

Standard Conditions governing Multimodal Transport Documents (MTD), issued in accordance with Multimodal Transportation of Goods Act, 1993 [As placed on www.dgshipping.com /Shipping Notices/ MTO]

1. Definitions:-

- "Carrier" means a person who is engaged in the business of transporting, for hire, goods by road, rail, inland waterways or sea;
- "Consignee" means the person named as consignee in the multimodal transport contract;
- "Consignment" means the goods entrusted to a MTO for Multimodal transportation;
- "Consignor" means the person, named in the multimodal transport contract as consignor, by whom or on whose behalf, the goods covered by such contract are entrusted to a MTO for multimodal transportation;
- "Delivery" means - (i) In the case of a negotiable MTD, delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any other person entitled to receive it; (ii) In the case of a non-negotiable MTD, delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any person authorized by the consignee to accept delivery of the consignment on his behalf;
- "Endorsement" means the signing by the consignee, or the endorsee after adding a direction on a negotiable MTD, to pass the property in the goods mentioned in such document to a specified person; Jaci/desktop MTO doc. 4
- "Goods" includes- (i) containers, pallets or similar articles of transport used to consolidate goods; and (ii) animals;
- "Mode of transport" means carriage of goods by road, rail, inland waterways or sea; (i) "Multimodal transportation" means carriage of goods, by two or more modes of transport, from the place of acceptance of the goods in India to a place of delivery of the goods outside India;
- "Multimodal transport contract" means a contract entered into by the consignor and the MTO for multimodal transportation;
- "Multimodal Transport Operator" (MTO) means any person who - (i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf; (ii) acts as principal and not as an agent, either of the consignor or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract; and (iii) is registered under sub-section (3) of section 4 of the Act. (i) "Negotiable MTD" means a MTD which is-
 - Made out to order or to bearer; or
 - Made out to order and is transferable by endorsement; or
 - Made out to bearer and is transferable without endorsement.(m) "Non-negotiable MTD" means a MTD, which indicates only one named consignee;

2. Applicability :-

The provision set out and referred to in this MTD shall apply, if the transport as described on the face of the document is by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India.

3. Effect of issuance of MTD :-

- The issuance of the MTD confers and imposes, on all parties having or acquiring hereafter an interest, the rights, obligations and defences set out in the conditions mentioned in this document.
- By the issuance of the MTD the MTO -
 - Undertakes to perform, and/or in his own name to procure performance of, the Multimodal transport including all services which are necessary to such transport, from the time of taking the goods in charge to the time of delivery, and accepts responsibility for such transport and such services to the extent set out in these conditions;
 - accepts responsibility for the acts and omissions of his agents or servants, when such agents or servants are acting within the scope of their employment, as if such acts and omissions were own;
 - accepts responsibility for the acts and omissions of any other person, whose services he uses, for the performance of the contract evidenced by this MTD;
 - undertakes to perform, or to procure performance of, all acts necessary to ensure delivery;
 - assumes liability, to the extent set out in these conditions, of loss of or damage to the goods, occurring between the time of taking them into his charge and the time of delivery, and undertakes to pay compensation as set out in these conditions in respect of such loss or damage;
 - assumes liability, to the extent set out in these conditions, for delay in delivery of the goods and undertakes to pay compensation as set out in these conditions.

4. Negotiability and Titles to the Goods :-

By accepting the Multimodal Transportation Document, the consignor and his transferees agree with the MTO that, unless it is marked "non-negotiable", it shall constitute title to the goods and the holder, by endorsement of this MTD, shall be entitled to receive or to transfer the goods mentioned in this MTD. Jaci/desktop MTO doc. 6

5. Reservations :-

If the MTD contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which, the MTO or a person acting on his behalf knows, or has reasonable grounds to suspect, do not accurately represent the goods actually taken in charge, or if he has no reasonable means of checking such particulars, the MTO or a person acting on his behalf shall insert in the MTD a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking. If the MTO or a person acting on his behalf fails to note on the MTD the apparent condition of the goods, he is deemed to have noted on the MTD that the goods were in apparent good condition.

6. Evidentiary effect of the MTD :-

- The MTD shall be, prima facie, evidence of the taking in charge, by the MTO, of the goods as described therein; and (2) Proof to the contrary by the MTO shall not be admissible if the MTD is issued in negotiable form and has been transferred to third party, including a consignee, who has acted in good faith in reliance on the description of goods therein.

