

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

CARRIAGE OF GOODS BY SEA BILL 1990

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement
3. Object of Act
4. Definitions
5. Act to bind Crown
6. Extension to external Territories

PART 2—APPLICATION OF THE AMENDED HAGUE RULES

7. The amended Hague Rules
8. Interpretation
9. Application of the amended Hague Rules
10. Received-for-shipment bills of lading
11. Bulk cargoes

PART 3—APPLICATION OF THE HAMBURG RULES

12. The Hamburg Rules
13. Interpretation
14. Application of the Hamburg Rules

PART 4—MISCELLANEOUS

15. Construction and jurisdiction
16. Amendment of the *International Arbitration Act 1974*
17. Amendment of the *Sea-Carriage of Goods Act 1924*

TABLE OF PROVISIONS—*continued*

SCHEDULE 1

THE AMENDED HAGUE RULES

Article 1.	Definitions
Article 2.	Risks
Article 3.	Responsibilities and liabilities
Article 4.	Rights and immunities
Article 4A.	Application of defences and limits of liability
Article 5.	Surrender of rights and immunities, and increase of responsibilities and obligations
Article 6.	Special conditions
Article 7.	Limitation on the application of the Rules
Article 8.	Limitation of liability
Article 9.	Liability for nuclear damage

SCHEDULE 2

THE HAMBURG RULES

PART 1—GENERAL PROVISIONS

Article 1.	Definitions
Article 2.	Scope of application
Article 3.	Interpretation of the Rules

PART 2—LIABILITY OF THE CARRIER

Article 4.	Period of responsibility
Article 5.	Basis of liability
Article 6.	Limits of liability
Article 7.	Application to non-contractual claims
Article 8.	Loss of right to limit responsibility
Article 9.	Deck cargo
Article 10.	Liability of the carrier and actual carrier
Article 11.	Through carriage

PART 3—LIABILITY OF THE SHIPPER

Article 12.	General rule
Article 13.	Special rules on dangerous goods

PART 4—TRANSPORT DOCUMENTS

Article 14.	Issue of bill of lading
Article 15.	Contents of bill of lading
Article 16.	Bills of lading: reservations and evidentiary effect
Article 17.	Guarantees by the shipper
Article 18.	Documents other than bills of lading

PART 5—CLAIMS AND ACTIONS

Article 19.	Notice of loss, damage or delay
Article 20.	Limitation of actions
Article 21.	Jurisdiction
Article 22.	Arbitration

PART 6—SUPPLEMENTARY PROVISIONS

Article 23.	Contractual stipulations
Article 24.	General average
Article 25.	Effect on international conventions etc.
Article 26.	Unit of account

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 12 September 1990

(Minister for Land Transport)

A BILL

FOR

**An Act relating to the carriage of goods by sea, and for
related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Carriage of Goods by Sea Act 1990*.

Commencement

2. (1) Subject to subsection (2), this Act commences on the day on
which it receives the Royal Assent.

10 (2) Part 3 and Schedule 2 commence on a day to be fixed by
Proclamation, being a day not sooner than the day on which the
Hamburg Convention enters into force in respect of Australia.

Object of Act

3. (1) The object of this Act is to introduce a regime of marine cargo liability that:

- (a) is up-to-date, equitable and efficient; and
 - (b) is compatible with arrangements existing in countries that are major trading partners of Australia; and 5
 - (c) takes into account developments within the United Nations in relation to marine cargo liability arrangements.
- (2) The object of the Act is to be achieved by:
- (a) as a first step—replacing the rules contained in the Schedule to the *Sea-Carriage of Goods Act 1924* with provisions (in this Act called the “**amended Hague Rules**”) that give effect to the Brussels Convention as amended by the Visby Protocol and the SDR Protocol; and 10
 - (b) as a second step—replacing those provisions with provisions (in this Act called the “**Hamburg Rules**”) that give effect to the Hamburg Convention. 15

