

# 1990 年國際海事法委員會電子載貨證券規則

1990 年 6 月 29 日 巴黎 (第 34 屆大會通過)

## 1990 CMI RULES FOR ELECTRONIC BILLS OF LADING

29th June 1990 Paris

### 1990 CMI-EBL

#### 1. Scope of Application

These rules shall apply whenever the parties so agree.

#### 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.

#### 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.

#### 1. 適用範圍

本規則經當事人同意援用後適用。

#### 2. 定義

- a. 「運送契約」係指全部或一部經由海上為貨物運輸之協議。
- b. 「EDI」係指電子數據交換，亦即透過電訊傳輸進行貿易數據交換。
- c. 「UN/EDIFACT」係指聯合國行政、商業、運輸電子數據交換規則。
- d. 「傳輸」係指一或一以上的電子數據透過電子傳輸作為一發送單元共同向外傳遞，包括該數據之標題及結尾。
- e. 「確認」係指某傳輸內容呈現上已完整及正確，而無損及該內容所擔保之任何對價或作為。
- f. 「密碼」係指經當事人同意為確保傳輸之真實性及完整性而採用之任何技術上適當之方式，如一組數碼及/或字母。
- g. 「訊息持有人」係指享有依據本規則第7條a項所列權利並擁有有效密碼人。
- h. 「電子監控系統」係指用於檢查電腦系統中所記載的交易手段，如貿易數據日誌或序號審核。
- i. 「電子儲存」係指電子數據的臨時、暫時或永久性儲藏，包括此數據之替代或原始儲藏。

#### 3. 程序規則

- a. 於不與本規則衝突之情況下，1987年「電訊傳輸貿易數據交換行為統一規則」應規範本規則當事人間之作

- 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.

#### 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.
  - (vi) 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.

#### 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

- 為。
- b. 本規則下之電子數據交換應符合聯合國行政、商業、運輸電子數據交換規則之有關標準。然當事人仍可使用為所有用戶接受之任何其他商業數據交換方法。
- c. 除另有協議外，運送契約之文件格式應符合聯合國編排圖例表，或與此相仿的各國載貨證券標準。
- d. 除另有協議外，任一項傳輸之接收人，除其於接收後發回確認，否則無權依據該傳輸內容行事。
- e. 因當事人間發生因實際傳送數據所引起的爭議時，可利用電子監控系統予以確認接收之數據。有關爭議數據外，涉及其他交易之數據應視為貿易機密而不予提供檢查。因作為電子監控系統檢查之一部分而不可避免地暴露非爭議數據時，當事人應信守機密，不向外界披露或挪作它用。
- f. 任何貨物所有權之轉讓都應視為私有情報，不應向與該貨物運輸或結關無關之任何其他人士披露。

#### 4. 訊息接收之形式及內容

- a. 運送人於接收到託運人提供之貨物後，應依照託運人所說明之電子地址給予託運人一接收貨物之電訊通知。
- b. 該收訖電訊應包括：
  - (i) 託運人姓名；
  - (ii) 貨物說明，包括如同為簽發一書面載貨證券所需一樣之說明及保留；
  - (iii) 接收貨物之地點及日期；
  - (iv) 所引用之運送人運送條款；
  - (v) 用於日後傳輸之密碼。
  - (vi) 託運人必須向運送人確認收訖電訊，依據該確認電訊，託運人便成為持有人。
- c. 依據持有人之請求，於貨物實際裝船時，收訖電訊之地點及日期應及時更新。
- d. 上述 b 項(ii)、(iii)及(v)款所包含之訊息，以及依據本規則 c 項所更新之裝運地及日期應如同該收訖電訊係屬書面載貨證券之一部分般，具有同等效力。

#### 5. 運送契約條款

- a. 業經同意及瞭解，無論何時當運送人主張其運送條款時，該運送條款即應成為運送契約之一部分。
- b. 該條款必須能夠隨時提供給運送契

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.

## 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.

## 7. Right of Control and Transfer

- a. The Holder is the only party who inlay, 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 effects as the transfer of such rights under a paper bill of lading.