7. Guarantee by the consignor :-

- The consignor shall be deemed to have guaranteed, to the MTO, the accuracy at the time the goods were taken in charge by the MTO, of particulars relating to the general nature of the goods, their marks, number, weight and quantity and, if applicable, to the dangerous character of the goods, as furnished by him for insertion in the MTD.
- The consignor shall indemnify the MTO, against loss resulting from inaccuracies or inadequacies of the particulars. The consignor shall remain liable even if the MTD has been transferred by him. The right of the MTO to such indemnity shall in no way limit his liability under the Multimodal Transport Contract to any person other than the consignor.

8. Dangerous Goods :-

- The consignor shall make or label dangerous goods in a suitable manner as "dangerous goods"
- Where the consignor hands over dangerous goods to the MTO or any person acting on his behalf, the consignor shall inform him of the dangerous character of the goods and, if necessary, the precautions to be taken. If the consignor fails to do so and the MTO does not otherwise have knowledge of their dangerous character then:
 - The consignor shall be liable, to the MTO, for all loss resulting from the shipment of such goods; and (b) The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation
- The above provisions may not be invoked by any person if during the Multimodal Transport he has taken the goods in his charge with knowledge of their dangerous character.
- If, in cases where the provisions (2) (b) referred to above do not apply or may not be invoked, dangerous goods become an actual danger to life or property they may be unloaded, destroyed or rendered innocuous, as the

circumstances may require, without payment of compensation, except where there is an obligation to contribute in general average or where the MTO is liable, in accordance with the provisions of relevant conditions.

9. Period of responsibility :-

- The responsibility of the MTO for the goods covers the period from the time he takes the goods in his charge to the time of their delivery. For the purpose of this responsibility, the MTO is deemed to be in charge of the goods -
 - from the time he has taken over the goods from: (i) the consignor or a person acting on his behalf; or (ii) an authority or other third party to whom, pursuant to law or regulations applicable at the place of taking charge, the goods must be handed over for transport;
 - until the time he has delivered the goods: (i) by handing them over to the consignor; or (ii) by placing them at the disposal of the consignee, in accordance with the Multimodal Transport Contract or with the law or with the usage of the particular trade applicable at the place of delivery; or (iii) by handing over 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.
- Reference to the MTO in this regard shall include his servants or agents or any other person of whose services he makes use of for performance of the Multimodal Transport Contract, and reference to the consignor or consignee shall include their servants or agents.

10. Basis of Liability :-

- The MTO shall be liable, for loss resulting from loss of or damage to the goods, delay in delivery and any consequential loss or damage arising from such delay, if the occurrence which caused such loss, damage or delay in delivery, took place while the goods were in his charge, unless the MTO proves that he, his servants or agents, or any other person whose services he uses for the performance of the contract evidenced by this MTD, took all measures that could reasonably be required to avoid the occurrence and its consequences.
- Where fault or neglect on the part of MTO, his servants or agents, or any other person whose services he uses for the performance of the contract evidenced by this MTD, combines with another cause to produce loss or damage or delay in delivery, the MTO shall be liable only to the extent that the loss, damage or delay in delivery which is attributable to such fault or neglect, provided that the MTO proves the part of the loss, damage or delay in delivery not attributable thereto.
- Delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon or in the absence of such agreement, within reasonable time required by a diligent MTO, having regard to the circumstances of the case to effect the delivery of goods.
- If the goods have not been delivered within ninety consecutive days following the date of delivery expressly agreed upon, the claimant may treat the goods as lost.

11. Liability for loss or damage when the stage of Transport where the loss or damage occurred is not known :-

- When the MTO is liable to pay compensation in respect of loss of or damage to the goods, occurring between the time of taking them into his charge and the time of delivery, and the stage of Transport where the loss or damage occurred is not known:
 - Such compensation shall be calculated by reference to the value of such goods at the place and time they are delivered to the consignee or at the place and time when, in accordance with the contract of the Multimodal Transport, they should have been so delivered.
 - The value of goods shall be determined according to the current commodity exchange price or, if there is not such price, according to the current market price, or if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality; However, the MTO shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to make the claim.
- Where a MTO becomes liable for any loss of, or damage to, any consignment, the nature and value whereof have not been declared by the consignor before such consignment has been taken in charge by the MTO and the stage of transport at which such loss or damage occurred is not known, then the liability of the MTO to pay compensation shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67 Special Drawing Rights per package or unit lost or damaged, whichever is higher, up whereof have not been declared by the consignor before such consignment has been taken in charge by the MTO and the stage of transport at which such loss or damage occurred is not known, then the liability of the MTO to pay compensation shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67 Special Drawing Rights per package or unit lost or damaged, whichever is higher.
- Notwithstanding anything contained above if the multimodal transportation does not, according to the multimodal transport contract, include carriage of goods by sea or by inland waterways, the liability of the MTO shall be limited to an amount not exceeding 8.33 Special Drawing Rights per kilogram of the gross weight of the goods lost or damaged.

