

附錄一

CMI RULES FOR ELECTRONIC BILLS OF LADING, 1990

CMI 電子提單規則

1. Scope of Application

These rules shall apply whenever the parties so agree.

1 · 適用範圍

本規則經當事方同意援用後適用。

2. Definitions

a. "Contract of Carriage" means any agreement to carry goods wholly or partly by sea.

b. "EDI" means Electronic Data Interchange, i. e. the interchange of trade data effected by teletransmission.

c. "UN/EDIFACT" means the United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport.

d. "Transmission" means one or more messages electronically sent together as one unit of dispatch which includes heading and terminating data.

e. "Confirmation" means a Transmission which advises that the content of a Transmission appears to be complete and correct, without prejudice to any subsequent consideration or action that the content may warrant.

f. "Private Key" means any technically appropriate form, such as a combination of numbers and/or letters, which the parties may agree for securing the authenticity and integrity of a Transmission.

g. "Holder" means the party who is entitled to the rights described in Article 7(a) by virtue of its possession of a valid Private Key.

h. "Electronic Monitoring System" means the device by which a computer system can be examined for the transactions that it recorded, such as a Trade Data Log or an Audit Trail.

i. "Electronic Storage" means any temporary, intermediate or permanent storage of electronic data including the primary and the back-up storage of such data.

2. 定 義

- a. “運送契約”：指任何全部或部分經由海上運送貨物的協定。
- b. “EDI”：指電子資料交換，即通過電訊傳輸進行貿易資料交換。
- c. “UN/EDIFACT”：指聯合國行政、商業、運輸電子資料交換規則。
- d. “傳輸”：指一個或一個以上的資訊，共同作為一個發送單位，透過電子傳輸，其中包括標題和結尾資料。
- e. “確認”：指一次傳輸，其傳輸內容看上去完整、正確，該傳輸內容所為之保證不會影響後續的考量或行為。
- f. “密碼”：指經當事方同意為確保傳輸的真實性和完整性而採用的任何技術上適當的方式，如一組數碼和/或字母。
- g. “持有人”：指享有根據本規則第 7 條 a 款所列權利並擁有有效密碼的一方。
- h. “電子監督系統”：指用於檢查電腦系統中所記載交易的設計，如貿易資料日誌或追蹤審核。
- i. “電子儲存”：指電子資料的臨時、中介的或永久性儲存，包括此資料的替代或原始儲存。

3. Rules of Procedure

- a. When not in conflict with these Rules, the Uniform Rules of Conduct for Interchange of Trade Data by Teletransmission, 1987 (UNCID) shall govern the conduct between the parties.
- b. The EDI under these Rules should conform with the relevant UN/EDIFACT standards. However, the parties may use any other method of trade data interchange acceptable to all of the users.
- c. Unless otherwise agreed, the document format for the Contract of Carriage shall conform to the UN Layout Key or compatible national standard for Bills of Lading.
- d. Unless otherwise agreed, a recipient of a Transmission is not authorised to act on a Transmission unless he has sent a Confirmation.
- e. In the event of a dispute arising between the parties as to the data actually transmitted, an Electronic Monitoring System may be used to verify the data received. Data concerning other transactions not related to the data in dispute are to be considered as trade secrets and thus not available for examination. If such

data are unavoidably revealed as part of the examination of the Electronic Monitoring System, they must be treated as confidential and not released to any outside party or used for any other purpose.

f. Any transfer of rights to the goods shall be considered to be private information, and shall not be released to any outside party not connected to the transport or clearance of the goods.

