

SCHEDULE

THE HAMBURG RULES - 1978

UNITED NATIONS CONVENTIONS ON THE CARRIAGE

OF GOODS BY SEA, 1978

PART 1

GENERAL PROVISIONS

ARTICLE 1

DEFINITIONS

In this Decree the following expressions have the meanings hereby assigned to them respectively, that is to say -

(a) "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a Shipper.

(b) "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.

(c) "Shipper" means any person by whom or in whose name or on whose behalf a contract 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.

(d) "Consignee" means the person entitled to take delivery of the goods.

(e) "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.

(f) "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 some other means is deemed to be a contract of carriage by sea for the purpose of this Convention only in so far as it relates to the carriage by sea.

(g) "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.

(h) "Writing" includes, inter alia, telegram, and telex.

(i) "Convention" means the United Nations Convention on the carriage of Goods by Sea, 1978 otherwise known as "The

Hamburg  
Rules".

- (j) "Contracting States" means countries which have consented to be bound by these rules and for these rules are in force.

## ARTICLE 2

### SCOPE OF APPLICATION

- 1 The provisions of these Rules 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 these Rules to govern the contract.
- 2 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.

3 The provisions of these Rules are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the 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.

4 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 charter-party, the provisions of para 3 of this article apply.

### ARTICLE 3

#### INTERPRETATION OF THE RULES

In the interpretation and application of the provisions of these Rules regard shall be had to its international character and to the need to promote uniformity.

#### PART II

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 part 1. of this Article, the Carrier is deemed to be in charge of the goods :

(a) from the time he has taken over the goods from :

(i) the Shipper, or a person acting on his behalf; or  
(ii) an authority or third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(b) Until the time he 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 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 part 1 and 2 of this Article, reference to the Carrier or to the Consignee means, in addition to the Carrier or the Consignee, the Servants or agents respectively of the Carrier of 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 which caused the loss, damage or delay took place while the goods were in his charge as defined in Article 4, unless the Carrier proves that he, his 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 when it would be reasonably required 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 para 2 of this Article.

4(a) The Carrier is liable:

(i) for loss 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,

his Servants or agents;

(ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the Carrier, his 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 case of fire on board the ship affecting the goods, if the claimant or the Carrier so deserves, 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 shall be made available on demand to Carrier and the claimant.

5 With respect to live animals, the Carrier is not liable for loss, damage or delay in delivery resulting from any special risk inherent in that kind of carriage, if the Carrier proves

that he has complied with any special instructions given to him by the Shipper respecting the animals and that in 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, his Servants or agents.

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

7 Where fault or neglect on the part of the Carrier, his 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 delivering is attributable to such fault or neglect, provided that the Carrier proves the amount of the loss, damage or delay in delivery not attributable thereto.

## 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 shall the aggregate liability of the Carrier, under both sub-paras (a) and (b) of this paragraph exceed the limitation which would be established under sub-para (2) 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 para 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 deemed packages or shipping unit. Except as aforesaid the goods in such Article of transport are deemed one shipping unit.

(b) In cases 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 Unit of account means the unit account mentioned in Article 26.

4 By agreement between the Carrier and the Shipper, limits of liability exceeding those provided for in para 1 may be fixed.

## ARTICLE 7

### APPLICATION TO NON-CONTRACTUAL CLAIMS

1 The defences and limits of liability provided for in these Rules apply to 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 if 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, such Servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which 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 para 2 of this Article shall not exceed the limit 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 provision of para 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 of omission of such 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.

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 shall 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 document the Carrier has the burden of proving that an agreement for carriage on deck has been entered into : however, 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 para 1 of this Article or where the Carrier may not under para 2 of this Article invoke an agreement for carriage on deck, the Carrier notwithstanding the provisions of para 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 his liability is to be determined in accordance with provisions of Article 6 or Article 8 of the Rules, as the case may be.

4 Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act of 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 in pursuance of 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 his 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 him. The provisions of paras 2 and 3 of Article 7 and para 2 of Article 8 apply if an action is brought against a Servant or Agent of the Carrier.

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 him 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 shall not exceed the limits of liability provided for in these Rules.

6 Nothing in this Article shall prejudice any right of recourse as between the Carrier and the Actual Carrier.

#### ARTICLE 11

##### THROUGH CARRIAGE

1 Notwithstanding the provisions of para 1 of Article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said 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 which 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 para 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 para 2 of Article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

### PART III

#### 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, his Servants or agents of the Shipper, his Servants or agents. Not 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 his part.

##### 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 him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the Shipper fails to do so and such 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 and compensation.

3       The provisions of para 2 of this Article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of the dangerous character.

4       If, in cases where the provisions of para 2, sub-para (b), 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 IV

TRANSPORT DOCUMENTS

ARTICLE 14

ISSUE OF BILL OF LADING

1 Where the Carrier or the Actual Carrier takes the goods in his charge, the Carrier must, on demand by 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 in consistent with the law of the country where the bill of lading is issued.