12. Liability of loss or damage, when the stage of the transport where the loss or damage occurred is known :-

- When the MTO is liable to pay compensation in respect of loss or damage to the goods, occurring between the time of taking them into his charge and the time of delivery, and the stage of the transport where such loss or damage occurred is known, the liability of the MTO in respect of such loss or damage shall be determined by the applicable Indian Law if the loss or damage occurs in India, or by the provisions of the applicable law of the country where the loss or damage occurred, as the case may be. Provisions of the Indian Law or the applicable law outside India -
 - cannot be departed from by private contract to the detriment of the claimant, and
 - would have applied if the claimant had made a separate and direct contract with the MTO in respect of the particular stage of transport where the loss or damage occurred.
- Without prejudice to the provisions contained in Para 3 (2) (b) and (c) mentioned above, the liability of the MTO shall be determined by the provisions of the Law referred to in condition (1) above, the liability shall be determined as though the MTO was a carrier referred to in such law. However, the MTO shall not be exonerated from liability, where the loss or damage is caused or contributed to by the acts or omissions of the MTO in his capacity as such, or his servants or agents when acting in such capacity and not in the performance of the carriage.

13. Defence and limits for the MTO and his servants :-

- The defences and limits of liability provided for in this MTD shall apply, in action against the MTO, in respect of loss resulting from loss of or damage to goods; delay in delivery and any consequential loss or damage arising from such delay.
- If any action in respect of loss resulting from loss of, or damage to, the goods or from delay in delivery is brought against the servant or agent of the MTO, if such servant or agent proves that he acted within the scope of his employment, or against any other person of whose services he makes use for the performance of the Multimodal Transport Contract, if such other person proves that he acted within the performance of the contract, the servant or agent or such other person shall be entitled to avail himself of the defences and limits of liability which the MTO is entitled to invoke under this MTD.
- Except as provided for liability for delay, as mentioned below, the aggregate of the amounts receivable, from the MTO and from a servant or agent or any other person of whose services he makes use of, for the performance of the Multimodal Transport Contract, shall not exceed the limits of liability provided for in this MTD.

14. Liability or delay :-

The liability of the MTO, for loss resulting from delay in delivery as per condition 10 above, shall be limited to an amount equivalent to the freight payable for the goods delayed, but not exceeding the total freight payable under the Multimodal Transport Contract.

15. Loss of the right to limit liability :-

- The limits of liability established in conditions 11, 12 and 14 above, shall not apply if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the MTO (or his servants or agents or any other person of whose services he makes use for the performance of Multimodal Transport Contract), done, with the intent to cause such loss, damage or delay in delivery, or recklessly and with knowledge that such loss, damage or delay would probably result.
- Notwithstanding the provisions 13 (2) above, if it is proved that the loss, damage or delay in delivery, resulted from an act or omission of a servant or agent (or any person of whose services the MTO makes use, for the performance of the Multimodal Transport Contract), done, with the intent to cause loss, damage or delay in delivery, or recklessly and with knowledge that such loss, damage or delay in delivery would probably result, the servant or agent shall not be entitled to the benefit of limitation of liability provided for in these conditions

16. Delivery / non-delivery :-

- If the goods are not taken delivery of by the consignee within a reasonable time, after the MTO has called upon him to take delivery, the MTO shall be at liberty to put the goods in safe custody on behalf of the consignee at the consignee's risk and expense, or to place the goods at the disposal of the consignee in accordance with the Multimodal Transport Contract or with the law, or with the usage of the particular trade applicable at the place of delivery.
- The MTO shall be discharged from his obligation to deliver the goods if, where a negotiable MTD has been issued, in a set of more than one original, he, or a person acting on his behalf, has in good faith delivered the goods against surrender of one of such originals.