3 · 程序規則

- a · 在不與本規則衝突的情況下，1987年“電訊傳輸貿易資料交換行爲統一規則”將指導本規則當事方的行爲。
- b · 本規則項下的電子資料交換應符合聯合國行政、商業、運輸電子資料交換規則的有關標準。但是，當事方可使用爲所有用戶接受的任何其他商業資料交換方法。
- c · 除另有協定外，運送契約的文件格式應符合聯合國編排圖列表，或與此相仿的國內提單標準。
- d · 除另有協定外，一項傳輸的接收人除非在其接收後發回確認，否則無權根據該傳輸內容行事。
- e · 因當事方之間發生由於實際傳送資料所引起的爭議時，可利用電子監督系統證實接收的資料。有關爭議資料以外的、涉及其他交易的資料應視爲貿易機密不予提供檢查。由於作爲電子監督系統檢查的一部分而不可避免地暴露非爭議資料，當事方應信守機密，並不向外界披露或挪作它用。
- f · 任何貨物所有權的轉讓都應視爲私有情報，不應向與該貨物運輸或結關無關的任何其他方披露。

4. Form and Content of the Receipt Message

- a. The carrier, upon receiving the goods from the shipper, shall give notice of the receipt of the goods to the shipper by a message at the electronic address specified by the shipper.
- b. This receipt message shall include:
 - i. the name of the shipper;
 - ii. the description of the goods, with any representations and reservations, in the same tenor as would be required if a paper Bill of Lading were issued;
 - iii. the date and place of the receipt of the goods;
 - iv. a reference to the carrier's terms and conditions of carriage; and

v. the Private Key to be used in subsequent Transmissions.

The shipper must confirm this receipt message to the carrier, upon which Confirmation the shipper shall be the Holder.

c. Upon demand of the Holder, the receipt message shall be updated with the date and place of shipment as soon as the goods have been loaded on board.

d. The information contained in (ii), (iii) and (iv) of paragraph (b) above, including the date and place of shipment if updated in accordance with paragraph (c) of this Rule, shall have the same force and effect as if the receipt message were contained in a paper Bill of Lading.

4. 收訊的形式和內容

a. 運送人在接收到託運人提供的貨物之後，應按照託運人指示的電子位址給予託運人收到貨物的電訊通知。

b. 該收訖電訊應包括：

i. 託運人姓名；

ii. 貨物說明，包括聲明和保留，如同為簽發書面提單所要求的一樣；

iii. 接收貨物的地點和日期；

iv. 援引運送人的運送條款；和

v. 用於日後傳輸的密碼。

託運人必須向運送人確認收訖電訊，根據該確認電訊，託運人便成為持有人。

c. 根據持有人的要求，一旦貨物實際裝船，收訖電訊的地點和日期應及時更新。

d. 上述 b 款 (ii)、(iii) 和 (v) 中所含資訊，以及根據本規則 c 款所更新的裝運地和日期，應如同該收訖電訊系書面提單的一部分一樣具有效力。

5. Terms and Conditions of the Contract of Carriage

a. It is agreed and understood that whenever the carrier makes a reference to its terms and conditions of carriage, these terms and conditions shall form part of the Contract of Carriage.

b. Such terms and conditions must be readily available to the parties to the Contract of Carriage.

c. In the event of any conflict or inconsistency between such terms and conditions and these Rules, these Rules shall prevail.

5. 運送契約條款

- a. 業經同意和諒解，無論何時當運送人援引其運送條款時，該運送條款將成爲運送契約的一部分。
- b. 該條款必須能夠隨時提供給運送契約之當事人。
- c. 當該條款與本規則發生衝突或不一致時，適用本規則。

6. Applicable Law

The Contract of Carriage shall be subject to any international convention or national law which would have been compulsorily applicable if a paper Bill of Lading had been issued.

6. 適用法律

運送契約應受任何強制性的國際公約或國內法的規範，如同適用於簽發書面提單的情形一樣。

7. Right of Control and Transfer

a. The Holder is the only party who may, as against the carrier:

- (1) claim delivery of the goods;
- (2) nominate the consignee or substitute a nominated consignee for any other party, including itself;
- (3) transfer the Right of Control and Transfer to another party;
- (4) instruct the carrier on any other subject concerning the goods, in accordance with the terms and conditions of the Contract of Carriage, as if he were the holder of a paper Bill of Lading.

