

Gard Guidance on Bills of Lading

BILL OF LADING - SHORT FORM

SHIP FROM
 [Name]
 Street Address
 City, St. ZIP Code
 SIC No.

SHIP TO
 [Name]
 Street Address
 City, St. ZIP Code
 CIE No.

THIRD PARTY FREIGHT CHARGES BILL TO
 [Name]
 Street Address
 City, St. ZIP Code

Instructions:

Freight Class
 [] Master In Rmt
 [] Other

Order No.

| QUANTITY | UNIT | WEIGHT | MEASUREMENT | COMMODITY DESCRIPTION |
|----------|------|--------|-------------|-----------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

CARRIER INFORMATION

Carrier Name: _____
 Vessel Name: _____
 Voyage No.: _____
 Date of Shipment: _____
 Port of Origin: _____
 Port of Destination: _____

Remarks:

For loss or damage in this shipment may be applicable. See 49 USC § 41101-41109.

The carrier shall not make delivery of this shipment unless the bill of lading is presented and all other bills of lading are surrendered.

Signature: _____
 Title: _____
 Date: _____



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PREFACE

Whilst working on the revised version of the Gard Guidance to Masters, the opportunity was taken to review the advice Gard can provide on bills of lading. As a P&I Association we have much experience of bill of lading issues both from claims handling as well as answering Member enquiries. Experience indicates that even the simplest of mistakes or an oversight in a bill of lading can lead to complex and often costly problems. It is clear that more of this experience can be shared than has previously been available through Gard publications. The need for a guidance not only exists, but is important when considering that the Member's P&I cover can be at stake. As a result, this Gard publication enhances Gard's continued commitment to loss prevention initiatives.

The bill of lading has its origins in the trade and carriage of goods by sea hundreds of years ago. It has since developed into a very important legal document, evidencing the carrier's receipt of the goods, the terms of the contract of carriage and the right to possession of the goods. With this important role, comes problems, one of which is the required presentation of an original bill of lading to take delivery of the cargo. Although the practice of paperless trading is developing rapidly, Masters will be burdened, for many years to come, with the responsibility of signing and authorising signature of bills of lading and delivering cargo against the same.

The purpose of this publication is to act as a practical reference guide and to assist the Master in avoiding pitfalls and problems. It is hoped that readers other than the Master will also find this publication useful. It is written in relatively simple and clear terms for the benefit of those whose first language is not English. It is not intended as a comprehensive reference work or to replace any corporate specific guidance. Should the Master find that there is a contradiction or significant difference between this guidance and that of the Master's Company, he is advised to resolve such issues with the Company before taking action.

The guidance explains, with examples where possible, what a bill of lading can and is used for, the obligations the Master has with regard to bills of lading, the consequences of things not being done correctly, what should be done/considered before signing bills of lading or authorising others to sign, how delivery against bills of lading should be made and how to deal with specific problems/issues that may arise.

It is hoped that the structure of this publication is found to be both logical and practical. *Part 1 – General information and guidance* explains the functions and importance of the bill of lading, and sets out how the Master should address issues such as the description of the goods, the date in the bill of lading, the relevance of a charterparty and the delivery of the goods covered by a bill of lading. *Part 2 – Preparing for signing the bill of lading* primarily deals with what is perhaps the most complicated aspect of the Master's obligation to issue an accurate bill of lading – the description of the goods – and focuses on inspecting the cargo, dealing with damage, recording inspection results in the mate's receipt and clausing the bill of lading. This part also deals with authorising others to sign bills of lading. *Part 3 – After signing the bill of lading* summarises what the Master should do if an inaccurate/incorrect bill of lading has been issued. However, this problem should primarily be dealt with by the Company. Finally, *Part 4 – Various other bill of lading issues* explains how the Master should approach specific bill of lading issues/problems.

The guidance provided is based on English law, since this law is often incorporated in many bills of lading and it is perhaps the most developed in terms of the many legal aspects associated with bills of lading. Where other laws apply, different guidance may equally apply. Furthermore, whilst the law on the aspects of bills of lading covered by this guidance should not be subject to significant change, the law is not static and changes may affect the guidance provided. If in doubt, and to confirm the current position, the Association is always on hand to assist.

The idea for this guidance came from one of Gard's claims managers based in London, Mark Russell. He has led the project and written the guidance with great enthusiasm, skill and hard work. Gard's sincere thanks goes to him in particular and to the rest of the production team, Alice Jackson and Randi Gaughan.

Even the most practical and comprehensive guidance can be lacking, particularly in terms of reality. It is hoped, if anything is found lacking, that this can be addressed and the guidance kept up to date on Gard's website, where this publication is also be available at www.gard.no

ACKNOWLEDGEMENT

From initial idea to final design, this publication is very much an in-house product. Gard has a great depth of experience and knowledge on which to call, which has been an invaluable source in writing this guidance, especially in terms of what is done in practice, what mistakes are commonly made and how mistakes can be avoided.

In producing this publication, special thanks is extended to the following Gard personnel:

John G. Bernander, Sven-Henrik Svensen and Gunnar Topland particularly for their support and enthusiasm.

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For the valuable external input into this guidance, a final note of thanks is extended to Charles Debattista, Director, Institute of Maritime Law, University of Southampton.

Mark Russell
Senior Manager

PART 1 GENERAL INFORMATION AND GUIDANCE

1.1. IF IN DOUBT

The bill of lading is a valuable and important legal document and the overriding advice to Masters in doubt about any aspect of the bill of lading is to seek the advice of the Company. Assistance and advice can also be sought from the local P&I correspondent. It is, however, hoped that the following guidance will be a useful reference for identifying issues the Master should be aware of and how they should be addressed.

1.2 FUNCTIONS OF THE BILL OF LADING AND WAYBILL

1.2.1 Document of title

1.2.1.1. Meaning and relevance of title

Title in the context of bills of lading means right to possession of the goods from the carrier. It does not mean right to ownership – the sales contract usually determines this. If the right to possession of the goods from the carrier is determined by the possession of a document such as a bill of lading, then that document is a document of title. Therefore, the person presenting an original bill of lading is entitled to delivery of the goods at the place of destination.

Waybills, however, and some *straight (non-order or nominate)* bills of lading (see section 1.2.1.2 *Negotiability*) are not documents of title in the sense described above. These documents show only the names of a shipper and consignee, unlike for example an order bill of lading which have the words "*to order (or assigns)*" inserted instead of or against a named consignee. Since the *straight* bill of lading and the waybill only envisage delivery to a named consignee, presentation of the document is not necessary for delivery. However, if the *straight* bill of lading expressly states that delivery shall only be made against presentation of an original bill of lading, then this should be complied with. In these circumstances, the *straight* bill of lading would be a document of title in the sense described above. Most waybills on the other hand expressly state that presentation is not required for delivery. Proper delivery of the cargo is extremely important and further explanation is provided in section 1.3.4 *Delivery of goods covered by a bill of lading and waybill*.

A *received for shipment* bill of lading may be issued to the shipper by the carrier or his agent for goods left with the carrier or agent at the load port prior to the arrival of the vessel. A *received for shipment* bill of lading may be on a specific form, but standard bill of lading forms are often used. In either case, the *received for shipment* bill of lading would have the name of the carrying vessel and date of shipment inserted (the words "*on board*" and initials of the Master or his agent may also be added), to make it a *shipped* bill of lading (evidencing, amongst other things, shipment of the goods on a named carrying vessel and on a specified date of shipment), or would be surrendered to and replaced by the carrier with a *shipped* bill of lading. Since a *received for shipment* bill of lading does not evidence shipment of the goods by the carrier, it has a limited function as a document of title, and in any event will only so function if it has been issued by or for (with the necessary authority) the carrier. Accordingly, in the event that the carrier is requested to deliver the goods, at the place of destination, against presentation of an original *received for shipment* bill of lading, delivery should only be made where the *received for shipment* bill of lading presented has been issued by or for the carrier. Since delivery against a *received for shipment* bill of lading is unusual, the Master should also check whether or not original *shipped* bills of lading have been issued. If they have, there may be a suspicion of fraud, since, as explained above, the original *received for shipment* bills of lading would normally be stamped or surrendered and replaced. It may also be that more than one person is entitled to claim for delivery of the cargo. In such a case the Master should inform the Company immediately and seek instructions.

1.2.1.2. Negotiability

Closely connected with the function of document of title is negotiability. If the bill of lading is negotiable it can be transferred from a person with title to a person without title, for example from a consignee named in the bill of lading to a consignee not named in the bill of lading. This in turn allows the goods to be traded whilst in transit.

The most common negotiable bills of lading are *order* bills of lading and have the words “*order (or assigns)*” inserted instead of or against a named consignee, respectively allowing the shipper or named consignee to transfer the bill of lading to another person. To transfer the bill of lading in this case the shipper or consignee endorses the bill of lading and then hands the bill of lading on. An endorsement in this case is made by the shipper or consignee signing his name on the bill of lading (an endorsement in blank), allowing transfer to any person to whom the bill of lading is handed. If the name of the person to whom the bill of lading is to be transferred is written in the bill of lading, in addition to the signature, the bill of lading can only be passed to the named endorsee (an endorsement in full). To allow the endorsee to transfer the bill of lading further, the words “*to order (or assigns)*” would have to be added against the named endorsee.

What are commonly known as *bearer* bills of lading are also negotiable documents. However, unlike *order* bills of lading, they can be transferred without endorsement. The *bearer* bill of lading can simply be transferred by hand from one person to another. A *bearer* bill of lading is either blank or the word *bearer* is inserted instead of a named consignee. An *order* bill of lading may also become a *bearer* bill of lading if it is endorsed in blank by the person named in the *order* bill of lading.

Negotiable bills of lading mean that the goods can be traded several times during the voyage. This is why delivery should only be made against presentation of an original bill of lading (see sections 1.2.1.1 *Meaning and relevance of title* and 1.3.4.2 *Delivery under bills of lading which function as a document of title*). This, however, can cause a problem if the bill of lading cannot be presented because, for example, it has been lost or delayed. Waybills and *straight* bill of lading can be used to avoid this problem, but only if they do not expressly require delivery against presentation (see section 1.2.1.1 *Meaning and relevance of title*). However, they cannot be negotiated because they show the names of a shipper and consignee. This of course is not a problem if the cargo is being traded between one buyer and one seller. Non-negotiable bills of lading are usually stamped or marked as such. Further explanation of proper delivery of cargo under bills of lading and waybills can be found in section 1.3.4 *Delivery of goods covered by a bill of lading and waybill*.

1.2.2. Evidence of the contract of carriage

1.2.2.1. The carrier

The bill of lading also acts as evidence of the contract of carriage between the carrier and the shipper. This is a function of bills of lading whether negotiable or not, as well as waybills.

The carrier may be the owner, charterer or freight forwarder and is the party who enters into a contract of carriage of goods with the shipper. Normally, the Master will be deemed to be in the employment of the shipowner and the Master’s signature will more often than not constitute a contract with the shipowner. Regardless of who the carrier is, the Master should assume that he will be signing the bills of lading or authorising another to sign on his behalf.

1.2.2.2. The charterparty

The terms of carriage are usually found on the reverse side of the bill of lading, however the carrier may have agreed special terms of carriage with a charterer. For reasons explained in section 1.3.3 *Incorporating the charterparty in the bill of lading* it is important that there is proper incorporation of the relevant charterparty into the bill of lading.