Definitions

4. In this Act:

“**amended Hague Rules**” means the rules relating to carriage of goods by sea referred to in section 7, as set out in Schedule 1; 20

“**Australia**”, when used in a geographical sense, includes the external Territories;

“**Brussels Convention**” means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, done at Brussels on 25 August 1924; 25

“**Hamburg Convention**” means the United Nations Convention on the Carriage of Goods by Sea, done at Hamburg on 31 March 1978;

“**Hamburg Rules**” means the rules relating to carriage of goods by sea referred to in section 12, as set out in Schedule 2; 30

“**SDR Protocol**” means the Protocol amending the Brussels Convention, as amended by the Visby Protocol, done at Brussels on 21 December 1979;

“**Visby Protocol**” means the Protocol amending the Brussels Convention, done at Brussels on 23 February 1968. 35

Act to bind Crown

5. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

Extension to external Territories

6. This Act extends to all the external Territories. 40

PART 2—APPLICATION OF THE AMENDED HAGUE RULES

The amended Hague Rules

5 7. (1) The provisions set out in Schedule 1 are rules relating to carriage of goods by sea contained in the Brussels Convention as amended by the Visby Protocol and the SDR Protocol.

 (2) The amendments made by the Visby Protocol and the SDR Protocol have been incorporated in the provisions.

Note: The provisions contain minor changes to the text of the Brussels Convention, the Visby Protocol and the SDR Protocol in order to make the provisions apply as provisions of an Act.

Interpretation

10 8. In this Part and the amended Hague Rules, unless the contrary intention appears, a word or expression has the same meaning as it has in the Brussels Convention as amended by the Visby Protocol and the SDR Protocol.

Application of the amended Hague Rules

15 9. (1) Subject to subsection (2), the amended Hague Rules apply to a contract of carriage of goods by sea if:

 (a) it is made on or after the commencement of this Part and before the commencement of Part 3; and

 (b) one or more of the following apply:

20 (i) the bill of lading, or similar document of title, to which the contract relates is issued in Australia;

 (ii) the carriage is from a port in Australia;

 (iii) the contract provides that Australian law is the law governing the contract;

25 whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

 (2) The amended Hague Rules do not apply in relation to the carriage of goods by sea from a port in any State or Territory in Australia to any other port in that State or Territory.

Received-for-shipment bills of lading

30 10. A bill of lading issued in accordance with paragraph 3 of Article 3 of the amended Hague Rules:

 (a) is taken, for all purposes, to be a valid bill of lading; and

 (b) has effect as if it were a “shipped” bill of lading.

Bulk cargoes

35 11. Where:

 (a) under the custom of any trade, the weight of any bulk cargo inserted in the bill of lading, or similar document of title, to which a contract of carriage of goods relates is a weight

ascertained or accepted by a third party other than the carrier or the shipper; and

- (b) the fact that the weight is so ascertained or accepted is stated in the bill of lading or similar document of title;

then, in spite of anything in the amended Hague Rules: 5

- (c) the bill of lading or similar document of title is not taken to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading; and

- (d) the shipper is not taken to have guaranteed the accuracy of the weight so stated. 10

PART 3—APPLICATION OF THE HAMBURG RULES

The Hamburg Rules

12. The provisions set out in Schedule 2 are the rules relating to the carriage of goods by sea contained in the Hamburg Convention.

Note: The provisions contain minor changes to the text of the Hamburg Convention in order to make the provisions apply as provisions of an Act:

Interpretation 15

13. In this Part and the Hamburg Rules, unless the contrary intention appears, a word or expression has the same meaning as it has in the Hamburg Convention.