ARTICLE 15

CONTENT 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 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 the 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 para 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 port of discharge if expressly agreed upon between the parties; and
- (o) any increased limit or limits of liability where agreed in accordance with para 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 para 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 amended, such document includes all the information required to the 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 characters of the document as a bill of lading provided that it nevertheless meets the requirement set out in parag of Article 1.

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 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 of which a reservation permitted under para 1 of this Article has been entered:

(a) the bill of lading is prima facie evidence of the taking over of 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 had acted in reliance on the description of the goods therein.

4 A bill of lading which does not, as provided in para 1 sub para (k) 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 him. 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.

## ARTICLE 17

### GUARANTEES BY THE SHIPPER

1 The Shipper is deemed 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 him for insertion on 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 him.

The right of Carrier to such indemnity in no way limits his 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 his 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 his behalf by omitting the reservation referred to in para 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 pursuant to para 1 of this Article.

4 In the case of intended fraud referred to in para 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 he has acted in reliance on the description of the goods in the bill of lading.

## ARTICLE 18

### DOCUMENTS OTHER THAN A BILL OF LADING

When 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.

## PART V

### 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 provision of para 1 of this Article apply correspondingly if notice in writing is not given within 15 consecutive days after the day which the goods were handed over to 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 shall be 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 him shall have the same effect as if it has been given to the Carrier, and any notice given to the Carrier shall have effect as if given to such 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 para 2 of Article 4 which ever 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, his 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 deemed to have been given to the Carrier, to the Actual Carrier or the Shipper, respectively.

## 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 two years.

2 The limitation period commences on the day on which the Carrier has delivered the goods or part thereof, 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 a state where proceedings are instituted.

However, the time allowed shall 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 himself.

## ARTICLE 21

### JURISDICTION

1 In judicial proceedings relating to carriage of goods under these Rules the plaintiff, at his option may institute an action in a court which, according to the law of the state where the court is situated, is competent and within the jurisdiction of which is situated one in the following places

- (a) the principal place of business or, in the absence of the defendant; or
- (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; or
- (c) the port of loading or the port of discharge; or
- (d) Any additional place designated for that purpose in the contract of carriage by sea.

2(a) Notwithstanding the preceding provision of this Article, an action may be instituted in the courts of any port or place in a contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that state and of international law. However in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in para 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 judgement that may subsequently be awarded to the claimant in the action.

(b) All questions relating to the sufficiency or other wise of the security shall 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 paras 1 or 2 of this Article. The provisions of this Paragraph do not constitute an obstacle to the jurisdiction of the contracting states for provisional or protective measures.

4(a) Where an action has been instituted in a court competent under paras 1 or 2 of this Article or where judgement has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgement 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 judgement 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 para 2 (a) 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 a carriage by sea has arisen, which 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 shall be referred to arbitration.

2 Where a charter-party contains a provision that disputes arising there under shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of 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 shall, at the option of the claimant, be instituted at one of the following places:

(a) a place in a state within whose territory is situated :-

in (i) the principal place of business of the defendant or, 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
- (ii) the port of loading or the port of discharge; or
- (b) any place designated for that purpose in the arbitration  
clause or agreement.

4 The arbitrator or arbitration tribunal shall apply these  
Rules

5 The provisions of paras 3 and 4 of this Article are deemed  
to  
be part of every arbitration clause or agreement, and any  
term  
of such clause or agreement which is inconsistent therewith  
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 VI

#### 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 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 para 1 of this Article, a  
Carrier may increase his 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 which nullify any 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 para 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 his 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 state where proceedings are instituted.

#### ARTICLE 24

##### GENERAL AVERAGE

- 1 Nothing in these Rules shall prevent the application of provisions in the contract of carriage by sea or national law 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

##### OTHER CONVENTIONS



Nothing contained in these Rules prevents a contracting state from applying any other International Convention which is already in force at the date of these Rules and which 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

### REVISION OF THE LIMITATION AMOUNT AND UNIT OF ACCOUNT

- 1 The unit of account referred to in Article 6 of these Rules is the Special Drawing Right as defined by the International Monetary Fund.
  
- 2 The unit of account and limits of liability referred to in Article 6 of these Rules may be review by the incorporation into Nigerian Laws any subsequent Protocols or amendments made to the Hamburg Rules 1978.

MADE IN ABUJA this - day of October 1997

By - Sani Ibrahim Abacha  
Head in State and Commander  
in Chief of the Armed Forces  
of Federal Republic of  
Nigeria.

#### EXPLANATORY NOTES

"This note does not form part of the above Decree but it  
is intended to explain the purpose"

This Decree incorporates the HAMBURG RULES, UNITED NATIONS  
CONVENTION on the Carriage of Goods by SEA; 1978, into Nigeria.  
Nigeria acceded to the Convention in November 1988 and the  
Convention came into force in November 1992 after the deposit of  
the 20th instrument of Ratification, Acceptance, Accession or  
Approval.