1.2.3. Receipt for the goods loaded

1.2.3.1. Evidence of receipt

The function of receipt applies to all bills of lading whether negotiable or not, and to waybills. The bill of lading will normally be evidence of when the goods were received and their status on receipt in terms of marks (to identify the goods), apparent order and condition and number, quantity or weight.

1.2.3.2. *Clausing*

The accuracy of the information in the bill of lading is very important for reasons explained later. A Master will normally play an important part in ensuring the accuracy of such information. Most bills of lading (and the mate's receipts as well) presented to the Master/his authorised agent for signature contain information from the shipper and should this information be inaccurate the bills of lading (and the mate's receipts as well) will need to be claused before signing to reflect the true state of the cargo. Clausing basically involves writing a remark on the bill of lading which contains the Master's factual findings. Further explanation is provided in sections 1.3.1 *Accuracy of the description of the goods* and 2.6 *Clausing bills of lading*.

1.3. **IMPORTANCE OF THE BILL OF LADING**

The information contained in the bill of lading is very important to the Company. The aspects that are most relevant to the Master, are explained below.

1.3.1. **Accuracy of the description of the goods in the bill of lading**

As mentioned in section 1.2.3 *Receipt for the goods loaded*, it is important to ensure that, when signing the bill of lading, the description of the goods in the bill of lading is accurate (marks, apparent order and condition and number, quantity or weight).

1.3.1.1. *Consequences of inaccuracy*

If the description of the goods is inaccurate or incorrect there are serious consequences for the Master and the Company:

- *Exposure to claims*
They are exposed to claims which they are unlikely to be able to defend. For example, if the bill of lading indicates that the goods were loaded in good order and condition, but the consignee receives them at the discharge port in a damaged condition, the consignee will be entitled to make a claim for the damage against the bill of lading carrier. Even if the Company is not the carrier, their liability may still be involved, particularly if the Master has signed the bill of lading (see section 1.2.2.1. *The carrier*). Similarly, if the bill of lading indicates that the goods were loaded in a quantity of, for example, 100 pallets, but the consignee receives only 90 pallets at the discharge port, the consignee will be entitled to make a claim against the bill of lading carrier for the shortage. Even if, in the above examples, the goods had actually been loaded in the same damaged condition as they were discharged, or, if only 90 pallets had been loaded, the consignee would be entitled to make a claim. In many jurisdictions it will be difficult for the carrier to defend the claim as in most cases, the carrier will not be able to contend that the goods were not loaded as described in the bill of lading. This will invariably be the case if the claim is brought under a negotiable bill of lading transferred to a third party (see section 1.2.1.2. *Negotiability*). The innocent transferee is reliant on the description of the goods when loaded in the bill of lading and is entitled to regard the description as conclusive evidence of their condition. Conclusive evidence means it cannot be disputed even if there is evidence to the contrary.
- *Loss of the right to limit liability*
The Company may lose its right to limit liability for a claim for cargo damage/shortage.
- *Loss of P&I cover*
P&I cover may not be available as Gard's Rules exclude cover for claims in certain circumstances where the description of the goods in the bill of lading is incorrect.

- *Loss of the right of indemnity from the charterer*
The charterparty may state that the Master is to sign bills of lading as presented or even that he is to sign only clean bills of lading, i.e. without clausing which casts doubt as to the apparent good order and condition of the goods. However, there will probably be no recourse against the charterer for liability arising from signing bills of lading which inaccurately describe the cargo even though liability may stem from complying with such charterparty provisions. The Master is under no obligation to sign bills of lading that inaccurately describe the cargo and he does so at his own peril.
- *Criminal prosecution*
There is the possibility that the Company and/or Master will be prosecuted for fraud.

1.3.1.2. *Clausing and letters of indemnity*

Most bills of lading presented to the Master/his authorised agent for signature contain the shipper's description of the goods. If this description is inaccurate the bills of lading will need to be claused before signing. The charterer and/or shipper may try to persuade the Master to accept a letter of indemnity or similar undertaking in return for issuing bills of lading which are clean, i.e. without clausing, or issuing bills of lading which inaccurately describe the cargo. Such requests should be resisted due to the risks inherent in accepting such letters or undertaking. Further explanation is given in *section 4.8 Letters of indemnity*.

1.3.2. **Date to be inserted in the bill of lading**

1.3.2.1. *Which date and its relevance*

Most bills of lading are what are known as "*shipped*" bills of lading. This basically means that the bill of lading will be evidence of the cargo at the time of loading. The date inserted in the bill of lading will therefore be considered to be the date of shipment and this may have important implications. For example the value of the cargo in the sales contract will usually be based on the market value of the cargo on the date shown in the bill of lading.

Where "*received for shipment*" bills of lading are issued, these will usually either be returned to the carrier and replaced by "*shipped*" bills of lading or be made "*shipped*" bills of lading by inserting the name of the carrying ship and the date of shipment (see *section 1.2.1.1. Meaning and relevance of title*).

1.3.2.2. *Consequences of inaccuracy*

It is very important that the bill of lading is signed and dated accurately to record the actual date on which the cargo was loaded.

If the bill of lading is ante/post-dated there are serious consequences for the Company. They are exposed to claims from cargo interests and P&I cover may not be available for such claims as Gard's Rules exclude cover for claims in certain circumstances where the bill of lading is ante/post dated.

1.3.2.3. *Letters of indemnity*

Charterers and/or shippers may try to persuade the Master to accept a letter of indemnity or similar undertaking in return for issuing ante/post dated bills of lading. Such requests should be resisted due to the risks involved in accepting such letters or undertakings. Further explanation is given in *section 4.8 Letters of indemnity*.

1.3.3. **Incorporating the charterparty in the bill of lading**

1.3.3.1. *Why the need to incorporate the charterparty*

The bill of lading, evidencing the terms of the contract of carriage, frequently ends up in the possession of somebody who is not the charterer. To ensure that the Company is not exposed to risks in excess of its charterparty obligations, and that the contract terms are uniform, the terms of the applicable charterparty should be incorporated in the bill of lading using appropriate wording on the face of the bill of lading.

1.3.3.2. Proper incorporation of the charterparty

General wordings, such as "*other conditions as per charterparty*" or "*charterparty terms and conditions incorporated herein*" are often insufficient to ensure proper incorporation. It is therefore recommended that the following or similar wording is used: "*all terms, clauses, conditions and warranties including the arbitration, choice of law, time bar and time limitation clauses of the charterparty dated ... are hereby incorporated into this bill of lading*". It is very important that the correct charterparty date is inserted into this wording and confirmation of the date should be obtained from the Company.

1.3.4. Delivery of goods covered by a bill of lading or waybill

1.3.4.1. General

Bills of lading are normally prepared in sets of three originals, which are returned to the shipper or his agent after signature. The ship should retain a non-negotiable copy to confirm that the bill of lading presented in exchange for delivery of the cargo is the same, endorsements aside, in all respects as that issued.

1.3.4.2. Delivery under bills of lading which function as documents of title

Documents of title are explained in *section 1.2.1 Document of title* and include *order* and *bearer* bills of lading as well as *straight* bills of lading expressly stating that delivery shall only be made against presentation of an original bill of lading. The statement "*One original bill of lading must be surrendered duly endorsed in exchange for the goods or delivery order*" appears in a number of bill of lading forms and is an example of such an expression.

The Master is entitled and obliged to deliver the cargo at the destination to the first person presenting such an original bill of lading, unless the carrier, the Master or the ship's agent is put on notice of some defect or dispute as to title of the person presenting the bill of lading. When the Company has agreed to discharge the goods at a destination other than that stated in the bill of lading (see *section 4.7 Delivery to a destination not named in the bill of lading*), or where there has been a serious dispute with the shipper over the clausing of the bills of lading, or in other unusual or suspicious circumstances, the Master should exercise caution and ask the Company to make appropriate investigations to confirm the position before delivery.

Extra care is needed with *order* bills of lading (see *section 1.2.1.2 Negotiability*) because the bill of lading may have been transferred to/by a number of persons. Such transfers will be evidenced by endorsements (see *section 1.2.1.2 Negotiability*), of which there may be several on the face and reverse of the bill of lading. The Master should ensure that delivery is made to the last valid endorsee presenting an original bill of lading. As for *bearer* bills of lading (see *section 1.2.1.2 Negotiability*), delivery should be made to the person presenting an original bill of lading.

Fraudulent bills of lading may exist, and it is therefore important that the Master thoroughly checks that the original bill of lading presented is genuine and that any endorsements appear genuine. If delivery is made against fraudulent bills of lading it will be difficult for the Company to avoid liability. When suspicions are raised therefore, the Company should be asked to make appropriate investigation before delivery. Furthermore, for those *straight* bills of lading which require presentation and for *order* bills of lading, the Master should be fully satisfied that the person named as being entitled to delivery is the person presenting the bill of lading.

1.3.4.3. Delivery under bills of lading not functioning as documents of title

Under a waybill (see *section 1.2.1.2 Negotiability*) the obligation is to deliver the goods either to the named consignee or to the shipper's nominated recipient of the goods, providing that person is the named consignee or the nominated recipient. Presentation of the original waybill is not necessary. This being the case, the shipper is in control of the right to possession of the goods at all times, and he may direct the carrier to deliver the cargo to a person other than the consignee or even demand that the goods be delivered to the shipper/his representative. The carrier should comply with such a direction (which should be obtained in writing before delivery) even without presentation of an original waybill.

Delivery against *straight* bills of lading is the same as for waybills. The Master should, however, be aware that the laws of some countries may permit *straight* bills of lading to be negotiated by endorsement. Therefore, if an endorsed *straight* bill of lading is presented for delivery, the Master should ask the Company to make appropriate investigations to confirm the position before delivery.

1.3.4.4. *Consequences of misdelivery or delivery without production of an original bill of lading*

The consequences are serious of misdelivering or delivering without production of an original bill of lading:

- *Exposure to claims*
The carrier is likely to be held fully liable for wrongful delivery of the cargo with the consequence of compensating the rightful cargo owner for the full value of the cargo – this could amount to a substantial sum.
- *Loss of P&I cover*
P&I cover may not be available as Gard's Rules exclude cover for claims in certain circumstances where proper delivery has not been made.

1.3.4.5. *Delivery problems*

The Master should inform the Company immediately and seek instructions when:

- An original bill of lading is presented and another person demands delivery of the same cargo. In these circumstances the Master is on notice that there may be some defect or dispute as to title and should not discharge the cargo until he is authorised by the Company.
- An original bill of lading cannot be produced. The Master should be aware that, even if an original bill of lading cannot be produced, there may be certain circumstances in which he must nevertheless deliver the cargo. The law or custom of the place of discharge may require it, or in the circumstances it may be reasonable to do so. However, the Master should not act without the approval of the Company.

Assistance and advice can also be sought from the P&I correspondent.

1.3.4.6. *Letters of indemnity*

The charterer and/or shipper may try to persuade the Master to accept a letter of indemnity or similar undertaking in return for delivering the cargo without production of an original bill of lading. Such requests should be resisted due to the risks involved in accepting such letters or undertakings. Further explanation is provided in *section 4.8 Letters of indemnity*.

PART 2 PREPARING FOR SIGNING BILLS OF LADING

The Master should fully consider the following points in advance of signing bills of lading even if an authorised representative will be signing the bills on his behalf.