Application of the Hamburg Rules

14. (1) In spite of paragraph 1 of Article 2 of the Hamburg Convention, but subject to subsection (2), the Hamburg Rules apply to a contract of carriage by sea made on or after the commencement of this Part, whether or not the carriage is between a port in Australia and a port outside Australia, if: 20

- (a) the port of loading as provided for in the contract is located in Australia; or 25
- (b) the port of discharge as provided for in the contract is located in Australia; or
- (c) one of the optional ports of discharge provided for in the contract is the actual port of discharge and the port is located in Australia; or 30
- (d) the bill of lading or other document evidencing the contract is issued in Australia; or
- (e) the bill of lading or other document evidencing the contract provides that the Hamburg Convention, the Hamburg Rules, this Part or Schedule 2 is to govern the contract. 35

(2) The Hamburg Rules do not apply to any contract of carriage by sea from a port in any State or Territory in Australia to any other port in that State or Territory.

PART 4—MISCELLANEOUS

Construction and jurisdiction

15. (1) All parties to a bill of lading or document evidencing a contract of carriage of goods by sea to which:

(a) the amended Hague Rules apply under section 9; or

(b) the Hamburg Rules apply under section 14;

are taken to have intended to contract in accordance with Australian law.

(2) An agreement has no effect so far as it purports to:

(a) preclude or limit the effect of subsection (1); or

(b) preclude or limit the jurisdiction of a Court of the Commonwealth or of a State or Territory;

in respect of a bill of lading or document evidencing such a contract.

Amendment of the *International Arbitration Act 1974*

16. Section 2C of the *International Arbitration Act 1974*¹ is repealed and the following section is inserted:

Carriage of goods by sea

“2C. Nothing in this Act affects the operation of section 9 of the *Sea-Carriage of Goods Act 1924* or section 15 of the *Carriage of Goods by Sea Act 1990*.”.

Amendment of the *Sea-Carriage of Goods Act 1924*

17. Section 10 of the *Sea-Carriage of Goods Act 1924*² is amended by omitting subsection (2) and substituting the following subsection:

“(2) The Rules do not apply to any contract for the carriage of goods by sea made before the commencement of this Act or after the commencement of Part 2 of the *Carriage of Goods by Sea Act 1990*.”.

SCHEDULE 1

Section 7

THE AMENDED HAGUE RULES**Article 1****Definitions**

1. In these Rules:

“carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper;

“contract of carriage” means a contract 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 such bill of lading or similar document of title issued under or pursuant to a charterparty from the moment at which the bill of lading or similar document of title regulates the relations between a carrier and a holder of the bill of lading or similar document of title;

“goods” includes goods, wares, merchandise and articles of every kind whatsoever, but does not include:

(a) live animals; or

(b) cargo which, by the contract of carriage, is stated as being carried on deck and is so carried;

“ship” means any vessel used for the carriage of goods by sea.

2. A reference in these Rules to the carriage of goods is a reference to the carriage of goods from the time when the goods are loaded on, to the time when they are discharged from, the ship.

Article 2**Risks**

Subject to Article 6, under every contract of carriage of goods by sea, the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, is subject to the responsibilities and liabilities, and entitled to the rights and immunities, set out in these Rules.

Article 3**Responsibilities and liabilities**

1. The carrier must, before and at the beginning of the voyage, exercise due diligence to:

(a) make the ship seaworthy; and

(b) properly man, equip and supply the ship; and

(c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

SCHEDULE 1—continued

2. Subject to Article 4, the carrier must properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods in the carrier's charge, the carrier, or the master or agent of the carrier, must, 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, but only if the marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which the goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage; and
- (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; and
- (c) the apparent order and condition of the goods;

but no carrier, master or agent of the carrier is obliged to state or show in the bill of lading any marks, number, quantity or weight that the carrier, master or agent has reasonable ground for suspecting not accurately to represent the goods actually received or that the carrier, master or agent has had no reasonable means of checking.

4. Such a bill of lading is *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs 3 (a), (b) and (c), but proof to the contrary is not admissible if the bill of lading has been transferred to a third party acting in good faith.

