

**UNIFORM ACT ON THE CONTRACT FOR THE  
CARRIAGE OF GOODS BY ROAD**



## TABLE OF CONTENTS

CHAPTER I SCOPE OF APPLICATION AND DEFINITIONS.....	573
Scope of application.....	573
Definitions.....	573
CHAPTER II CONTRACT OF CARRIAGE AND TRANSPORT DOCUMENTS FORMATION OF THE CONTRACT OF CARRIAGE .....	575
Consignment Note.....	575
The probative value of the consignment note .....	576
Customs Documents .....	576
CHAPTER III PERFORMANCE OF THE CONTRACT OF CARRIAGE PACKING OF THE GOODS.....	577
Particulars and Liability of the Sender .....	577
Period of Carriage .....	578
Taking over of the Goods.....	578
Right to dispose of the goods in transit.....	579
Inability to carry and deliver the goods .....	579
Delivery of the goods.....	580
Condition of the Goods and Delay in Delivery.....	581
Payment of the charges shown to be due on the consignment note .....	582
CHAPTER IV LIABILITY OF THE CARRIER BASIS OF LIABILITY .....	582
Exemption from Liability .....	583
Limits of Liability .....	584
Calculation of compensation.....	584
Extra-contractual liability .....	585
Loss of right of exemption and limitation of liability .....	585
Liability in case of combined transport .....	586
Liability in case of successive carriage.....	586

CHAPTER V DISPUTES - ACTIONS BETWEEN CARRIERS .....	586
Time-limit for claims and actions .....	587
Arbitration .....	587
Competent Jurisdiction in matters of inter-States Carriage .....	587
CHAPTER VI MISCELLANEOUS PROVISIONS NULLITY OF STIPULATIONS CONTRARY TO THE UNIFORM ACT .....	588
Currency conversion .....	588
CHAPTER VII TRANSITIONAL AND FINAL PROVISIONS .....	589

The Council of Ministers of the Organisation for the Harmonization of Business Law in Africa (OHADA),

- Considering the Treaty for the Harmonization of Business Law in Africa, in particular Article s 2, and 5-10 thereof;
- Considering the report by the Permanent Secretariat and the observations of the State Parties;
- Considering the opinion of the Common Court of Justice and Arbitration dated 17 December 2003;

Having deliberated thereon, adopt by unanimous vote of the State Parties present and voting, the Uniform Act set out below.

## **CHAPTER I SCOPE OF APPLICATION AND DEFINITIONS**

### **Scope of application**

#### **ARTICLE 1**

- 1- This Uniform Act shall apply to every contract for the carriage of goods by road, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are either situated in the territory of an OHADA State Party or on the territory of two different States, of which at least one is an OHADA Member. The Uniform Act shall apply irrespective of the place of residence and nationality of the parties to the contract of carriage.
- 2- The Uniform Act shall not apply to the carriage of dangerous goods, funeral consignments, furniture removal, or to carriage performed under the terms of any international postal conventions

### **Definitions**

#### **ARTICLE 2**

In this Uniform Act, the following words shall have the following meanings:

- a) “notice”: an oral or written notice, unless a provision in this Uniform Act requires a written notice or unless provided otherwise by the persons concerned ;
- b) “contract for the carriage of goods”: any contract under which a natural person or legal person called the carrier, undertakes, principally and in return for remuneration to convey by road

from one place to another , by means of a vehicle, goods entrusted to him by another person, known as the sender.

- c) “written document”: a series of letters, characters, figures or any other signs or symbols with a meaning, which are either put on paper or on a medium using information technologies.

Unless otherwise agreed by the persons concerned, the requirement for a written document is met whatever the medium and the method of transmission provided the integrity, stability and durability of the written document are guaranteed.

- d) the “consignment note” is the written document which confirms the contract for the carriage of goods.