2.1. OBLIGATIONS WITH REGARD TO ISSUING AND SIGNING BILLS OF LADING

The Master should be familiar with the provisions of the Hague/Hague-Visby Rules regarding obligations for the issuing and signing of bills of lading demanded by the shipper. These obligations will apply to most bills of lading, but where the Hamburg Rules apply there may be additional obligations of which the Master should be aware (See *Appendix I Extracts from the Hague-Visby and Hamburg Rules*). If in doubt as to which Rules apply or if no bill of lading is demanded, the Master should seek the guidance of the Company or P&I correspondent. For the Master, one of the most important aspects of fulfilling these obligations is the inspection of the cargo.

2.2. INSPECTING THE CARGO BEFORE AND/OR AT THE TIME OF LOADING

The provisions of the Hague/Hague-Visby Rules place obligations on the Master to:

- inspect the cargo's apparent order and condition to enable the Master to ensure that the bill of lading is accurate in its description of these items
- inspect the cargo's marks (to identify the goods), and number, quantity or weight as the case may be, to enable the Master to ensure that the bill of lading is accurate in its description of these items, unless there are no reasonable means of inspecting the cargo.

2.2.1. Consequences of not inspecting the cargo

If the cargo inspection obligations are not fulfilled the Master is unable to verify the accuracy of the description of the cargo in the bill of lading before signing. It may be impossible to rectify any omission and faced with possible long delays there will be considerable commercial pressure on the Master to sign the bills of lading as presented by the shipper. There may be serious consequences if this is done as explained in *section 1.3.1.1 Consequences of inaccuracy*.

2.2.2. Knowledge of the cargo, the loading and inspection practices

Knowledge of the cargo, e.g. common sensitivities and customary packing, as well as the loading and inspection practices peculiar to the place of loading will assist in the proper planning and performance of inspections. Special arrangements may need to be made for certain cargoes and/or in certain places. Knowledge of how the cargo might have been affected prior to loading, in relation to its common sensitivities etc., should also assist the Master in terms of what he should particularly be aware of during his inspection of the cargo. The Master is therefore advised to:

- investigate whether there have been any previously reported problems with regard to inspection practices and the cargo to be loaded at the place concerned. The Company may keep records and Gard's publications may also be a source of useful information
- the Master should make an effort to enquire at the load port about the cargo, e.g. where it comes from, how old it is, how it has been stored ashore and how it is to be transported to the ship. It is advisable to keep a written note of such enquiries and information obtained.

2.2.3. Who should/can inspect the cargo?

It is preferable that the Master or one of his senior deck officers performs the cargo inspection, but this is not always practical or indeed realistic. The person performing the inspection should, however, have reasonable and suitable knowledge and experience and be briefed by the Master. Surveyors may be appointed to perform the inspection, but the Master should be aware that a surveyor may not be representing the Company, so there may be certain risks involved with relying on such surveyors. To fully comply with the obligation to inspect the cargo, the Master should perform his own inspection or have a surveyor perform one on the Company's behalf.

The Association recommends that, for steel cargoes, surveyors be appointed to perform the cargo inspection and furthermore, to assist the Master in clausing the bills of lading. For further information reference should be made to Gard News No. 153, March/May 1999 and the article "Steel pre-shipment surveys" (See Appendix II).

2.2.4. When to inspect the cargo?

Whilst the type of cargo generally determines when a cargo can be inspected, it is important to be aware that the bill of lading will in most cases evidence the condition of the cargo at the time of shipment. If the vessel's loading gear is being used, the relevant time is usually when the goods are hooked onto the tackle. If shore loading gear is being used the relevant time is usually when the goods cross over the vessel's rail. For liquid or gas cargoes, the relevant time would usually be when the cargo passes through the vessel's manifold. Certain cargoes may change physical condition and appearance over a relatively short period of time. Such cargoes should therefore be inspected as near to the time of shipment as practicable. For example, steel cargo inspected in a warehouse may subsequently be damaged by stevedores whilst bringing the cargo to the ship's side. In such cases it is advisable to perform a second inspection of the cargo at the time of shipment. Depending on the circumstances, it may be possible to restrict the second inspection to recording handling damages only as this is likely to be the only change to the cargo since the first inspection.

If the cargo is inspected prior to shipment and damage/loss occurs after the relevant time of shipment, e.g. by stevedore handling, such damage/loss should not be recorded in the bill of lading. For further advice see section 2.3.3. *Damage caused after shipment.*

2.2.5. What should be inspected?

The apparent order and condition and, if possible, the marks (to identify the goods), and number, quantity or weight of the cargo should be inspected. Outlined below is a guide to what should be taken into account:

2.2.5.1. The apparent order and condition of the goods

- Order basically means general type. The inspection should determine and record the general type of cargo, e.g. corn or soyabean, and the general type of packing, e.g. polythene bags or jute bags.
- Condition primarily describes how the cargo and/or any packing looks, smells and feels. The inspection should determine and record whether there is any apparent damage, defect or abnormality with the cargo and/or packing compared with how the cargo and/or packing is normally expected to look, smell and feel when in good condition.
- Condition also describes the sufficiency and/or adequacy of the packing for the intended carriage and the ability of perishable goods to withstand such carriage. The inspection should determine and record any observations in these regards.
- Apparent means what is recognisable to a proper and responsible ship's officer with reasonable knowledge and experience and not what might be recognisable to an expert.
- Apparent also means what is apparent by reasonable inspection. Clearly this will vary depending on the circumstances. Generally, however, whilst a Master is usually expected to identify apparent damage etc., by sight and/or smell, he is not expected to identify hidden damage etc. Accordingly, the Master is not expected to remove packing or have the cargo analysed or tested.
- If the cargo has been loaded from open storage and/or from ground which might damage (e.g. by wetting) the lower parts of cargo not visible from inspection this should also be recorded. Similarly, if the cargo is loaded from barges or other means whilst not alongside a berth, this should be recorded.

- Order and condition does not mean or include quality. The Master is not expected to verify statements as to quality in the bill of lading. An example of a quality issue is whether yellow corn is US number one or two. For some cargoes, however, it may be difficult to determine whether an apparent defect or abnormality concerns quality or condition. For example, a liquid cargo may be a suspicious colour. In these circumstances, the Master should err on the side of caution and assume the apparent discolouration concerns condition.
- With regard to bulk cargoes, it is not generally sufficient to only inspect the cargo at completion of loading. It should, if reasonable and safe to do so, be inspected at regular intervals during loading in order to obtain a picture of the entire cargo's apparent order and condition. Regular inspection is also important in terms of discovering any problems, e.g. contamination, so that such problems can be rectified as soon as practicable to minimise further contamination.
- Containers will be regarded as packing if provided by the shippers, but, if provided by the Company, they may be considered an extension of the ship's cargo spaces. Container seals should be inspected to check that they are intact and the seal number recorded. If the seal is broken, the container should be opened if practicable and the outward appearance of the contents inspected. The container should then be re-sealed and the new seal number recorded (see *section 2.3.2 Broken container seals*).
- Any damage, defect, abnormality or inadequacy should be accurately recorded in sufficient detail, identifying the location of the inspection and any relevant cargo marks.
- Samples of the inspected cargo should be obtained and retained in accordance with industry guidelines when common practice to do so. Samples should also be obtained, if practicable, if the Master expects to encounter difficulty in clausing the bills of lading, as samples may serve as evidence of the cargo's condition as apparent to the Master during his inspection. If any damage, defect or abnormality is present, samples will also assist to determine who (e.g. ship or shore) and what caused it. This is particularly relevant to liquid cargoes but is becoming increasingly relevant to dry cargoes as well, especially where it is suspected that a cargo from a certain load port has an inherent problem(s), e.g. bad weather during the growing season affecting crop quality. Many large claims arise in connection with what are really quality problems but the carrier has the difficult burden of proving this.

2.2.5.2. *Marks for the purpose of identifying the goods*

- Inspection is also done to record the marks made on the cargo for the purposes of identification and to determine and record whether the marks are clear and that they will remain legible until the end of the carriage. This includes seal numbers (mostly on containers) and hazardous goods identification numbers or codes.
- If the marks cannot be determined during a reasonable inspection by the Master or his representative, the Master should make a record of the circumstances and reasons why determining the marks was not possible.

2.2.5.3. *Number, quantity or weight*

- If either the number, quantity or weight cannot be determined by reasonable inspection by the Master or his representative, the Master should make a record of the circumstances and reasons why. As an example, the Master may not be able to determine the weight of a cargo of steel coils, although he will be able to determine the number of coils.
- If the number, quantity or weight can be determined by reasonable inspection, the calculation and results of the draft survey, tally, ullage, or other inspection/survey should be accurately recorded in sufficient detail, identifying the location of the inspection and any relevant cargo marks. A record should also be made of any observations that may affect the accuracy of either the ship's or shipper's figure, e.g. a swell affecting the accuracy of a draft survey.

- For containers it is recommended that weights are checked and recorded frequently. There have been many instances where containers have been shipped empty and, as the weight has not been checked, bills of lading have been issued for cargo that does not exist. The carrier's liability may be involved and if so, evidence of the inspection regime will be important. If the seal is broken the container should be opened if practicable, and the outward appearance of the contents inspected, e.g. to ascertain whether any goods are missing. The container should then be re-sealed and the new seal number recorded (see *section 2.3.2 Broken container seals*).

2.3. DEALING WITH DAMAGE FOUND DURING INSPECTION/LOADING

2.3.1. General steps to take

If during inspection, it is found that the goods are damaged or that packing is inadequate/insufficient, or that marks are unclear or will not likely remain legible for the entire carriage, the Master should:

- take steps to prevent such cargo from being loaded. It will be more difficult, even impossible if there are no means of discharge, to have damaged goods replaced if they have already been loaded
- immediately inform the shipper and confirm in writing, that the bills of lading will be appropriately claused unless replacement goods are provided or the damage is made good. The latter may still necessitate clausing the bills of lading depending on the extent to which the damage is made good. If the shipper refuses to accept claused bills of lading, is unwilling to provide replacement goods or make good the damage, the Master should protest in writing stating that the ship is at liberty to reject the goods. Rejection should not formally be given without the Company's approval. Assistance/advice can be sought from the P&I correspondent.

2.3.2. Broken container seals

Broken container seals should be dealt with similarly to damaged cargo, and a replacement seal should be requested from the shipper unless the container has been sealed by the Company. If the shipper refuses, the ship should protest in writing, provide its own replacement seal and clause the mate's receipt. It is also advisable to open the container and inspect the goods (see *section 2.2.5.1. The apparent order and condition of the goods*). If the goods are found in a damaged condition, the steps should be followed as set out in *section 2.3.1. General steps to take*.

2.3.3. Damage caused after shipment

If damage has been caused after the goods have been shipped (see *section 2.2.4. When to inspect the cargo?*), replacement goods can still be requested, however, the bill of lading cannot be claused in respect of such damage. It may, however, be advisable to insert, after consulting the shipper, a suitable remark in the bill of lading so as to draw attention to the damage caused after shipment. If the damage has been caused by the stevedores, the Master should note protest against them, giving full details of the cargo and damage concerned. In cases of serious or extensive damage it may be advisable to appoint a surveyor. If any of these circumstances arise the Company should be notified immediately and instructions obtained. Assistance/advice can also be sought from the P&I correspondent.

2.3.4. Charterparty requiring clean bills of lading

If the charterparty requires clean bills of lading to be issued, any cargo to be shipped which is not in apparent good order and condition must be rejected. If the shipper cannot provide replacement cargo or make good the damage the Company should be informed.