5. The shipper is taken to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by the shipper, and the shipper must indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to the indemnity in no way limits the carrier's responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage is given in writing to the carrier or the carrier's agent at the port of discharge:

- (a) if the loss or damage is apparent—before or at the time of the removal of the goods into the custody of the person entitled to delivery under the contract of carriage; or
- (b) if the loss or damage is not apparent—within 3 days after such removal;

the removal is *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

SCHEDULE 1—continued

If the loss or damage is not apparent, the notice must be given within 3 days of the delivery of the goods.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6A, the carrier and the ship are in any event to be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage, the carrier and the receiver must give all reasonable facilities to each other for inspecting and tallying the goods.

6A. An action for indemnity against a third person may be brought even after the expiration of the year provided for in paragraph 6 if it is brought within the time allowed by the law of the Court seized of the case. However, the time allowed is to be not less than 3 months, commencing from the day when the person bringing the action for indemnity has settled the claim or has been served with process in the action against the person.

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 must, if the shipper so demands, be a “shipped” bill of lading, provided that if the shipper has previously taken up any document of title to the goods, the shipper must 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 this Article, the document of title is, for the purpose of this Article, taken to constitute a “shipped” bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, is null and void and of no effect.

A benefit of insurance in favour of the carrier or similar clause is taken to be a clause relieving the carrier from liability.

SCHEDULE 1—continued

Article 4

Rights and immunities

1. Neither the carrier nor the ship is liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article 3.

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

2. Neither the carrier nor the ship is responsible for loss or damage arising or resulting from any of the following:

- (a) an act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship;
- (b) fire, unless caused by the actual fault or privity of the carrier;
- (c) perils, dangers and accidents of the sea or other navigable waters;
- (d) an act of God;
- (e) an act of war;
- (f) an act of public enemies;
- (g) the arrest or restraint of princes, rulers or people, or seizure under legal process;
- (h) quarantine restrictions;
- (i) an act or omission of the shipper or owner of the goods, or the shipper's or owner's agent or representative;
- (j) strikes or lock-outs, or a stoppage or restraint of labour, from whatever cause, whether partial or general;
- (k) riots and civil commotions;
- (l) saving or attempting to save life or property at sea;
- (m) wastage in bulk or weight or any other loss or damage arising from an inherent defect, quality or vice of the goods;
- (n) insufficiency of packing;
- (o) insufficiency or inadequacy of marks;
- (p) latent defects not discoverable by due diligence;
- (q) any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof is on the person

SCHEDULE 1—continued

claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper is not responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, or the shipper's agents or servants.

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

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship in any event is or is to become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable is to be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

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

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in the article of transport is taken to be the number of packages or units for the purpose of this paragraph so far as these packages or units are concerned. Except for the purposes of this subparagraph, the article of transport is to be considered the package or unit.

(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in subparagraph (a) of this paragraph are to be converted into Australian currency on the basis of the value of the currency on a date to be determined by the law of the Court seized of the case.

The value of Australian currency, in terms of the Special Drawing Right, is to be calculated in accordance with the method of valuation applied by the International Monetary

SCHEDULE 1—continued

Fund in effect at the date in question for its operation and transactions.

- (e) Neither the carrier nor the ship is entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- (f) The declaration mentioned in subparagraph (a) of this paragraph, if embodied in the bill of lading, is *prima facie* evidence, but is not binding or conclusive on the carrier.
- (g) By agreement between the carrier, master or agent of the carrier and the shipper, maximum amounts other than those mentioned in subparagraph (a) of this paragraph may be fixed, but no maximum amount so fixed is to be less than the appropriate maximum mentioned in that subparagraph.
- (h) Neither the carrier nor the ship is to be responsible in any event for loss or damage to, or in connection with, goods if the nature or value of the goods has been knowingly mis-stated by the shipper in the bill of lading.

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

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

Article 4A

Application of defences and limits of liability

- 1. The defences and limits of liability provided for in these Rules apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action is founded in contract or in tort.
- 2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), the servant or agent is entitled to the benefit of the defences and limits of liability that the carrier is entitled to invoke under these Rules.
- 3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, must in no case exceed the limit provided for in these Rules.

