiable Shipping Receipt shall operate to limit or deprive GNWT of any statutory protection or limitation of liability.

#### **15. BOTH TO BLAME COLLISION CLAUSE**

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of GNWT in the navigation or in the management of the ship, the Shipper of the cargo carried hereunder will indemnify GNWT against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of Shipper of the said cargo, paid or payable by the other or non-carrying ship or her owners to the Shipper of the said cargo, and set off, recouped or recovered by the other or non-carrying ship to her owners as part of their claim against the carrying ship or GNWT. The foregoing provision shall apply where the owners, operators, or those in charge of any ship or ships, or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact.

#### **16. GOVERNMENT ORDERS**

GNWT shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever, given by the Government of Canada and any Provincial, Territorial, or Municipal government or any department or agency or department thereof or by any committee or person having under the terms of the insurance of the vessel the right to give such orders or directions and if by reason of and in full compliance with any such orders and directions anything is done or is not done the same shall not be deemed to be a deviation and delivery in accordance with such rights or directions shall be a fulfillment of GNWT's obligations hereunder.

#### **17. SHIPMENT OF HIGH RISK GOODS AND INDEMNIFICATION OF GNWT**

The Shipper warrants to GNWT that:

- (a) it has brought to the attention of GNWT in writing the nature of all pollutants, hazardous or dangerous substances and/or substances which may cause damage to the environment or danger to health, safety or welfare of persons, or risk of interference with normal enjoyment of property or life, or danger to the health of animal life, or damage to plant life or property, to be carried pursuant to this Non-Negotiable Shipping Receipt, such cargo to





include any toxic substance, waste, pollutant, deleterious substance or dangerous good, as these terms are given meaning under the International Maritime Dangerous Goods Code ("IMDGC") or any laws of Canada or one of its Provinces or Territories applicable hereto (hereinafter in this section called "dangerous goods");

- (b) all applicable requirements of the laws of Canada with respect to the transportation of dangerous goods, including those set out in the *Transportation of Dangerous Goods Act, 1992* and the *Transportation of Dangerous Goods Regulations*, and all applicable requirements of the IMDGC, have been complied with;
- (c) the shipper has properly packaged, labeled and marked the dangerous goods and all cargo which is designated as "marine pollutants" in any laws of Canada or one of its Provinces or Territories or in the IMDGC is clearly and visibly identified by the words "MARINE/POLLUTANT" together with the proper shipping name;
- (d) where applicable, the Shipper has an emergency response assistance plan that has been filed with and approved by the Minister of Transport pursuant to section 7 of the *Transportation of Dangerous Goods Act, 1992*;
- (e) the Shipper has packed any dangerous goods into containers or vehicles that comply with the requirements of the IMDG code;
- (f) the Shipper has not packed any dangerous goods with incompatible substances;
- (g) the Shipper has externally examined its packaged dangerous goods and found them to be sound; and
- (h) the Shipper has properly stowed and secured its packaged dangerous goods or had them properly stowed and secured in containers or vehicles.

The Shipper not withstanding anything contained herein or in the *Marine Liability Act* shall:

- (a) indemnify GNWT and hold it harmless from all loss, damage, delay and also from any costs of taking any measures required by law, regulation or governmental directive and taking any measures consistent with public or environmental safety in connection with the dangerous goods to prevent or eliminate dangerous conditions, and prevent the release, or if released, to remedy any dangerous condition or reduce or mitigate any danger to health, safety or welfare of persons, any risk of interference with normal enjoyment of property or life, any danger to the health of animal life, and any risk of damage to plant life, or property or the environment; and
- (b) indemnify GNWT and hold it harmless against all claims (including actions, claims, demands, causes of action, liens, penalties, forfeitures, assessments and proceedings of every nature and kind made, brought or prosecuted by any person, including by Her Majesty in the Right of Canada or in the Right of any of the Provinces or Territories of Canada or other governments and agencies thereof or by persons receiving the dangerous goods from GNWT hereunder) in respect of, directly or indirectly, the dangerous goods or any portion or portions thereof which are pollutants, hazardous or dangerous substances or substances which may cause damage to the environment.



In addition to any remedy available at law, GNWT may sell, destroy, store ashore or afloat, abandon or otherwise dispose of any dangerous goods in respect of which GNWT reasonably believes the Shipper to be in breach of this warranty and representation, all at the expense and for the account of the Shipper and without liability to compensate the Shipper.

#### **18. SERVANTS AND AGENTS OF GNWT**

It is hereby expressly agreed that no servant or agent of GNWT (including every independent contractor from time to time employed by GNWT) shall in any circumstances whatsoever be under any liability whatsoever to the Shipper of the cargo for any loss, damage or delay or otherwise of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on their part while acting in the course of or in the connection with their employment and, without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty contained in this Shipping Receipt and every right, exemption from liability, defence and immunity of whatsoever nature applicable to GNWT or to which GNWT is entitled hereunder shall also be available and shall extend to and protect every such servant or agent of GNWT acting as aforesaid and for the purpose of all the foregoing provisions of this clause GNWT is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract evidenced by this Shipping Receipt.

#### **19. LAW AND JURISDICTION**

The contract evidenced by this Non-Negotiable Shipping Receipt shall be interpreted in accordance with the laws of the Northwest Territories and the laws of Canada applicable therein. The parties submit to the jurisdiction of the Federal Court of Canada and the Supreme Court of the Northwest Territories, whichever is the most appropriate with respect to the matter arising hereunder.