

The Rotterdam Rules and the Facilitation of Electronic Commerce

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COMITÉ MARITIME INTERNATIONAL

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Article 3

Form requirements

The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (b), (c) and (d); 40, subparagraph 4 (b); 44; 48, paragraph 3; 51, subparagraph 1 (b); 59, paragraph 1; 63; 66; 67, paragraph 2; 75, paragraph 4; and 80, paragraphs 2 and 5, shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is **with the consent** of the person by which it is communicated and of the person to which it is communicated.

Article 8

Use and effect of electronic transport records

Subject to the requirements set out in this Convention:

- (a) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is **with the consent** of the carrier and the shipper; and
- (b) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

Article 35

Issuance of the transport document or the electronic transport record

Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, **at the shipper's option**:

- (a) A non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record; or
- (b) An appropriate negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.

Article 10

Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and **the carrier and the holder agree** to replace that document by a negotiable electronic transport record:
 - (a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;
 - (b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and
 - (c) The negotiable transport document ceases thereafter to have any effect or validity.

Article 10

Replacement of negotiable transport document or negotiable electronic transport record

2. If a negotiable electronic transport record has been issued and **the carrier and the holder agree** to replace that electronic transport record by a negotiable transport document:
 - (a) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and
 - (b) The electronic transport record ceases thereafter to have any effect or validity.



Article 1

Definitions



17. “Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.

18. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:
 - (a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and
 - (b) Evidences or contains a contract of carriage.

Article 1

Definitions

10. “Holder” means:

- (a) A person that is in possession of a negotiable transport document; and (i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or (ii) if the document is a blank endorsed order document or bearer document, is the bearer thereof; or
- (b) The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in article 9, paragraph 1.**

Article 1

Definitions

19. “Negotiable electronic transport record” means an electronic transport record:
- (a) That indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and
 - (b) The use of which meets the requirements of article 9, paragraph 1.**

Article 1

Definitions

21. The “issuance” of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to **exclusive control** from its creation until it ceases to have any effect or validity.

22. The “transfer” of a negotiable electronic transport record means the transfer of **exclusive control** over the record.

Article 9

Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record shall be subject to procedures that provide for:
 - (a) The method for the issuance and the transfer of that record to an intended holder;
 - (b) An assurance that the negotiable electronic transport record retains its integrity;
 - (c) The manner in which the holder is able to demonstrate that it is the holder; and
 - (d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs 1 (a) (ii) and (c), the electronic transport record has ceased to have any effect or validity.
2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.



Article 38

Signature

1. A transport document shall be signed by the carrier or a person acting on its behalf.
2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.



Back-up Plan

Article 50

Exercise and extent of right of control

1. The right of control may be exercised only by the controlling party and is limited to:
 - (a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;
 - (b) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and
 - (c) The right to replace the consignee by any other person including the controlling party.
2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.



Article 51

Identity of the controlling party and transfer of the right of control



1. Except in the cases referred to in paragraphs 2, 3 and 4 of this article:
 - (a) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;
 - (b) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and
 - (c) The controlling party shall properly identify itself when it exercises the right of control.

Article 51

Identity of the controlling party and transfer of the right of control

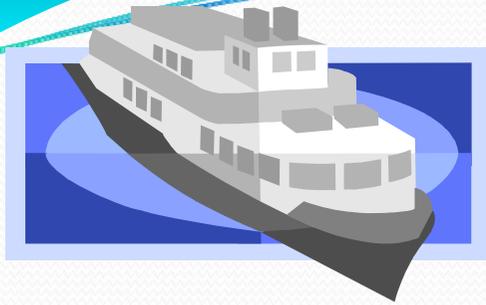
4. When a negotiable electronic transport record is issued:
 - (a) The holder is the controlling party;
 - (b) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9, paragraph 1; and
 - (c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder.

Article 54

Variations to the contract of carriage

1. The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 50, subparagraphs 1 (b) and (c).
2. Variations to the contract of carriage, including those referred to in article 50, subparagraphs 1 (b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender, or incorporated in a negotiable electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If so stated or incorporated, such variations shall be signed in accordance with article 38.





Article 56

Variation by agreement

The parties to the contract of carriage may vary the effect of articles 50, subparagraphs 1 (b) and (c), 50, paragraph 2, and 52. The parties may also restrict or exclude the transferability of the right of control referred to in article 51, subparagraph 1 (b).

Article 57

When a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:
 - (a) Duly endorsed either to such other person or in blank, if an order document; or
 - (b) Without endorsement, if:
 - (i) a bearer document or a blank endorsed document; or
 - (ii) a document made out to the order of a named person and the transfer is between the first holder and the named person.
2. When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9, paragraph 1.

Article 58

Liability of holder

1. **Without prejudice to article 55, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.**
2. A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.
3. For the purposes of paragraphs 1 and 2 of this article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:
 - (a) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or
 - (b) It transfers its rights pursuant to article 57.