SCHEDULE 1—continued

4. Nevertheless, a servant or agent of the carrier is not entitled to the benefit of the provisions of this Article if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

Article 5**Surrender of rights and immunities, and increase of responsibilities and obligations**

A carrier is at liberty to surrender in whole or in part all or any of the carrier's rights and immunities or to increase any of the carrier's responsibilities and obligations under these Rules, but the surrender or increase must be embodied in the bill of lading issued to the shipper.

The provisions of these Rules do not apply to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they must comply with the terms of these Rules. Nothing in these Rules prevents the insertion in a bill of lading of any lawful provision regarding general average.

Article 6**Special conditions**

Notwithstanding the provisions of the preceding Articles, a carrier, a master or agent of the carrier, and a shipper are, in regard to any particular goods, at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for the goods, and as to the rights and immunities of the carrier in respect of the goods, or the carrier's obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of the carriers, servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, but only if:

- (a) no bill of lading has been or will be issued; and
- (b) the terms agreed are embodied in a receipt that is a non-negotiable document and has been marked as such.

Any agreement so entered into has full legal effect.

This Article does not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried, or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

Article 7**Limitation on the application of the Rules**

Nothing in these Rules prevents a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss

SCHEDULE 1—continued

or damage to or in connection with the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

Article 8

Limitation of liability

These Rules do not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article 9

Liability for nuclear damage

These Rules do not affect the provisions of any international convention or Australian law (including any law of a State or Territory) governing liability for nuclear damage.

SCHEDULE 2

Section 12

THE HAMBURG RULES**PART 1—GENERAL PROVISIONS****Article 1****Definitions**

In these Rules:

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:

(a) live animals; and

(b) where:

(i) the goods are packed, or are consolidated in a container, pallet or similar article of transport; and

(ii) the article of transport, or packaging, is supplied by the shipper;

the article of transport, or packaging.

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 that involves carriage by sea and also carriage by some other means is taken to be a contract of carriage by sea for the purposes of these Rules only in so far as it relates to the carriage by sea.

7. **“Bill of lading”** means a document that 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.

SCHEDULE 2—continued

8. **“Writing”** includes a telegram and a telex.

Article 2

Scope of application

1. The provisions of these Rules are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

2. The provisions of these Rules are not applicable to charterparties. However, where a bill of lading is issued under a charterparty, the provisions of these Rules 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.

3. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of these Rules apply to each shipment. However, where a shipment is made under a charterparty, the provisions of paragraph 2 of this Article apply.

Article 3

Interpretation of the Rules

In the interpretation and application of the provisions of these Rules, regard is to be had to their international character and to the need to promote uniformity.

PART 2—LIABILITY OF THE CARRIER

Article 4

Period of responsibility

1. The responsibility of the carrier for the goods under these Rules covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

2. For the purpose of paragraph 1 of this Article, the carrier is taken to be in charge of the goods:

- (a) from the time the carrier has taken over the goods from:

(i) the shipper, or a person acting on the shipper's behalf;
or

(ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment; and

- (b) until the time the carrier has delivered the goods:

(i) by handing over the goods to the consignee; or

(ii) in cases where the consignee does not receive the goods from the carrier—by placing them at the disposal of the consignee in accordance with the contract, or with the

SCHEDULE 2—continued

law, or with the usage of the particular trade, applicable at the port of discharge; or

- (iii) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

3. In paragraphs 1 and 2 of this Article, references to the carrier or to the consignee mean, in addition to the carrier or the consignee, the servants or agents (respectively) of the carrier or the consignee.

Article 5**Basis of liability**

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence that caused the loss, damage or delay took place while the goods were in the carrier's charge as defined in Article 4, unless the carrier proves that the carrier, or the carrier's servants or agents, took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by Article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this Article.

4. (a) The carrier is liable:

- (i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, or the carrier's servants or agents; and
 - (ii) for such loss, damage or delay in delivery as is proved by the claimant to have resulted from the fault or neglect of the carrier, or the carrier's servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.
- (b) In the case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report must be made available on demand to the carrier and the claimant.