b. A transfer of the Right of Control and Transfer shall be effected: (i) by notification of the current Holder to the carrier of its intention to transfer its Right of Control and Transfer to a proposed new Holder, and (ii) Confirmation by the carrier of such notification message, whereupon (iii) the carrier shall transmit the information as referred to in Article 4 (except for the Private Key) to the proposed new Holder, whereafter (iv) the proposed new Holder shall advise the carrier of its acceptance of the Right of Control and Transfer, whereupon (v) the carrier shall cancel the current Private Key and issue a new Private Key to the new Holder.

c. If the proposed new Holder advises the carrier that it does not accept the Right of Control and Transfer or fails to advise the carrier of such acceptance within a reasonable time, the proposed transfer of the Right of Control and Transfer shall not take place. The carrier shall notify the current Holder accordingly and the current Private Key shall retain its validity.

d. The transfer of the Right of Control and Transfer in the manner described above shall have the same effect as the transfer of such rights under a paper Bill of Lading.

7. 支配和轉讓權

a. 持有人是唯一可以向運送人採取下列行動的一方：

i. 要求放貨；

ii. 指定收貨人或指定任何其他替換被指定的收貨人，包括持有人自己；

iii. 向另一方轉讓支配和轉讓權；

iv. 根據運送契約條款，對貨物的其他事項向運送人發出指示，如同一個書面提單持有人一樣。

b. 支配和轉讓權的轉讓按下列程式進行：

i. 由現持有人向運送人發出其意欲將支配和轉讓權轉讓給一新的持有人的通知；

ii. 由運送人確認該通知電訊，並據此

iii. 向預定的新持有人發送本規則第 4 條除密碼以外的所有資訊；之後

iv. 由預定的新持有人通知運送人接受擬被轉讓的支配和轉讓權；據此

v. 運送人銷毀現用密碼，並向新持有人發出一新的密碼。

c. 如果預定的新持有人通知運送人其不欲接受該支配和轉讓權，或在一合理時間內未能通知運送人其是否接受，那麼將不出現支配和轉讓權的轉讓。據此運送人應通知現持有人，同時現密碼仍保持有效性。

d. 按上述方法進行的支配和轉讓權的轉讓，應如同在書面提單項下轉讓權利一樣具有效力。

8. The Private Key

- a. The Private Key is unique to each successive Holder. It is not transferable by the Holder. The carrier and the Holder shall each maintain the security of the Private Key.
- b. The carrier shall only be obliged to send a Confirmation of an electronic message to the last Holder to whom it issued a Private Key, when such Holder secures the Transmission containing such electronic message by the use of the Private Key.
- c. The Private Key must be separate and distinct from any means used to identify the Contract of Carriage, and any security password or identification used to access the computer network.

8 · 密 碼

- a · 密碼對各個持有人各不相同。持有人不得轉讓密碼。運送人和持有人應各自保持密碼的安全性。
- b · 運送人只負責向最後一個他給予密碼的持有人發送確認的電子資訊，該持有人亦利用此密碼保證包括該項電子資訊的傳輸內容。
- c · 密碼必須獨立，並與任何用於鑒別運送契約的方法，和任何用於進入電腦網路的保密口令或識別相區別。

9. Delivery

- a. The carrier shall notify the Holder of the place and date of intended delivery of the goods. Upon such notification the Holder has a duty to nominate a consignee and to give adequate delivery instructions to the carrier with verification by the Private Key. In the absence of such nomination, the Holder will be deemed to be the consignee.
- b. The carrier shall deliver the goods to the consignee upon production of proper identification in accordance with the delivery instructions specified in paragraph (a) above; such delivery shall automatically cancel the Private Key.
- c. The carrier shall be under no liability for misdelivery if it can prove that it exercised reasonable care to ascertain that the party who claimed to be the consignee was in fact that party.