2.3.5. Effect of damage on sound cargo

It is important to remember that damaged cargo may affect sound cargo stowed in the same or adjacent cargo spaces. If such a possibility exists the Master should demand replacement cargo.

2.4 RECORDING INSPECTION RESULTS IN THE MATE'S RECEIPT

2.4.1. General

A record of the cargo inspection may be contained in a report, tally sheet or other document. These records form the basis for what should be inserted in the mate's receipts and should be kept in a safe place as they are evidence in their own right of the status of the goods upon receipt by the vessel. The mate's receipt is referred to when checking the accuracy of the description of the cargo in the bills of lading, before the bills of lading are signed. Most bills of lading presented to the Master or his authorised agent for signature contain the shipper's description of the goods. If this description is inaccurate the Master should clause the bills of lading before signing.

2.4.2. Shipper's description of the goods inserted in the mate's receipt

It is common for the shipper's description of the goods to be inserted in the mate's receipt, as well as in the bill of lading. It is therefore important that, if this description is inaccurate, the mate's receipt is claused before signing. The mate's receipt is also evidence in its own right of when and how the goods were received. For guidance on clausing the mate's receipt follow the guidance in *section 2.6. Clausing bills of lading*.

2.4.3. Mate's receipts issued to the shippers

In the normal course of events the mate's receipt is issued to the shipper to prepare the bill of lading. It is returned to the ship in exchange for a signed bill of lading. Therefore, the ship should retain a copy of any mate's receipt issued to the shipper so that the Master can be confident that he is comparing the bill of lading presented for signature with the correct mate's receipt.

2.5. AUTHORISATION FOR SIGNING BILLS OF LADING

If the Master is requested by or arranges with the Company to have the bill of lading signed on his behalf by the ship's agents, the charterer/his agents or if the charterer is to be authorised by the Master to sign the bill of lading on his own behalf, it is essential that full and proper instructions are given by the Master to the charterer or agents. Such instructions are normally contained in a letter of authorisation, issued to the agents/charterer in advance. In such circumstances the Master should:

- ensure that the description of the cargo and the date of shipment in the mate's receipt are accurate
- ensure that the mate's receipt contains the same applicable details, information or remarks as the bill of lading should contain or that the letter of authorisation states that such details, information or remarks are to be inserted in the bill of lading (see *section 2.7. Checks to be made before signing bills of lading*)
- ensure that the letter of authorisation expressly states that the bill of lading is only to be signed in accordance with the mate's receipt and the letter of authorisation. It is also advisable to include in the letter of authorisation how the Master expects conflicting statements in the bill of lading to be dealt with (see *section 2.6.3 Clausing in general*)
- issue a letter of protest and inform the Company immediately if the charterer/agents refuse to sign the bill of lading in accordance with the mate's receipt or accept the terms of the letter of authorisation. Assistance and advice can also be sought from the P&I correspondent.

2.6 CLAUSING BILLS OF LADING

2.6.1. General

It is very important to ensure, when signing the bill of lading, that the description of the goods, i.e. marks, apparent order and condition and number, quantity or weight, is accurate in the bill of lading. Most bills of lading presented to the Master or his authorised agent for signature contain the shipper's description, hence it is common for inaccuracies to occur. If the bill of lading is not accurate it should not be signed. A replacement bill of lading with an accurate description should be requested, and if provided, all originals and copies of the bill of lading with the inaccurate description should be destroyed. Due to time constraints, a replacement bill of lading cannot usually be provided, so the inaccurate bill of lading will need to be claused before signing. Clausing involves writing a remark on the bill of lading which represents the Master's factual findings based on his best assessment of the description of the goods.

2.6.2. Dealing with pressure to issue clean bills of lading

The charterer and/or shipper may try to pressurise the Master to accept a letter of indemnity or similar undertaking in return for issuing a clean bill of lading, i.e. without clausing casting doubt as to the apparent good order and condition of the goods, or inaccurately describing the cargo. Such pressure should be resisted due to the considerable risks inherent in accepting such letters or undertakings, see *section 4.8 Letters of indemnity*.

The charterer and/or shipper may argue that the letter of credit is dependent on a clean bill of lading, so that clausing puts the cargo sale at risk. This is the shipper's problem. Although difficult, one way around this problem is for the shipper to have the letter of credit amended to reflect the damage etc. The Master is obliged to issue bills of lading which accurately describe the cargo. He must keep in mind that he is also representing the third party buyer of the goods, on whose behalf he is responsible for clausing the bill of lading if appropriate. Clausing the bill of lading with regard to cargo marks, number, quantity or weight, or with the words "*in apparent good order and condition*", "*weight/measure/quantity unknown*" or "*said to be*" will not normally make the bill of lading unacceptable for the purpose of the letter of credit.

The charterer and/or shipper may try to convince the Master that the bill of lading need not be claused as the damage is not of commercial significance. However, the Master has no way of knowing whether this is correct and is obliged to issue bills of lading which accurately describe the cargo.

Whilst the terms of the charterparty may require bills of lading to be signed as presented or for clean bills to be issued, the Master is under no obligation to sign bills of lading which inaccurately describe the cargo (see *section 1.3.1.1. Consequences of inaccuracy*).

2.6.3. Clausing in general

Clausing such as "*shipper's load and count*" and "*particulars furnished by shipper*" is not likely to afford the carrier any protection from inaccurate descriptions of the cargo. The following guidance should be taken into account:

- Clausing must be in conformity with the mate's receipt.
- Some jurisdictions do not recognise printed, standard form qualifications, the most common of which being "*condition, weight, measure, marks, numbers, quality, contents and value unknown*". It is therefore advisable to always clause a bill of lading in the Master's own handwriting or in typed text. If the printed standard form does not include the above words the bill of lading should be claused according to what is unknown.

- The Master should be aware of other cargo specifications stated in the bill of lading, e.g. moisture content and temperature. If he has been unable to verify such specifications, he should clause the bill of lading accordingly. With regard to requested carriage temperatures/conditions, the Master should ensure that references to these in the bill of lading do not go beyond the ship's capabilities. For example, with containers, the ship can only ensure a set point or delivery air temperature.
- The Master should act reasonably when deciding to clause the bill of lading and do so within reasonable time. He cannot insist on clausing the bill of lading with a description less accurate than the shipper's or wait for completion of loading before issuing a bill for part of the cargo already loaded.
- Clausing should be made on the face of the bill of lading. If it can only be made on the reverse, the face of the bill of lading should contain an appropriate reference, e.g. "*see reverse of this bill of lading for Master's clausing*".
- Statements in the bill of lading which conflict with printed standard form qualifications and/or the Master's clausing, should be deleted as it may not be clear to the bill of lading holder whether the clausing overrides and a Court may deem the clausing null and void. The Master should particularly beware the statements "*clean*" or "*clean on board*" appearing in the bill of lading, and which may be interpreted to mean the cargo was shipped in good order and condition as per the shipper's description. If a court deems that these statements should override any other description of the goods in the bill of lading the carrier may be prevented from contending that the goods were in fact damaged etc., at the time of shipment or that the damage etc., would not have been apparent to the Master by reasonable inspection. If conflicting statements cannot be omitted or deleted the Master should ensure that the standard form qualifications and/or his clausing will override them by handwriting the remarks – it is widely accepted that handwritten words override typed words, which in turn override printed words.
- If there is insufficient space in the bill of lading for the clausing or description of the cargo, which is often the case with clausing for steel cargoes, an attachment(s) to the bill of lading should be used. However, great care should be taken as there is increased scope for fraud. The attachment(s) should be in the same form as the original bill of lading and details should be identical except for any differences in the description of the goods. The bill of lading must contain a clear reference to identify the attachment(s), e.g. "*Page 1 of [insert total number of bill of lading forms used] bill of lading forms, Continued on attached bill of lading form(s), page(s) no. [insert page number(s)]*". The attachments should contain clear remarks identifying itself and the bill of lading to which it relates, e.g. "*Page [insert page number of attached form] of [insert total number of bill of lading forms used] bill of lading forms, Continuation of bill of lading [insert bill of lading number]*". The attachment should be signed, dated and stamped "*original*" as per the bill of lading. If an original bill of lading form cannot be used for the attachment, an alternative is the carrier's headed stationary, following the same guidelines as above. However, it is questionable whether this would comply with applicable laws for issuing a bill of lading requiring details to be inserted in the bill of lading itself. It is essential in all cases, to ensure that the attachment(s) is securely attached to the bill of lading.
- If there is a disagreement as to clausing, the Master should notify the Company immediately. Assistance and advice can also be sought from the P&I correspondent. A formal written protest should be issued to cargo interests.
- If the Master does not have time to check the accuracy of the details in the bill of lading and/or properly clause the bill of lading, he is advised to leave signature to an authorised agent, with full and proper instructions (see *section 2.5 Authorisation for signing the bill of lading*).

Further assistance and advice can be sought from the P&I correspondent.

2.6.4. Apparent order and condition

2.6.4.1. *Cargo and/or packaging apparently damaged, defective, abnormal, inadequate*

If the cargo and/or packaging appears damaged, defective, abnormal or inadequate (see *section 2.2.5.1 The apparent order and condition of the goods*) but the bill of lading presented for signature does not accurately reflect this, the bill of lading must be claused before signature. Clausing "order and condition unknown" is unacceptable – the Master is obliged to inspect order and condition. When clausing the bill the Master should be aware of the following:

- the clausing should be as accurate as possible. E.g., "1,000 steel coils, 50 coils rusty, remainder in apparent good order and condition" is better than "1,000 steel coils, some rusty". In some circumstances it is also advisable to include the reason if known for the damage, e.g. "marked by handling gear". This gives the bill of lading holder a better idea of the damage involved. If the clausing is too wide it may be legally meaningless. Words such as "some", "many", "a number of" and "several" should be avoided
- where practicable the clausing should state the package or item marks, e.g. *package no. 125 dented*
- there may be statements in the presented bill of lading which conflict with the Master's clausing, e.g. "clean", "clean on board", "in apparent good order and condition". Such statements may be interpreted to mean that the cargo was shipped in good order and condition without any damage. The Master should deal with conflicting statements as outlined in *section 2.6.3 Clausing in general*.

2.6.4.2. *Cargo and packing in apparent good order and condition*

If the cargo and packing are in apparent good order and condition, i.e. it is apparent to the Master that the cargo and packaging are not damaged, defective, abnormal or inadequate, (see *section 2.2.5.1 The apparent order and condition of the goods*) the bill of lading may not need to be claused. However, there may be statements in the presented bill of lading which conflict with the Master's view that the cargo and packing are in apparent good order and condition. Statements such as "clean on board" may prevent the carrier contending at a later date that certain damage etc., was not apparent to the Master. The Master should deal with conflicting statements as outlined in *section 2.6.3 Clausing in general*. The Master should also, where applicable, clause the bill of lading "loaded from open storage" or "loaded from barges" (see *section 2.2.5.1 The apparent order and condition of the goods*).

2.6.5. Marks (for the purpose of identifying the goods)

2.6.5.1. *Unable to determine the marks*

If the Master or his representative has been unable to determine by reasonable inspection (see *section 2.2.5.2 Marks for the purpose of identifying the goods*) the cargo marks, including seal numbers as loaded, but the bill of lading presented for signature shows such marks, the Master should request the shipper to omit or delete reference to them in the bill of lading. The Master is not obliged to issue a bill of lading showing the cargo marks in such circumstances. If the marks cannot be omitted/deleted, the bill of lading should be claused "cargo marks unknown". An alternative, but less protective wording, is "marks said by the shipper to be". The words "said to be" alone may not be sufficient to protect the carrier. It is also advisable to clause the bill of lading as to why the marks are unknown.