SCHEDULE 2—continued

5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that the carrier has complied with any special instructions given to the carrier by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, or the carrier's servants or agents.

6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

7. Where fault or neglect on the part of the carrier, or the carrier's servants or agents, combines with another cause to produce loss, damage or delay in delivery, the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery that is not so attributable.

Article 6

Limits of liability

1. (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of Article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(b) The liability of the carrier for delay in delivery according to the provisions of Article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.

(c) In no case is the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, to exceed the limitation that would be established under subparagraph (a) of this paragraph for total loss of the goods with respect to which such liability was incurred.

2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 (a) of this Article, the following rules apply:

(a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport, are taken to be packages or shipping units. Except for the

SCHEDULE 2—continued

purposes of this subparagraph, the goods in such article of transport are considered one shipping unit.

(b) Where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

3. In this Article, “**unit of account**” means the unit of account mentioned in Article 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

Article 7**Application to non-contractual claims**

1. The defences and limits of liability provided for in these Rules apply in any action against the carrier in respect of loss or damage to the goods covered by the contract of carriage by sea, as well as in respect of delay in delivery, whether the action is founded in contract, in tort or otherwise.

2. If such an action is brought against a servant or agent of the carrier, the servant or agent, if proven by the servant or agent to have acted within the scope of the servant's or agent's employment, is entitled to the benefit of the defences and limits of liability that the carrier is entitled to invoke under these Rules.

3. Except as provided in Article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this Article is not to exceed the limits of liability provided for in these Rules.

Article 8**Loss of right to limit responsibility**

1. The carrier is not entitled to the benefit of the limitation of liability provided for in Article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provisions of paragraph 2 of Article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in Article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

SCHEDULE 2—continued

Article 9

Deck cargo

1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.

2. If the carrier and the shipper have agreed that the goods must or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect. In the absence of such a statement, the carrier has the burden of proving that an agreement for carriage on deck has been entered into, and the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this Article or where the carrier may not under paragraph 2 of this Article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of Article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of the carrier's liability is to be determined in accordance with the provisions of Article 6 or Article 8 of these Rules, as the case may be.

4. Carriage of goods on deck contrary to express agreement for carriage under deck is taken to be an act or omission of the carrier within the meaning of Article 8.

Article 10

Liability of the carrier and actual carrier

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not pursuant to a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of these Rules. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of the actual carrier's servants and agents acting within the scope of their employment.

2. All the provisions of these Rules governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by the actual carrier. The provisions of paragraphs 2 and 3 of Article 7 and of paragraph 2 of Article 8 apply if an action is brought against a servant or agent of the actual carrier.

SCHEDULE 2—continued

3. Any special agreement under which the carrier assumes obligations not imposed by these Rules or waives rights conferred by these Rules affects the actual carrier only if agreed to by the actual carrier expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.

5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents is not to exceed the limits of liability provided for in these Rules.

6. Nothing in this Article prejudices any right of recourse as between the carrier and the actual carrier.

Article 11**Through carriage**

1. Notwithstanding the provisions of paragraph 1 of Article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence that takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of Article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

2. The actual carrier is responsible in accordance with the provisions of paragraph 2 of Article 10 for loss, damage or delay in delivery caused by an occurrence that takes place while the goods are in the actual carrier's charge.

PART 3—LIABILITY OF THE SHIPPER**Article 12****General rule**

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, or the shipper's servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on the servant's or agent's part.

SCHEDULE 2—continued

Article 13

Special rules on dangerous goods

1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.

2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform the carrier or actual carrier of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and the carrier or actual carrier does not otherwise have knowledge of their dangerous character:

- (a) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods; and
- (b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3. The provisions of paragraph 2 of this Article may not be invoked by any person if, during the carriage, the person has taken the goods in the person's charge with knowledge of their dangerous character.