- e) “goods”: any movable property;

- f) “dangerous goods ”: goods which, generally, given their composition or condition, present a risk to the environment, to the safety or integrity of persons or goods

- g) “furniture removal”: the carriage of used movable property from and to a residential premise or premises for professional, commercial, industrial, handicraft or administrative use, where the packing is done by the carrier and the movement does not constitute the principal service;

- h) “funeral consignment”: the carriage of the body of a deceased person;

- i) “successive carriage” : carriage in which several road carriers perform various stages of a single contract of carriage by road ;

- j) “combined transport” : carriage in which, for the purposes of performing one single contract of carriage , a road vehicle containing goods is carried over part of the journey, in or on a non road vehicle without transshipment;

- k) “carrier”: any natural or legal who undertakes to carry goods from the place of departure to the place designated for delivery, by means of a road vehicle;

- l) “vehicle”: any motorised road vehicle or any trailer or semi-trailer with a rear axle, with its front part resting on the towing vehicle, and which is designed to be hitched up to such a vehicle.

**CHAPTER II**  
**CONTRACT OF CARRIAGE AND TRANSPORT DOCUMENTS**  
**FORMATION OF THE CONTRACT OF CARRIAGE**

**ARTICLE 3**

A contract for the carriage of goods exists as soon as the sender and the carrier reach an agreement concerning the carriage of goods in consideration of an agreed price.

**Consignment Note**

**ARTICLE 4**

1- The consignment note shall contain:

- a) the date of the consignment note and the place at which it was drawn up;
- b) the name and address of the carrier;
- c) the names and addresses of the sender and of the consignee;
- d) the place and the date of taking over of the goods and the place designated for delivery;
- e) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognized description;
- f) the number of packages and their special marks and numbers;
- g) the gross weight of the goods or their quantity otherwise expressed;
- h) the requisite instructions for Customs and other formalities;
- i) charges relating to the carriage (carriage charges, supplementary charges, Customs duties and other charges incurred from the making of the contract to the time of delivery);

2- Where applicable, the consignment may contain:

- a) a statement that trans-shipment is not allowed;
- b) the charges which the sender undertakes to pay;
- c) the amount of “cash on delivery” charges;
- d) a declaration by the sender, against payment of a surcharge agreed upon, of the value of the goods or an amount representing special interest upon delivery;
- e) the sender’s instructions to the carrier regarding insurance of the goods;

- f) the agreed time limit within which the carriage is to be carried out; and
  - g) the grace period for the payment of vehicle immobilisation charges;
  - h) a list of the documents handed to the carrier.
- 3- The contracting parties may enter on the consignment note any other particulars which they deem useful.
- 4- The absence or irregularity of the consignment note or of particulars referred to in paragraphs 1 or 2 in this article , as well as the loss of the consignment note, shall not affect either the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Uniform Act.

### **The probative value of the consignment note**

#### **ARTICLE 5**

- 1- In the absence of proof to the contrary, the consignment note shall be prima facie evidence of the conditions of the contract and the taking over of the goods by the carrier.
- 2- The consignment note shall be made out in one original copy and at least two copies, and the number of copies shall be mentioned. The original copy shall be handed to the sender, one copy shall be retained by the carrier, and another copy shall accompany the goods to their destination.

### **Customs Documents**

#### **ARTICLE 6**

- 1- In inter-States carriage, for the purposes of Customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all useful information.
- 2- The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of the documents referred to in the above paragraph. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act on the part of the carrier.
- 3- The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent; provided that, the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.



**CHAPTER III**  
**PERFORMANCE OF THE CONTRACT OF CARRIAGE –**  
**PACKING OF THE GOODS**

**ARTICLE 7**

- 1- Unless provided otherwise in the contract or by trade usages, the sender shall pack the goods in an appropriate manner. He shall be liable to the carrier or to any other person whose services the carrier made use of for the performance of the contract of carriage, for damage to persons, equipment or other goods, as well as for any expenses incurred by reason of the defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.
- 2- If, at the time the goods are taken over, a defective packing which is apparent or known to the carrier presents an obvious risk to the safety or integrity of persons or goods, the carrier shall notify the person in charge of the packing, and invite him to remedy the defect. The carrier shall not be required to carry the goods if, following such notice, the defective packing is not remedied within a reasonable period of time, having regards to the circumstances of the case.
- 3- In the event of breakage of the packing during carriage, the carrier shall take the measure, which appear to him to be most appropriate in the interest of the person entitled to make a claim for any loss or damage caused thereby of the goods and shall inform him thereof. If the broken package or the goods it contains present a risk to the safety or integrity of persons or goods, the carrier may through appropriate means, immediately unload the goods on the account of the person entitled to make a claim for any loss or damage caused thereby and shall notify him thereof. After such unloading, the carriage shall then be deemed to be at an end. In such a case, the carrier shall hold the goods on behalf of the claimant. He may, however, entrust them to a third party, and shall then be liable only for the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.