2.6.5.2. *Marks different to those shown on the bill of lading*

If the Master/his representative has been able to determine the cargo marks, but the bill of lading presented for signature shows different marks, he should clause the bill of lading to reflect the discrepancy.

2.6.5.3. *Marks not clear or will not remain legible until end of carriage*

If the Master/his representative has been able to determine that the cargo has marks but they are not clear, or he suspects that the marks will not remain legible until the end of the carriage, he should clause the bill of lading "marks not clear", or "Master suspects that marks will not remain legible until the end of the carriage".

2.6.5.4. *Conflicting statements*

In every case the Master should beware of statements in the bill of lading which conflict with the Master's clausings, e.g. "shipped on board" or "clean on board". Such statements may be interpreted to mean that the cargo was loaded as per the shipper's marks. The Master should deal with such statements as outlined in section 2.6.3 *Clausing in general*.

2.6.5.5. *The Hamburg Rules*

If the Hamburg Rules apply, the Master must specify any inaccuracy, grounds of suspicion or the absence of reasonable means of checking.

2.6.6. **Number, Quantity or Weight**

2.6.6.1. *Unable to determine the number, quantity or weight*

If the Master/his representative has been unable to determine by reasonable inspection (see section 2.2.5.3 *Number, quantity and weight*) either the number, quantity or weight loaded, but the bill of lading presented for signature shows a number, quantity or weight, the Master should request the shipper to omit/delete the respective figures in the bill of lading. The Master is not obliged to issue a bill of lading showing a number, quantity or weight in such circumstances. If the figures cannot be omitted/deleted the bill of lading should be claused "number unknown", "quantity unknown" or "weight unknown" as the case may be. An alternative, but less protective wording is "weight/number/quantity said by the shipper to be". The words "said to be" alone may not be sufficient to protect the carrier. It is also advisable to clause the bill of lading as to why the number, quantity or weight is unknown.

2.6.6.2. *Number, quantity or weight different to bill of lading*

A *Shipper's figure exceeds ship's*

If the Master or his representative has been able to determine the number, quantity or weight loaded (see section 2.2.5.3 *Number, quantity and weight*) but the bill of lading presented for signature contains the shipper's figure(s) exceeding the ship's figure(s) by an amount beyond a normal and/or customary difference, the Master should request the shipper to omit/delete their respective figures. The Master is not obliged to issue a bill of lading showing the shipper's number, quantity or weight in such circumstances. If the shipper insists that a number, quantity or weight be shown, the ship's figure(s) should be used. If this is unacceptable, the Master should clause the bill of lading with the ship's figure, e.g. "ship's figure, as determined by draft survey 12,500 mt" or some other suitable wording, e.g. "5 packages in dispute".

B *Clausing with "number, quantity and weight unknown"*

In circumstances where the difference is not normal or customary, it is insufficient to clause the bill of lading with the words "number, quantity and weight unknown". If the Master has been able to determine the number, quantity or weight loaded, such clausings are clearly not true. Such clausings should, however, still be used in circumstances where the difference is normal or customary.

C *What is a normal and customary difference?*

This depends on the circumstances and the means of measurement used to determine the ship's figures, e.g. a properly executed draft survey is said to have an accuracy of 0.5 per cent. Therefore, if the shipper's figure exceeds the draft survey figure by more than 0.5 per cent, the bill of lading should be claused. A smaller percentage may be relevant depending on the circumstances. For tankers, the accuracy of tank calibrations, measuring methods and equipment will need to be considered in relation to the prevailing circumstances and conditions. In very general terms, if the shipper's (terminal) figure exceeds the ship's figure by more than 0.25 per cent, the bill of lading should be claused. A smaller percentage however may be relevant, and in this regard reference should be made to the Vessel Experience Factor (VEF).

The VEF is a ratio calculated by a comparison between the ship and shipper's volume figures. Many tankers will have a record of these from previous shipments. Particular attention should be paid to previously calculated VEFs which are very similar for a particular place of loading. These VEFs may be considered as the normal and customary difference. However, caution must be exercised when using VEFs, e.g. a calculated VEF can only be considered reliable if it is calculated in accordance with industry guidelines. An average VEF may also be of little use if it relates to previous loadings above and below the shipper's figure.

D Recalculate

If it appears that the bills of lading will have to be claused and the shipper protests it may be appropriate for both ship and shore to re-calculate their figures, as mistakes may have been made, e.g. the amount of cargo left in the line between the tank and the ship may not have been deducted from the amount delivered to the vessel according to the shore tank figure.

E Ship's figure exceeds shipper's figure

If the Master/his representative has been able to determine the number, quantity or weight loaded and it exceeds the shipper's figure in the bill of lading presented for signature, the bill of lading should be claused "*number, quantity and weight unknown*".

F Conflicting statements

In all of the above circumstances the Master should beware of statements in the bill of lading which conflict with the Master's clausing, e.g. "*shipped on board*" or "*clean on board*". Such statements may be interpreted to mean that the cargo was loaded in the number, quantity or weight stated by the shipper. The Master should deal with such statements as outlined in *section 2.6.3 Clausing in general*.

G The Hamburg Rules

See *section 2.6.5.5. The Hamburg Rules*.

2.7. CHECKS TO BE MADE BEFORE SIGNING BILLS OF LADING

The following checks on which guidance may be found in the preceding sections, should be made prior to signing the bill of lading:

- Bill of lading on the form prescribed by the charterparty or on the ordinary form for the trade.
- All the contractual terms required by the charterparty, appear in the bill of lading.
- Correct name of carrying vessel.
- Correct description of voyage, i.e. the place of loading and place of discharge. Bills of lading covering the carriage from/to a place other than the place of loading and discharge usually provide for the place of receipt and/or the place of delivery (similar words may be used). If in doubt, the Master should check with the Company that it is correct for the bill of lading to refer to such places.
- Place of discharge is safely reachable by the vessel and within any charterparty geographical limits.
- Correct place and date of shipment (see *section 1.3.2 Date to be inserted in the bill of lading*), i.e. the day of loading. If the cargo covered by the bill of lading concerned has been loaded over several days, then the day of completion of loading is the correct date.

- Accurate description of the goods as shipped – marks, apparent order and condition, including packing condition and adequacy, and number, quantity or weight (see *section 1.3.1. Accuracy of the description of the goods as shipped*). Is clausing of the bill of lading necessary? (see *section 2.6. Clausing bills of lading*). Check for statements which conflict with the description of the goods (see *2.6.3. Clausing in general*).
- Correct name of the shipper. The consignee may or may not be named or the words "to order" or "bearer" may appear (see *section 1.2.1.2. Negotiability*). This is usually of no concern to the Master when signing.
- Charterparty incorporation clause inserted, as applicable (see *section 1.3.3 Incorporating the charterparty in the bill of lading*).
- Claused "Shipped on deck" if cargo so carried.
- Protective clauses inserted as required by the Company, e.g. "shipper's load, stow and count" (for containers), *Retla rust clause* (for steel shipments), "carried on deck at shippers risk without responsibility for loss or damage howsoever caused".
- Carriage terms inserted as required by the Company, e.g. "free in, free out", "liner in, liner out" etc. Such terms set out the carrier's period of responsibility for caring for the cargo and who is responsible for paying for the load and discharge operations. The terms may be abbreviated, e.g. FIFO, LIFO etc. If the Master is in doubt as to what these mean, he should seek the Company's clarification and instructions.
- The number of original bills of lading stated to exist is correct. The Master should only sign the correct number of originals and should also ensure that each is identical and marked or stamped original.
- Bill of lading copies should be marked/stamped non-negotiable copy.
- If a cargo value is stated in the bill of lading, the Master should inform the Company immediately as extra insurance may be necessary and/or additional freight may be due. P&I cover generally excludes bills of lading with a stated cargo value.
- Any carriage instructions, e.g. carriage temperature, inserted in the bill of lading should be checked against other documents in the Master's possession, e.g. mate's receipt, voyage orders, shipping order etc. If the Master is unsure about the carriage instructions, he should clarify them with the shipper and the Company.
- For shipments to the United States the bill of lading should show a series of numbers and/or letters which are unique to the carrier and bill of lading.
- Any freight statements appearing in the bill of lading should be clarified with the Company if the Master is in any doubt.
- The Master should sign in the place designated for signature in the bill of lading or if there is no such place, at the bottom of the bill of lading face. The Master should not sign or stamp anywhere else in the bill of lading, especially not next to the shipper's description of the cargo as this as may be interpreted as an acceptance of the description.

PART 3 – AFTER SIGNING THE BILL OF LADING

3.1. SIGNATURE UNDER DURESS

If the Master feels that he has signed a bill of lading under duress or threat of any kind, he must inform the Company as soon as it is safe to do so. He should also make a detailed report of the circumstances involved.

3.2. INCORRECT/INACCURATE BILL OF LADING SIGNED

If the Master feels that a bill of lading has been signed which contains incorrect or inaccurate information, he should inform the shipper and the Company immediately (confirming in writing).

3.3. SHIP'S COPY

A copy of the signed bill of lading marked/stamped non-negotiable copy should be retained by the ship for comparison with the original bill of lading presented for delivery.

PART 4 – VARIOUS OTHER BILL OF LADING ISSUES

4.1. EARLY DEPARTURE PROCEDURE (EDP)/SIGNING BLANK BILLS OF LADING

Predominantly in the tanker trade, a shipper, loading terminal or charterer may request the ship to follow Early Departure Procedure (EDP). Amongst other things, EDP usually involves the Master issuing a signed but otherwise blank bill of lading form. Alternatively, the bill of lading may be completed except for the quantity or weight. Clearly this procedure exposes the Company to significant liabilities (see *section 1.3 Importance of the bill of lading*). Accordingly, if the Master is requested to follow EDP and/or sign a blank bill of lading he should refuse and contact the Company immediately.

4.2. CARGO INTENDED TO BE SHIPPED ON DECK

If it is intended to ship cargo on deck, the Master should be fully satisfied either that it is a custom of the trade, e.g. containers on a purpose built containership or lumber on a purpose built log carrier, or it is a statutory obligation, e.g. dangerous cargo, or has been agreed with the shipper. If the cargo is carried on deck in any other circumstances, the carrier may be in breach of the contract of carriage and may consequently lose the right to rely on certain contractual exceptions, e.g. for loss or damage to the goods. The carrier may also lose the right to limit liability for claims in respect of such loss or damage and P&I cover. Clauses which seek to relieve the carrier from all liability for deck carriage will normally not protect the carrier from unauthorised deck carriage. Whilst bills of lading may provide that the carrier has a liberty or right to carry cargo on deck, Courts will normally restrict the carrier's right to rely on such provisions. If the Master has any doubt as to whether the carrier has a right to carry cargo on deck he should contact the Company.