4. If, in cases where the provisions of subparagraph (b) of paragraph 2 of this Article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of Article 5.

PART 4—TRANSPORT DOCUMENTS

Article 14

Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in the carrier's or actual carrier's 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 to be taken 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.

SCHEDULE 2—continued

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 being 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 the carrier's behalf;
- (k) the freight to the extent payable by the consignee, or other indication that freight is payable by the consignee;
- (l) the statement referred to in paragraph 3 of Article 23;
- (m) the statement, if applicable, that the goods must 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;
- (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 shipper's demand for a "shipped" bill of lading if, as

SCHEDULE 2—continued

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 or pieces, weight or quantity of the goods that the carrier or other person issuing the bill of lading on the carrier’s 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 the carrier or other person had no reasonable means of checking such particulars, the carrier or 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 the carrier’s behalf fails to note on the bill of lading the apparent condition of the goods, the carrier or other person is taken 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.

4. A bill of lading that does not, as provided in subparagraph (k) of paragraph 1 of Article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is *prima facie* evidence that no freight or such demurrage is payable by the consignee. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

SCHEDULE 2—continued**Article 17****Guarantees by the shipper**

1. The shipper is taken to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by the shipper for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by the shipper. The right of the carrier to such indemnity in no way limits the carrier's liability under the contract of carriage by sea to any person other than the shipper.

2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on the carrier's behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee or agreement is valid as against the shipper unless the carrier or the person acting on the carrier's behalf, by omitting the reservation referred to in paragraph 2 of this Article, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper under paragraph 1 of this Article.

4. In the case of intended fraud referred to in paragraph 3 of this Article the carrier is liable, without the benefit of the limitation of liability provided for in these Rules, for the loss incurred by a third party, including a consignee, because the third party has acted in reliance on the description of the goods in the bill of lading.

Article 18**Documents other than bills of lading**

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

SCHEDULE 2—continued

PART 5—CLAIMS AND ACTIONS

Article 19

Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this Article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee.

3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

4. In the case of any actual or apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation is payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this Article to the actual carrier has the same effect as if it had been given to the carrier, and any notice given to the carrier has effect as if given to the actual carrier.

7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of Article 4, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, or the shipper's servants or agents.

8. For the purpose of this Article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is taken to have been given to the carrier, to the actual carrier or to the shipper, respectively.

SCHEDULE 2—continued**Article 20****Limitation of actions**

1. Any action relating to carriage of goods under these Rules is time-barred if judicial or arbitral proceedings have not been instituted within a period of 2 years.

2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

3. The day on which the limitation period commences is not included in the period.

4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the place where proceedings are instituted. However, the time allowed must not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against the person.

Article 21**Jurisdiction**

1. In judicial proceedings relating to carriage of goods under these Rules, the plaintiff, at the plaintiff's option, may institute an action in a court of competent jurisdiction (whether or not the court is in Australia) and within the jurisdiction of which is situated one of the following places:

- (a) the principal place of business or, in the absence thereof, the habitual residence of the defendant;
- (b) the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made;
- (c) the port of loading or the port of discharge;
- (d) any additional place designated for that purpose in the contract of carriage by sea.

2. (a) Notwithstanding the preceding provisions of this Article, an action may be instituted in the courts of any port or place in a country that is a Contracting State to the Hamburg Convention at which the carrying vessel or any other vessel of the same ownership may have

SCHEDULE 2—continued

been arrested in accordance with applicable rules of the law of that country and of international law. However, in such a case, at the petition of the defendant, the claimant must remove the action, at the claimant's choice, to one of the jurisdictions referred to in paragraph 1 of this Article for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgment that may subsequently be awarded to the claimant in the action.

(b) All questions relating to the sufficiency or otherwise of the security are to be determined by the court of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under these Rules may be instituted in a place not specified in paragraph 1 or 2 of this Article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of countries that are Contracting States to the Hamburg Convention for provisional or protective measures.