17. Notice of loss, damage or delay :-

- Unless notice of loss or damage, specifying the general nature of such loss or damage is given in writing by the consignee to the MTO at the time of taking over the goods, such handing over is prima facie evidence of the delivery by MTO of the goods as described in the MTD
- Where the loss of or damage is not apparent, the provisions of condition (1) referred to above apply correspondingly, if notice in writing is not given within six consecutive days after the day when the goods were handed over to the consignee.
- If the state of the goods at the time they were handed over to the consignee, has been the subject of a joint survey or inspection by the parties or their representatives at the place of delivery, notice in writing need not be given, of loss or damage ascertained during such survey or inspection.
- In the case of any actual or apprehended loss or damage, the MTO and the consignee shall give all reasonable facilities to each other for inspecting and tallying the goods.
- If any of the no time periods provided for in condition (2) and (4) referred to above, terminates on a public holiday at the place of delivery, such periods shall be extended upto the next working day.
- Notice given to a person acting on behalf of the MTO including any person of whose services he makes use at the place of delivery, shall be deemed to have been given to the MTO.

18. Freight and charges :-

- Freight shall be deemed earned, on receipt of goods by MTO and shall be paid for, in any event.
- For the purpose of verifying the freight basis, the MTO reserves the right, to have the contents of the containers, trailers or similar articles of transport inspected, in order to ascertain the weight, measurement, value or nature of the goods.
- All dues, taxes and the charges levied on the goods and other expenses in connection therewith, shall be paid by the consignor or the consignee or the holder of MTD or the owner of the goods.

19. Containers etc. :-

- Goods may be stowed by the MTO by means of containers, trailers, transportable tanks, flats, pallets or similar articles of transport used to consolidate goods and these articles of transport may be stowed under or on deck.
- If a container has not been filled, packed or stowed by the MTO, the MTO shall not be liable for any loss of, or damage to, its contents and the consignor shall cover any loss of expense incurred by the MTO, if such loss, damage or expense has been caused by:
 - negligent filling, packing or stowing of the containers; or
 - the contents being unsuitable for carriage in container; or
 - the unsuitability or defective condition of the container, unless the container has been supplied by the MTO and the unsuitable or defective condition would not have been apparent upon reasonable inspection at, or prior to, the time when the container was filled, packed and stowed. The provisions of this condition also apply with respect to trailers, transportable tanks, flats and pallets, which have not been filled, packed or stowed by the MTO.
- The MTO does not accept liability for the functioning of reefer equipment or trailers supplied by the consignor.
- If, by order of the authorities of any place, the goods have to be unpacked from their containers to be inspected, the MTO shall not be liable for the loss or damage incurred during unpacking, inspection or re-packing. The MTO shall be entitled to recover the cost of unpacking, inspection and re-packing from the consignor / consignee.

20. Hindrances etc. affecting performance :-

The MTO shall use reasonable endeavors to complete the transport and to deliver the goods at the place designed for delivery.

21. Lien :-

The MTO shall have a lien on the goods, for any amount due, under this Multimodal Transport Contract and for the costs of recovering the same, and may enforce such lien in any reasonable manner.

22. Limitation of action :-

Any action relating to Multimodal Transport under these conditions, shall be timebarred if judicial proceedings have not been instituted within a period of nine months after:

- the date of delivery of the goods, or
- the date when the goods should have been delivered, or
- the date, on and from which, the party entitled to receive has the right to treat the goods as lost.

23. Jurisdiction :-

- In judicial proceedings relating to the contract for MTD under these conditions, the plaintiff, at his option, may institute an action in court, which, according to the law of the country where the court is situated, is competent, and within the jurisdiction of which is situated one of the following places:
 - the principal place of business or, in the absence thereof, the habitual residence of the defendant; or
 - the place where the Multimodal Transport Contract was made, provided that the defendant has there a place of business, branch or agency at such place; or
 - the place of taking charge of the goods for Multimodal Transportation or the place of delivery there of; or
 - any other place specified for that purpose in the Multimodal Transport Contract and evidenced in the MTD.

24. General Average :-

The consignor or consignee, the holder of the MTD, the receiver and the owner of the goods, shall indemnify MTO in respect of any claims of the general average nature, which may be made on him and shall provide such security as may be required by the MTO in this connection

25. Arbitration :-

Suitable provisions may be incorporated, by the parties to the Multimodal Transport Contract.