4.3. DELIVERY OF CARGO AGAINST A BILL OF LADING RETAINED ON BOARD

It has been known for a shipper to pressurise the Master to retain on board one original bill of lading out of the set (usually three) issued with the instruction to hand it to the intended receiver to avoid the possibility of there being no original bill of lading for presentation at the discharge port. The intended receiver presents the original bill of lading back to the Master and claims delivery of the goods. The risk involved in this practice is that since the Master knows or should know that through ordinary commercial channels, competing claims for the cargo can arise under the original bills of lading not retained on board he will be deemed to have acted in bad faith by delivering the cargo against the original bill of lading retained on board. If a competing claim does arise, the carrier may be held fully liable for wrongful delivery of the cargo and for compensating the rightful cargo owner for the full value of the cargo. P&I cover may be lost as Gard's Rules exclude cover for claims in certain circumstances where proper delivery has not been made.

For further explanation of delivery see *section 1.3.4. Delivery of goods covered by a bill of lading and waybill*.

4.4. COMMINGLING OR BLENDING CARGO ON BOARD

Commingling or blending is mostly associated with oil cargoes in bulk. Cargo interests may wish to commingle or blend cargoes loaded on different dates and/or at different places and/or with different specifications. Should this be requested, the Master should refuse to perform any commingling or blending until he has received the Company's approval and instructions. The commingling or blending may affect the specification of the cargo already loaded and the carrier may be held liable under any bill of lading already issued for such cargo. The same liability may arise under the bill of lading to be issued for the second parcel of cargo to be loaded. Whilst a remark can be inserted in the bill of lading for this parcel drawing attention to the commingling/blending, should the cargo be loaded in apparent good order and condition, there will be no basis for clausing which casts doubt on the apparent order and condition. There may be complications with regard to dates and places of shipment stated in the bills of lading because if these are different a single bill of lading should not be issued.

4.5. SPLIT BILLS OF LADING AND DELIVERY ORDERS

Split bills of lading are bills issued for part of a cargo originally shipped under a single set of bills of lading. They are most common in the bulk trades, e.g. cargo interests may wish to split a cargo covered by a single bill of lading under which delivery can only be made to one party, between say three receivers. If such a request is made, all the original bills of lading of the set first issued for the consignment to be split should be surrendered and replacement bills of lading issued. Care must be taken to ensure that the total amounts of

cargo stated in the split bills of lading equals the amount in the original bill of lading, and the information, e.g. the description of the cargo and date, is the same. It is also advisable to clause the replacement bills as there is an increased risk of one or more of the receivers receiving more or less cargo than they are due. Once the replacement bills of lading have been issued, delivery should only be made to the receiver named in the replacement bills of lading and for the amount stated in that particular bill of lading. Care will obviously have to be taken to deliver an amount as close as is possible to that stated in the bill of lading.

Delivery orders may be requested instead of split bills of lading because cargo interests do not require bills of lading that allow them to trade the cargo during the carriage. The person entitled to delivery simply requires the cargo to be delivered at discharge to other parties. The same precautions regarding the use of split bills of lading apply to delivery orders.

For further explanation of delivery see *section 1.3.4 Delivery of goods covered by a bill of lading and waybill*.

4.6. BILL OF LADING COVERING A BULK CARGO WITH MORE THAN ONE DISCHARGE PORT

Such a bill should be avoided. Complications arise if cargo interests request the cargo to be discharged at more than one port and all the original bills of lading cannot be surrendered at the first discharge port for clausing as to how much cargo was discharged there or replaced with delivery orders or split bills of lading. The risk is that an original bill of lading may be presented at the second discharge port for delivery of the full cargo. If the above request is made and the original bills of lading cannot be surrendered the Company should be informed and instructions obtained as soon as possible before completion of discharge at the first discharge port. For further explanation of delivery see *section 1.3.4 Delivery of goods covered by a bill of lading and waybill*.

4.7. DELIVERY TO A DESTINATION NOT NAMED IN THE BILL OF LADING

If cargo interests request delivery of their cargo at a place other than that named in the bill of lading, the Company should be informed and instructions obtained as soon as possible. It may be that all original bills of lading can be surrendered and replacement bills of lading issued, but if this cannot be done, the Company will have to make other arrangements to protect itself by complying with such a request. There is a risk of an original bill of lading being presented for the cargo at the place stated in the bill of lading and additionally the carrier could be deemed to have committed a deviation by discharging at a different port other than that stated in the bill of lading. A deviation is a breach of the contract of carriage and has serious consequences similar to those for unauthorised deck carriage.

For further explanation of delivery see *section 1.3.4 Delivery of goods covered by a bill of lading and waybill*.

4.8. LETTERS OF INDEMNITY

It is common for charterers/shippers to offer letters of indemnity in an attempt to persuade the Master/ Company to issue a bill of lading containing incorrect/inaccurate information. These letters are a promise to indemnify the Company in respect of any liability incurred under the bill of lading as a result of the incorrect/inaccurate information. If offered in exchange for issuing a clean bill of lading (see *sections 1.3.1.2 Clausing and letters of indemnity* and *2.6.2 Dealing with pressure to issue clean bills of lading*) or for a bill of lading which is ante- or post-dated, such letters will be unenforceable in most jurisdictions. Courts take the view that such letters of indemnity facilitate a fraud, i.e. it is a deliberate act of inserting into the bill of lading information known to be incorrect. Such letters of indemnity are not legally binding, and therefore offer the Company no protection if the shipper goes back on his promise. There will be no P&I cover available either because Gard's Rules exclude cover for claims arising from the issue of an ante/post-dated bill of lading or claims arising from the issue of a bill of lading known by the Master or the Member to contain an incorrect description of the cargo, its quantity or condition.

The Courts may enforce a letter of indemnity if there is genuine doubt whether or not the cargo is damaged or where the dispute as to clausing is so trivial that the means required to establish the true position are out of proportion to the likely outcome. In these circumstances, assistance and advice should be sought from the P&I correspondent.

Cargo interests or the charterer may offer a letter of indemnity in exchange for delivering the cargo without production of an original bill of lading (see *section 1.3.4. Delivery of goods covered by a bill of lading and waybill*) or for delivering the cargo to a destination not named in the bill of lading. Whilst these letters may be legally enforceable, it is important that the letter of undertaking is properly worded and counter-signed by a first class bank, unless the Company is satisfied that the entity offering the letter of indemnity is sufficiently solvent. Letters of indemnity are nevertheless a commercial reality, so the International Group of P&I Clubs has drafted suitable wordings. See *Appendix III*. It should be noted that, depending on the terms of an applicable charterparty, there may be an obligation on the Company to accept a letter of indemnity in certain circumstances. Whatever the position, the decision to accept a letter of indemnity is a commercial decision, falling outside P&I cover.

Whenever the Master is offered a letter of indemnity he should:

- refuse, despite threats to delay the vessel or other forms of pressure
- immediately inform the Company and obtain instructions.

Assistance and advice can also be sought from the P&I correspondent.

APPENDIX 1 – EXTRACTS FROM THE HAGUE-VISBY AND HAMBURG RULES

Shown here are those parts of the Hague-Visby and Hamburg Rules, which are considered most relevant to the Master when issuing and signing bills of lading (see section 2.1 Obligations with regard to issuing and signing bills of lading).

THE HAGUE VISBY RULES

The Hague Rules as amended by the Brussels Protocol 1968

Article I In these Rules the following words are employed, with the meanings set out below:

- a** 'Carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper.
- b** 'Contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- c** 'Goods' includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- d** 'Ship' means any vessel used for the carriage of goods by sea.
- e** 'Carriage of goods' covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article III ...

- 3** After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:
 - a** The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
 - b** Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
 - c** The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

- 4** Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.
- 7** After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands be a 'shipped' bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the 'shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this article be deemed to constitute a 'shipped' bill of lading.

- Article X** The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if
- a** the bill of lading is issued in a contracting State, or
 - b** the carriage is from a port in a contracting State, or
 - c** the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract; whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA (HAMBURG RULES)

PART I GENERAL PROVISIONS

Article 1 Definitions

In this Convention:

- 1 "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.
- 2 "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.
- 3 "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.
- 4 "Consignee" means the person entitled to take delivery of the goods.
- 5 "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, goods includes such article of transport or packaging if supplied by the shipper.
- 6 "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.
- 7 "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.
- 8 "Writing" includes, *inter alia*, telegram and telex.

Article 2 Scope of application

- 1 The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:
 - a the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or
 - b the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or
 - c one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or
 - d the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or
 - e the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.
- 2 The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

- 3 The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.
- 4 If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article apply.

PART IV TRANSPORT DOCUMENTS

Article 14 Issue of bill of lading

- 1 When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.
- 2 The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.
- 3 The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

Article 15 Contents of bill of lading

- 1 The bill of lading must include, *inter alia*, the following particulars:
 - a the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;
 - b the apparent condition of the goods;
 - c the name and principal place of business of the carrier;
 - d the name of the shipper;
 - e the consignee if named by the shipper;
 - f the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;
 - g the port of discharge under the contract of carriage by sea;
 - h the number of originals of the bill of lading, if more than one;
 - i the place of issuance of the bill of lading;
 - j the signature of the carrier or a person acting on his behalf;
 - k the freight to the extent payable by the consignee or other indication that freight is payable by him;
 - l the statement referred to in paragraph 3 of article 23;
 - m the statement, if applicable, that the goods shall or may be carried on deck;
 - n the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and
 - o any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.
- 2 After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shippers demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.

- 3 The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.

Article 16 Bills of lading: reservations and evidentiary effect

- 1 If the bill of lading contains particulars concerning the general nature, leading marks, number of packages of pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.
- 2 If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.
- 3 Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:
 - a the bill of lading is prima facie evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and
 - b proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

APPENDIX II – STEEL PRE-SHIPMENT SURVEYS

Purpose

Cargo survey

The purpose of a pre-shipment survey of the cargo is to establish its apparent condition immediately before it is loaded onto the vessel. Because of increasing claims for poor outturn of steel cargoes, it is now very common for carriers to contract independent surveyors to perform pre-loading surveys of this type of cargo. There would be insufficient time for the ship's officers to perform a detailed survey of all of the cargo from the time of the arrival of the vessel until the cargo is loaded. Hence the assistance of an independent surveyor is essential if the condition of the cargo at this time is to be fully and accurately determined. This is done to assist the Master to ensure that the Mate's receipts and bills of lading are appropriately claused to accurately describe the apparent condition of the cargo at the time he accepts responsibility for the cargo.¹

Vessel survey

Often a pre-shipment survey of the vessel is also requested. This will involve an examination of the vessel's holds to ensure that they are in a suitable condition to receive the cargo. The survey also involves the examination of the hatches, ventilators, sounding pipes, accesses, etc. to ensure that the watertight integrity of the vessel is adequate. A hatch survey includes the structure of the panels, sealing bars, rubbers, drain channels, guttering, cleats, wedges, wheels, hinges and the operating system, including any hydraulic leaks. It may include testing the integrity of the hatch covers by ultrasonic means or with a jet hose of water. Any faults discovered at the pre-loading survey of the vessel should be corrected before the vessel loads the cargo if necessary, but in any event before the vessel puts to sea.

Loading survey

Usually the surveyor is requested to remain in attendance throughout the loading so that he can monitor the loading operation. He may be requested to advise the Master on stowage and dunnaging, and to check (and perhaps advise) on the standards of securing. Correct stowage ensures the load on the ship's structure is within its strength limits (e.g., deck load in tonnes per square metre), avoids the cargo shifting, crushing and chafing, and ensures that the cargo can be readily discharged. Dunnage is used to distribute the load from the cargo, prevent friction damage, prevent distortion of the cargo in the stow and assist in cargo securing. The surveyor will keep complete records, such as the timing of the loading operations, including delays with reasons, the weather throughout, and details of the vessel, cargo description, numbers, types, weights, stowage, bills of lading, etc.