4. (a) Where an action has been instituted in a court competent under paragraph 1 or 2 of this Article or where judgment has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgment of the court before which the first action was instituted is not enforceable in the country in which the new proceedings are instituted.

(b) For the purpose of this Article the institution of measures with a view to obtaining enforcement of a judgment is not to be considered as the starting of a new action.

(c) For the purpose of this Article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with subparagraph (a) of paragraph 2 of this Article, is not to be considered as the starting of a new action.

5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, that designates the place where the claimant may institute an action, is effective.

Article 22

Arbitration

1. Subject to the provisions of this Article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under these Rules is to be referred to arbitration.

2. Where a charterparty contains a provision that disputes arising thereunder are to be referred to arbitration and a bill of lading issued pursuant to the charterparty does not contain a special annotation providing that such provision is binding upon the holder of the bill of

SCHEDULE 2—continued

lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings are, at the option of the claimant, to be instituted at one of the following places:

(a) a place in a country within whose territory is situated:

(i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or

(ii) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(iii) the port of loading or the port of discharge;

(b) any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal must apply the provisions of these Rules.

5. The provisions of paragraphs 3 and 4 of this Article are taken to be part of every arbitration clause or agreement, and any term of such a clause or agreement that is inconsistent with those paragraphs is null and void.

6. Nothing in this Article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

PART 6—SUPPLEMENTARY PROVISIONS**Article 23****Contractual stipulations**

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogates, directly or indirectly, from the provisions of these Rules. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of the goods in favour of the carrier, or any similar clause, is null and void.

2. Notwithstanding the provisions of paragraph 1 of this Article, a carrier may increase the carrier's responsibilities and obligations under these Rules.

3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of these Rules that nullify any

SCHEDULE 2—continued

stipulation derogating therefrom to the detriment of the shipper or the consignee.

4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present Article, or as a result of the omission of the statement referred to in paragraph 3 of this Article, the carrier must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of these Rules for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising the claimant's right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the place where proceedings are instituted.

Article 24

General average

1. Nothing in these Rules prevents the application of provisions in the contract of carriage by sea or Australian law (including any law of a State or Territory) regarding the adjustment of general average.

2. With the exception of Article 20, the provisions of these Rules relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

Article 25

Effect on international conventions etc.

1. These Rules do not modify the rights or duties of the carrier, the actual carrier and their servants and agents, provided for in international conventions or Australian law (including any law of a State or Territory) relating to the limitation of liability of owners of seagoing ships.

2. The provisions of Articles 21 and 22 do not prevent the application of the mandatory provisions of any multilateral convention already in force at the date of the Hamburg Convention (being 31 March 1978) relating to matters dealt with in those Articles, provided that the dispute arises exclusively between parties having their principal place of business in countries that are members of the first-mentioned convention. However, this paragraph does not affect the application of paragraph 4 of Article 22 of these Rules.

3. No liability arises under the provisions of these Rules for damage caused by a nuclear incident if the operator of a nuclear installation is liable for the damage:

SCHEDULE 2—continued

- (a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage; or
- (b) by virtue of Australian law (including any law of a State or Territory) governing the liability for the damage, provided that the law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.

4. No liability arises under the provisions of these Rules for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or Australian law (including any law of a State or Territory) relating to the carriage of passengers and their luggage by sea.

5. Nothing contained in these Rules prevents the application of any other international convention that is already in force at the date of the Hamburg Convention (being 31 March 1978), and that applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

Article 26**Unit of account**

The unit of account referred to in Article 6 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 6 are to be converted into Australian currency according to the value of the currency at the date of judgment or the date agreed upon by the parties. The value of the Australian currency, in terms of the Special Drawing Right, is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions.

NOTES

- 1. No. 136, 1974, as amended. For previous amendments, see No. 19, 1979; No. 141, 1987; and No. 25, 1989.
- 2. No. 22, 1924, as amended. For previous amendments, see No. 216, 1973; and No. 101, 1979.

**9 780644 207058**