## 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.

約當事人。  
c. 當該條款與本規則有所衝突或不一致時，本規則應優先適用。

## 6. 準據法

如同已簽發書面載貨證券一般，運送契約應受任何具強制性之國際公約或國內法之拘束。

## 7. 控制及轉讓之權利

- a. 持有人是唯一可向運送人採取下列作為之一方：
- (1) 請求貨物之交付；
  - (2) 指定受貨人或指定任何其他替換被指定之受貨人，包括持有人自己；
  - (3) 向另一人轉讓控制及轉讓權；
  - (4) 如同一書面載貨證券持有人般，依據運送契約條款，對貨物之其他事項向運送人為指示。
- b. 控制及轉讓權之轉讓應依照下列程序進行：
- (i) 由現持有人向運送人發出其意欲將控制及轉讓權轉讓給一新的持有人之通知；
  - (ii) 由運送人確認該通知電訊，並據此
  - (iii) 向被建議之新持有人發送本規則第 4 條除密碼以外之所有資訊；之後
  - (iv) 由被建議之新持有人通知運送人接受擬被轉讓之控制及轉讓權；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. 如被建議之新持有人通知運送人其不欲接受該控制及轉讓權，或於一合理時間內未能通知運送人其是否接受，則不應為控制及轉讓權之轉讓，據此運送人應通知現持有人，同時現密碼仍保持其效力。
- d. 依前述方法進行之控制及轉讓權之轉讓應如同於書面載貨證券下轉讓權利般，具有同等效力。

## 8. 密碼

- a. 密碼對各個持有人應各不相同。持有人不得轉讓密碼。運送人及持有人應各自維護保持密碼之安全性。
- b. 運送人只負責向最後一個給予密碼的持有人發送確認之電子資訊，該持有人亦利用此密碼確保包括該項電子資訊之傳輸內容。

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.

## 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 mis-delivery 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.

## 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 document 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.

c. 密碼必須獨立，並與任何用於鑒別運送契約之方法，及任何用於進入電腦網路之保密密碼或識別碼相區別。

## 9. 交貨

- a. 運送人應將擬交貨之地點及日期通知持有人。依據該項通知，持有人有義務指定一受貨人，並給予運送人充分之交貨指示，並利用密碼加以核對確認。如無人被指定為受貨人，持有人本人將被視為受貨人。
- b. 運送人應依前a項之交貨指示，將貨物交付給提示適當身份證明之受貨人；該密碼於交貨後應自動取消。
- c. 如運送人證明其已合理克盡職責核實自稱為受貨人之一方確係事實上之受貨人，則運送人對誤交不負責任。

## 10. 要求書面單證之選擇權

- a. 於交貨前之任何階段，持有人有向運送人要求書面載貨證券之選擇權。該文件須於持有人指定之地點提供，然如運送人於該地點無提供該文件之便利條件，於此情況下，運送人僅負責於離持有人指定地點最近的並有其便利條件之地點提供該文件，因持有人行使前述選擇權而造成延遲交貨時，運送人不負責任。
- b. 於交貨前任何階段，運送人有向持有人簽發書面載貨證券之選擇權，然採用前述選擇權會造成過分延遲交貨或擾亂交貨者除外。
- c. 依據本規則第 10 條 a 或 b 項簽發之載貨證券應包括
  - (i) 本規則第 4 條收訖電訊中(除密碼外)所列明之事項；
  - (ii) 聲明書面載貨證券業已簽發，國際海事法委員會電子載貨證券規則項下之電子數據交換程序亦已終止。前述載貨證券之簽發應依據持有人之選擇權，或載明憑載貨證券上列名之持有人或待其指定之人之指示。
- d. 依據本規則第 10 條 a 或 b 項簽發之書面載貨證券時，應銷毀密碼，並終止本規則之電子數據交換程序。持有人或運送人對該程序之終止並不解除運送契約任何一方依據本規則所生之權利、義務或責任，亦不解除契約任一方依據運送契約所生之權利、義務或責任。

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.

e. 持有人得於任何時候要求運送人依本規則第4條要求發送一份列印之收訖訊息(除密碼外)，並加蓋“不可轉讓副本”字樣，發送該列印文件並不銷毀密碼，亦不終止電子數據交換程序。

## 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 defence that this contract is not in writing,

## 11. 電子數據與書寫效力等同

運送人及託運人以及此後所有採用本程序之當事人均同意載於電腦數據貯藏中之可用人類語言於螢幕上顯示或由電腦列印之業經傳輸及確認之電子數據將滿足任何國內法或地方法、習慣或實務規定運送契約必須經簽署並以書面形式加以證明之要求。經採納上述規定，所有當事人將被認為業已同意不再提出契約非書面形式之抗辯。