Terminology

The terms used to describe the condition of the cargo are the personal choice of the surveyor. The actual words he uses should be in the English language, which may not be his native tongue. Hence it can be seen that the true meaning of the terms used could be open to interpretation. In an attempt to avoid this confusion, the International Group of P&I Clubs has issued a list of standard clauses to be used to describe the condition of steel cargoes.² There are clauses to describe surface condition, including packaging if appropriate, which are mainly an attempt to differentiate between degrees of rust, and other clauses to describe mechanical damage. In all cases, it is essential that the surveyor take a full set of high-quality photographs in order to both provide evidence and clarify the terminology, should this become necessary.

The formation of rust

When it leaves the producer, raw steel is covered by a thin coating of mill scale. This is brittle, and is easily displaced, whereupon rusting commences. The rusting of steel is a continuous process. The longer it continues, the more it will damage the cargo. Any rust which appears to be insignificant during loading could develop during the voyage, even if the cargo is properly looked after by the vessel. Thus it is vital that any and all signs of rust, no matter how minor, are identified by the surveyor.

Surface rust which forms in a fresh water environment, and is removed within a reasonable time, seldom causes damage which reduces the commercial value of the cargo. However, rust which forms in a salt laden environment can result in rapid deterioration of the cargo, with pitting of the surface. This considerably

reduces the commercial value of the product, and may make it unsuitable for its intended purpose. It may have to be sold off for a lower quality application or even scrap and the attending surveyor must test any rust for salt content. This is usually done with silver nitrate, which turns milky when exposed to chlorides. However, this test is not infallible, and a positive result is only an indication that there may be salt contamination.

What does the surveyor look for?

Is the cargo wet?

This may be caused by the cargo being stowed in the open either during storage at the manufacturer's yard or in the port before loading. Even if it appears dry on the outside, rain may have penetrated, for example through covers or amongst rods of a bundle. Moisture may be apparent when the cargo is lifted and tilted, and there may be stains or marks on the outside to indicate that the cargo is damp or has been wetted in the past. If there are signs of moisture, it is important that these are tested for salinity. This could be caused by a salt laden environment (such as an open stow close to the sea with a strong onshore breeze) in addition to direct wetting by sea water. Wetness includes snow or ice.

Are there any signs of surface rust?

Types of rust include:

- Spot – Localised slight penetration of the mill scale.
- Stained – A light tan coloured and fine powdery coating.
- Rusty – A thicker coating of brown scale, when removed, the remaining surface is uneven.
- Pitted – Penetration of the surface with minor indentations which cannot be removed by wire brushing.
- Scale – Thick flaking rust.
- Streaks – Stains which indicate that water has previously run across the surface.

These comments should indicate the extent of the rust, with expressions to describe the percentage of the surface area affected, or the location of the rust if a distinct portion of the steel is affected (e.g., edges of flanges). If the product is galvanised, comments should be made if the zinc coating is dull or affected by white oxidation.

Is there any contamination present?

Full details including extent should be noted if there are any signs of grease or oil, including stains, or the presence (note colour and any other characteristics if the contaminant cannot be identified).

1 See article "Pre-load Surveys of Steel Products" in Gard News 144, of December 1996.

2 The relevant section of the International Group Circular, dated February 1964, reads:

"In appropriate cases, (...) it is permissible for any of the following clauses to be used when describing steel shipments which show signs of rust or a similar condition on shipment:

| | | |
|--------------------------|--------------------------|--|
| Partly rust stained | Rust and oil spotted | Rust stained |
| Wet before shipment | Rust spots apparent | Wet steel tubes |
| Some rust spots apparent | Wet bars | Some rust spots apparent on top sheets |
| Rust on metal envelopes | Top sheets rusty | Covered with snow |
| Some top sheets rusty | Pitted | Rusty edges |
| Rusty | Some rusty edges | Rust with pitting |
| Rusty ends | Goods in rusty condition | Some rusty ends |
| Edges bent and rusty | Rust spotted | Partly rusty |

When packed sheet iron is shipped the following two clauses may be used:

| | |
|------------------|--------------------|
| Covers rusty/wet | Packing rusty/wet" |
|------------------|--------------------|

Is the cargo mechanically damaged?

The type and extent of deformations should be described as accurately as possible, with appropriate dimensions. Terms which are commonly used include:

- Bent (locally or entire length/width)
- Dented
- Edges buckled
- Scored
- Nicked
- Coating scratched, cracked, peeling
- Windings telescoped
- Bindings broken
- Packaging torn/dented punctured

Often mechanical damage is caused by careless or inappropriate handling. If the handling damage is caused by the stevedores during loading, then they should be held responsible. The procedure is normally clarified in any charterparty. The bill of lading should not be claused as this is not strictly pre-shipment damage. Comments should also be made where individual pieces within a package have become mis-aligned, for example, bars protruding from one end, coils ovalised.

Who should be notified

The attending surveyor should report any damage noted to his principals. His instructions should state who else should be notified, for example, the shipper of the cargo, so that he is given the opportunity to replace damaged goods or cancel shipment of affected items. Sometimes, the surveyor will negotiate an agreement with the shipper on the wording of the clauses to be used. The instructions will normally provide for the vessel to be kept fully advised so that the appropriate clauses to describe the apparent condition of the cargo can be inserted into the Mate's receipts and bills of lading.

Clousing Mate's receipts and bills of lading

At the time of loading a Mate's receipt is issued and signed by the vessel. Later, the carrier will issue a bill of lading to the shipper based on the Mate's receipt. Amongst other facts, these documents state the condition of the cargo at the time of loading. This is usually phrased as "*in apparent good order and condition*". If this does not describe the condition of the cargo as would be apparent from a careful inspection, then the documents must be claused to reflect the true condition observed.

If the cargo is found to be wet, then the documents should be claused for example "wet before shipment". If rust is found, the type and extent of the rust should be described using the phrases discussed earlier. Similarly, if the cargo has mechanical damage, the type and extent should be included in the clause. Appropriate clauses should indicate the likely cause, for example "*marked by handling gear*". It is important that these remarks are as accurate as possible. The affected cargo should be identified. General terms such as "*some*", "*a few*" and "*a number of*" should be avoided.

The bill of lading represents the goods themselves, and if the cargo is sold during the voyage, the new owner will rely on the description of the cargo in the bill of lading. He will expect to receive his cargo as described, and so will have a case for damages against the carrier if the cargo is delivered in a worse condition. This is why care should be taken to ensure that an accurate description of the condition of the cargo at the time of loading is included in these documents.

The outturn survey

Although we have discussed pre-loading surveys, it is important that an independent surveyor attends at the discharge port. He will examine the hatch covers before they are unsecured if possible, and check for signs of water ingress when they are first opened. His main duty is to examine the cargo upon discharge to check for damage. If he finds any damage that was not recorded at the time of loading, then he should investigate the causes. He may also be involved in ensuring that the damaged cargo is properly sorted, segregated and stored with suitable protection to prevent the cargo from deteriorating further, and that all necessary measures are taken to mitigate any loss.

By Captain Peter Roberts, London Offshore Consultants, London

APPENDIX III – STANDARD FORMS OF LETTERS OF INDEMNITY

BILLS OF LADING – DELIVERY OF CARGO

STANDARD FORMS OF LETTERS OF INDEMNITY TO BE GIVEN IN RETURN FOR:

- (A) Delivery of cargo without production of the original bill of lading
- (B) Delivery of cargo at a port other than that stated in the bill of lading
- (C) Delivery of cargo at a port other than that stated in the bill of lading and without production of the original bill of lading

In December 1998, the International Group of P&I Clubs issued a Circular to Members (see Gard Member Circular No 9/98) recommending revised wordings of the standard form Letters of Indemnity for use by Members in circumstances where they are requested to deliver cargo without production of the original bill of lading and/or to deliver cargo at a port other than that stated in the bill of lading.

As a result of comments from shipowners and shipowners' organisations, a further review of the wordings was undertaken and further modifications to the standard wordings were made. Moreover, discussions took place between the International Group and the British Bankers Association (BBA) and a separate standard wording was agreed on the basis of which banks members of the BBA would be prepared in principle to join in the Letters of Indemnity while, through the auspices of the International Chamber of Commerce, the BBA would endeavour to promote this agreed standard wording within the international business community.

In consequence of the agreement reached with the BBA, the three recommended standard form Letters of Indemnity are issued in two versions: INT GROUP A (for delivery of cargo without production of the original bill of lading), INT GROUP B (for delivery of cargo at a port other than that stated in the bill of lading against production of at least one original bill of lading), and INT GROUP C (for delivery of cargo at a port other than that stated in the bill of lading and without production of the original bill of lading) for use when the commercial party requesting delivery (the "Requestor") will alone be signing the Letter of Indemnity, and INT GROUP AA, INT GROUP BB and INT GROUP CC for use when a bank will be joining in the Letter of Indemnity and which forms incorporate, in addition to the same indemnities given by the Requestor under INT GROUP A, B and C, the separate standard wording agreed with the banks.

The principal features of the wordings are explained below.

Financial Limit

The liability of the Requestor should generally not be limited. However, where a bank is to join in the Letter of Indemnity it will generally insist upon a fixed monetary limit. The amount of the limit must be a matter for negotiation in order that it properly reflects the potential exposure in the particular circumstances, taking into account, inter alia, the sound market value of the cargo at the time of delivery, but it is recommended that the limit should be a minimum of 200% of the sound market value of the cargo at the time of delivery.

Duration of security

Under INT GROUP A and AA, the liability of the Requestor (and, hence, the bank under AA) terminates upon the delivery of all original bills of lading to the shipowner. If the original bills of lading are not delivered to the shipowner, the Requestor's liability under the Letter of Indemnity continues.

Subject to delivery of all original bills of lading as stated, and to the two exceptions described below, the bank's liability under INT GROUP AA is for an initial period of six years, but which is automatically renewable from time to time for further periods of two years at the request of the shipowner. The exceptions are (1) that, rather than agree to an extension of its liability, the bank has the option of discharging its liability by paying the maximum amount payable under its indemnity and (2) that, in the event of a demand being made by the shipowner to the bank for payment under the indemnity before the termination date, or in the event of the bank being notified by the shipowner of the commencement of legal proceedings against the shipowner before the termination date, the liability of the bank will continue until the demand has been paid or the legal proceedings have been concluded, the bank, if called upon so to do, paying the amount of any judgment or settlement payable by the shipowner if the Requestor has failed to do so.

Under INT GROUP B, C, BB and CC, since it is possible for a claim to be pursued against a shipowner for delivering cargo at a port other than that stated in the bill of lading despite cargo being delivered against production of the original bill of lading, or all original bills of lading being subsequently delivered to the shipowner (in particular, in circumstances where a charterer may require a cargo owner to receive his cargo at such other port against his wishes and request the shipowner to accommodate his request), the liability of the Requestor will continue until it can be established to the satisfaction of the shipowner that no such claim will be made.

Accordingly, unless the shipowner is satisfied that no claim of this nature will be made, the liability of the bank under INT GROUP BB and CC will be as described under INT GROUP AA above.