9 · 交 貨

- a · 運送人應將擬交貨的地點和日期通知持有人。根據該項通知，持有人有義務指定一收貨人，並給予運送人充分的交貨指示，並利用密碼加以核實。如無人被指定為收貨人，持有人本人將被視為收貨人。
- b · 如果運送人證明自己已合理克盡職責，核實自稱為收貨人的一方確係事實上的收貨人，那麼運送人對誤交不負責任。

10. Option to Receive a paper Document

- a. The Holder has the option at any time prior to delivery of the goods to demand from the carrier a paper Bill of Lading. Such documents shall be made available at a location to be determined by the Holder, provided that no carrier shall be obliged to make such document available at a place where it has no facilities and in such instance the carrier shall only be obliged to make the document available at the facility nearest to the location determined by the Holder. The carrier shall not be responsible for delays in delivering the goods resulting from the Holder exercising the above option.
- b. The carrier has the option at any time prior to delivery of the goods to issue to the Holder a paper Bill of Lading unless the exercise of such option could result in undue delay or disrupts the delivery of the goods.
- c. A Bill of Lading issued under Rules 10(a) or (b) shall include: (i) the information set out in the receipt message referred to in Rule 4 (except for the Private Key); and (ii) a statement to the effect that the Bill of Lading has been issued upon termination of the procedures for EDI under the CMI Rules for Electronic Bills of Lading. The aforementioned Bill of Lading shall be issued at the option of the Holder either to the order of the Holder whose name for this purpose shall then be inserted in the Bill of Lading or to bearer.
- d. The issuance of a paper Bill of Lading under Rule 10 (a) or (b) shall cancel the Private Key and terminate the procedures for EDI under these Rules. Termination of these procedures by the Holder or the carrier will not relieve any of the parties to the Contract of Carriage of their rights, obligations or liabilities while performing under the present Rules nor of their rights, obligations or liabilities under the Contract of Carriage.
- e. The Holder may demand at any time the issuance of a print-out of the receipt message referred to in Rule 4 (except for the Private Key) marked as "non-negotiable copy". The issuance of such a print-out shall not cancel the Private Key nor terminate the procedures for EDI.

10 · 要求書面單證的選擇

- a · 在交貨前的任何時候，持有人有向運送人索要書面提單的選擇。此份文件須在持有人指定的地點得以提供，除非在該地點運送人沒有提供這份文件的便利條件，在這種情況下運送人只負責在離持有人指定地點最近的，並有其便利條件的地點提供此份文件，由於持有人採用上述選擇而造成延遲交貨，運送人不負責任。
- b · 在交貨前任何時候，運送人有向持有人簽發書面提單的選擇，除非採用上述選擇會造成過分延遲交貨或擾亂交貨。
- c · 根據本規則第 10 條 a 或 b 款簽發的提單應包括 (i) 本規則第 4 條收訖電訊中 (除密碼外) 列明的事項；和 (ii) 聲明書面提單業已簽發，國際海事委員會電子提單規則項下的電子資料交換程式

也已終止。上述提單的簽發應根據持有人的選擇，或載明憑提單上指名的持有人指示，或載明交于持單人。

- d · 根據本規則第 10 條 a 或 b 款簽發的書面提單將銷毀密碼，並終止本規則上電子資料交換程式。持有人或運送人對該程式的終止並不解除運送契約任何一方根據本規則產生的權利、義務或責任，也不解除契約任何一方根據運送契約產生的權利，義務或責任。
- e · 持有人可在任何時候要求運送人按本規則第 4 條要求發送一份列印的收訖訊件（除密碼外），並加蓋“不可轉讓複件”字樣，發送該列印件並不銷毀密碼，亦不終止電子資料交換程式。

11. Electronic Data is Equivalent to Writing

The carrier and the shipper and all subsequent parties utilizing these procedures agree that any national or local law, custom or practice requiring the Contract of Carriage to be evidenced in writing and signed, is satisfied by the transmitted and confirmed electronic data residing on computer data storage media displayable in human language on a video screen or as printed out by a computer. In agreeing to adopt these Rules, the parties shall be taken to have agreed not to raise the defense that this contract is not in writing.

11 · 電子資料與書寫效力等同

運送人和託運人以及此後所有採用本程式的當事方均同意儲存於電腦媒體的、可用人類語言在螢幕上顯示或由電腦列印的業經傳輸和確認的電子資料，將滿足任何國內法或地方法、習慣或實踐規定運輸合同必須經簽署並以書面形式加以證明的要求。經採納上述規定，所有當事方將被認為業已同意不再提出契約非書面形式的抗辯。