Scope of security

The Requestor is obliged to provide bail or other security not only to prevent or lift the arrest of the ship the subject matter of the indemnity, but also any other ship in the same or associated ownership, management or control. In addition, the Requestor is obliged to provide bail or other security to prevent interference in the use or trading of the ship, such as a caveat being entered on the ship's registry to prevent the sale of the ship the subject matter of the indemnity.

Where a bank joins in the Letter of Indemnity it will generally not agree to provide bail or other security. However, the bank will pay any amount up to the limit of its liability under the Letter of Indemnity in order to enable the shipowner to arrange the provision of security if the Requestor fails to provide bail or other security.

Tankers

A provision designed to give greater security to tankers has been incorporated, whereby requested delivery of a bulk liquid or gas cargo to a terminal or facility, or to another ship, lighter or barge is to be deemed to be delivery to the party to whom delivery has been requested.

Members are reminded that, unless the Association's Board of Directors otherwise determines, there is no cover in respect of liabilities arising out of the delivery of cargo without production of the original bill of lading and/or delivery at a port other than that stated in the bill of lading and that, in such circumstances, Members are strongly advised to ensure that they are fully satisfied with the financial standing and authority of those who are to issue and sign these indemnities.

The standard form Letters of Indemnity are designed to cover a broad range of trades and operations, and Members may wish to modify the standard forms to suit particular requirements. However, in this event, it must be appreciated that if a bank is to join in the Letter of Indemnity there may be limited scope for amendment, and that the Requestor's bank will have to be consulted if any material change is contemplated. The Managers will be pleased to advise Members regarding any proposed modification.

Finally, it is not uncommon for Members to be requested by charterers to agree clauses in charter parties which expressly provide for the delivery of cargo without production of bills of lading and/or at ports other than those stated in the bills of lading against Letters of Indemnity. Members are strongly advised not to accept such clauses and it is recommended that Members seek advice from the Managers before responding to such requests.

Standard Form Letters of Indemnity

| | |
|--------------|---|
| INT GROUP A | Standard form letter of indemnity to be given in return for delivering cargo without production of the original bill of lading |
| INT GROUP AA | Standard form letter of indemnity to be given in return for delivering cargo without production of the original bill of lading incorporating a bank's agreement to join in the letter of indemnity |
| INT GROUP B | Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading |
| INT GROUP BB | Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading incorporating a bank's agreement to join in the letter of indemnity |
| INT GROUP C | Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading |
| INT GROUP CC | Standard form letter of indemnity to be given in return for delivering cargo at a port other than that stated in the bill of lading and without production of the original bill of lading incorporating a bank's agreement to join in the letter of indemnity |

INT GROUP A

STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO WITHOUT PRODUCTION OF THE ORIGINAL BILL OF LADING

To : [insert name of Owners] [insert date]
 The Owners of the [insert name of ship]
 [insert address]

Dear Sirs

Ship: [insert name of ship]

Voyage: [insert load and discharge ports as stated in the bill of lading]

Cargo: [insert description of cargo]

Bill of lading: [insert identification numbers, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but the bill of lading has not arrived and we, [insert name of party requesting delivery], hereby request you to deliver the said cargo to [insert name of party to whom delivery is to be made] at [insert place where delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.

Appendix III

6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully

For and on behalf of
[insert name of Requestor]
The Requestor

.....
Signature

INT GROUP AA

STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO WITHOUT PRODUCTION OF THE ORIGINAL BILL OF LADING INCORPORATING A BANK'S AGREEMENT TO JOIN IN THE LETTER OF INDEMNITY

To: [insert name of Owners] [insert date]
 The Owners of the [insert name of ship]
 [insert address]

Dear Sirs

Ship: [insert name of ship]

Voyage: [insert load and discharge ports as stated in the bill of lading]

Cargo: [insert description of cargo]

Bill of lading: [insert identification numbers, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but the bill of lading has not arrived and we, [insert name of party requesting delivery], hereby request you to deliver the said cargo to [insert name of party to whom delivery is to be made] at [insert place where delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.

5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully
For and on behalf of

[insert name of Requestor]
The Requestor

.....
Signature

We, [insert name of the Bank], hereby agree to join in this Indemnity providing always that the Bank's liability:-

1. shall be restricted to payment of specified sums of money demanded in relation to the Indemnity (and shall not extend to the provision of bail or other security)
2. shall be to make payment to you forthwith on your written demand in the form of a signed letter certifying that the amount demanded is a sum due to be paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:-
 - (a) such compensation shall include, but not be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you to arrange the provision of security to release the ship (or any other ship in the same or associated ownership, management or control) from arrest or to prevent any such arrest or to prevent any interference in the use or trading of the ship, or other ship as aforesaid, and
 - (b) in the event that the amount of compensation so paid is less than the amount stated in proviso 3 below, the liability of the Bank hereunder shall continue but shall be reduced by the amount of compensation paid.
3. shall be limited to a sum or sums not exceeding in aggregate [insert currency and amount in figures and words]

4. subject to proviso 5 below, shall terminate on [date six years from the date of the Indemnity] (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on or before that date.
5. shall be extended at your request from time to time for a period of two calendar years at a time provided that:-
- a) the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and
 - b) such notice is received by the Bank at the address indicated below on or before the then current Termination Date.

Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the Bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

6. shall be governed by and construed in accordance with the law governing the Indemnity and the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

It should be understood that, where appropriate, the Bank will only produce and deliver to you all original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

Please quote the Bank's Indemnity Ref in all correspondence with the Bank and any demands for payment and notices hereunder.

Yours faithfully
For and on behalf of

[insert name of bank]
[insert full details of the office to which any demand or notice is to be addressed]

.....
Signature

INT GROUP B

STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO AT A PORT OTHER THAN THAT STATED IN THE BILL OF LADING

To : [insert name of Owners] [insert date]

The Owners of the [insert name of ship]
[insert address]

Dear Sirs

Ship: [insert name of ship]

Voyage: [insert load and discharge ports as stated in the bill of lading]

Cargo: [insert description of cargo]

Bill of lading: [insert identification number, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the ship to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] against production of at least one original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo against production of at least one original bill of lading in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.

5. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully
For and on behalf of

[insert name of Requestor]
The Requestor

.....
Signature

INT GROUP BB

STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO AT A PORT OTHER THAN THAT STATED IN THE BILL OF LADING INCORPORATING A BANK'S AGREEMENT TO JOIN IN THE LETTER OF INDEMNITY

To: [insert name of Owners] [insert date]

The Owners of the [insert name of ship]
[insert address]

Dear Sirs

Ship: [insert name of ship]

Voyage: [insert load and discharge ports as stated in the bill of lading]

Cargo: [insert description of cargo]

Bill of lading: [insert identification number, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the ship to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] against production of at least one original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo against production of at least one original bill of lading in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.

5. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully
For and on behalf of

[insert name of Requestor]
The Requestor

.....
Signature

We, [insert name of the Bank], hereby agree to join in this Indemnity providing always that the Bank's liability:-

1. shall be restricted to payment of specified sums of money demanded in relation to the Indemnity (and shall not extend to the provision of bail or other security)
2. shall be to make payment to you forthwith on your written demand in the form of a signed letter certifying that the amount demanded is a sum due to be paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:-
 - (a) such compensation shall include, but not be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you to arrange the provision of security to release the ship (or any other ship in the same or associated ownership, management or control) from arrest or to prevent any such arrest or to prevent any interference in the use or trading of the ship, or other ship as aforesaid, and
 - (b) in the event that the amount of compensation so paid is less than the amount stated in proviso 3 below, the liability of the Bank hereunder shall continue but shall be reduced by the amount of compensation paid.
3. shall be limited to a sum or sums not exceeding in aggregate [insert currency and amount in figures and words]
4. subject to proviso 5 below, shall terminate on [date six years from the date of the Indemnity] (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on or before that date.
5. shall be extended at your request from time to time for a period of two calendar years at a time provided that:-
 - a) the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and
 - b) such notice is received by the Bank at the address indicated below on or before the then current Termination Date.

Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the Bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

- 6. shall be governed by and construed in accordance with the law governing the Indemnity and the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

It should be understood that, where appropriate, the Bank will only produce and deliver to you all original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

Please quote the Bank's Indemnity Ref in all correspondence with the Bank and any demands for payment and notices hereunder.

Yours faithfully
For and on behalf of

[insert name of bank]
[insert full details of the office to which any demand or notice is to be addressed]

.....
Signature

INT GROUP C

STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO AT A PORT OTHER THAN THAT STATED IN THE BILL OF LADING AND WITHOUT PRODUCTION OF THE ORIGINAL BILL OF LADING

To : [insert name of Owners] [insert date]

The Owners of the [insert name of ship]
[insert address]

Dear Sirs

Ship: [insert name of ship]

Voyage: [insert load and discharge ports as stated in the bill of lading]

Cargo: [insert description of cargo]

Bill of lading: [insert identification number, date and place of issue]

The above cargo was shipped on the above vessel by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bills of lading are made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bills of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the vessel to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] to [insert name of party to whom delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.

5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully
For and on behalf of

[insert name of Requestor]
The Requestor

.....
Signature

INT GROUP CC

STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO AT A PORT OTHER THAN THAT STATED IN THE BILL OF LADING AND WITHOUT PRODUCTION OF THE ORIGINAL BILL OF LADING INCORPORATING A BANK'S AGREEMENT TO JOIN IN THE LETTER OF INDEMNITY

To : [insert name of Owners] [insert date]

The Owners of the [insert name of ship]
[insert address]

Dear Sirs

Ship: [insert name of ship]

Voyage: [insert load and discharge ports as stated in the bill of lading]

Cargo: [insert description of cargo]

Bill of lading: [insert identification number, date and place of issue]

The above cargo was shipped on the above vessel by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bills of lading are made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bills of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the vessel to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] to [insert name of party to whom delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.

5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully
For and on behalf of

[insert name of Requestor]
The Requestor

.....
Signature

We, [insert name of the Bank], hereby agree to join in this Indemnity providing always that the Bank's liability:-

1. shall be restricted to payment of specified sums of money demanded in relation to the indemnity (and shall not extend to the provision of bail or other security)
2. shall be to make payment to you forthwith on your written demand in the form of a signed letter certifying that the amount demanded is a sum due to be paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:-
 - (a) such compensation shall include, but not be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you to arrange the provision of security to release the ship (or any other ship in the same or associated ownership, management or control) from arrest or to prevent any such arrest or to prevent any interference in the use or trading of the ship, or other ship as aforesaid, and
 - (b) in the event that the amount of compensation so paid is less than the amount stated in proviso 3 below, the liability of the Bank hereunder shall continue but shall be reduced by the amount of compensation paid.
3. shall be limited to a sum or sums not exceeding in aggregate [insert currency and amount in figures and words]
4. subject to proviso 5 below, shall terminate on [date six years from the date of the Indemnity] (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on or before that date.

5. shall be extended at your request from time to time for a period of two calendar years at a time provided that:-
- a) the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and
 - b) such notice is received by the Bank at the address indicated below on or before the then current Termination Date.

Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the Bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

6. shall be governed by and construed in accordance with the law governing the Indemnity and the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

It should be understood that, where appropriate, the Bank will only produce and deliver to you all original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

Please quote the Bank's Indemnity Ref in all correspondence with the Bank and any demands for payment and notices hereunder.

Yours faithfully
For and on behalf of

[insert name of bank]

[insert full details of the office to which any demand or notice is to be addressed]

.....
Signature

THE GARD GROUP

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