**Particulars and Liability of the Sender**

**ARTICLE 8**

- 1- The sender shall furnish the carrier with the information and instructions referred to in Article 4, paragraph i (c) to (h) above, and, where applicable, those provided for in paragraph 2 of the same Article .
- 2- The sender shall be liable for any damage incurred by the carrier or by any other person whose services he makes use of for the performance of the contract of carriage, if the damage results either from inherent vice of the goods or from the omission, insufficiency or inaccuracy of the information furnished or instructions relating to the goods carried.
- 3- The sender, who hands goods of a dangerous nature to the carrier, and fails to inform him of the exact nature of the goods, shall be liable for any damage resulting from their carriage. In particular, the sender shall pay the storage costs and the expenses incurred by these goods,

and shall bear the risks thereof. The carrier may, through appropriate means and without compensation, unload, destroy or render harmless goods of a dangerous nature which he would not have accepted to take over had he known been aware of their nature or character.

- 4- The sender, who hands over documents, cash or goods of substantial value, without informing the carrier beforehand of the nature or value, shall be liable for any damage resulting from the carriage. The carrier shall not be under any duty to carry documents, cash or goods of substantial value. If he does carry them, he shall be liable for the loss thereof only if the nature or value of the goods was declared to him. A false declaration as to the nature or value of the goods shall relieve the carrier from any liability.

### **Period of Carriage**

#### **ARTICLE 9**

The carriage of goods covers the period from the taking over of the goods by the carrier with a view to carrying them, to the delivery of said goods.

### **Taking over of the Goods**

#### **ARTICLE 10**

- 1- On taking over the goods, the carrier shall check:
  - a) the accuracy of the particulars in the consignment note as to the number of packages and their marks and quantities; and
  - b) the apparent condition of the goods and their packaging.
- 2- Where the carrier has no reasonable means of checking the accuracy of the particulars referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note.
- 3- The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking from the sender. The result of the checks shall be entered in the consignment note.
- 4- If the carrier fails to enter his reservations in the consignment note, together with the reasons on which they are based, it shall be presumed that the goods and their packaging were in apparent good condition when the carrier took them over and that the number of packages, their marks and quantities corresponded to the statements in the consignment note.

## **Right to dispose of the goods in transit**

### **ARTICLE 11**

- 1- The sender has the right to dispose of the goods in transit, in particular by asking the carrier to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note.
- 2- The consignee shall, however, have the right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.
- 3- The exercise of the right of disposal shall be subject to the following conditions:
  - a) that the sender or, in the case referred to in paragraph 2 of this article , the consignee who wishes to exercise this right produces the original copy of the consignment note on which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions;
  - b) that the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out and does not either interfere with the normal working of the carrier's undertaking or prejudice the senders or consignees of other consignments;
  - c) that the instructions do not result in a division of the consignment.
- 4- When, by reason of the provisions of paragraph 3 b) of this article , the carrier cannot carry out the instructions which he receives, he shall immediately notify the person who gave him such instructions.
- 5- A carrier who has not carried out the instructions given under the conditions provided for in this article or who has carried them out without requiring the original copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.

## **Inability to carry and deliver the goods**

### **ARTICLE 12**

- 1- The carrier shall immediately notify and ask for instructions from:
  - a) the claimant if, before the goods reach the place designated for delivery, it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note;
  - b) the sender if, after the goods reach the place designated for delivery, for any reason and without any fault from the carrier, the carrier is unable to deliver the goods.

- 2- In the situation provided in paragraph 1 a) above, if circumstances are such as to allow the carriage to be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in reasonable time from the claimant, he shall take such steps as seem to him to be in the best interests of the said person.
- 3- If the delivery could not take place because the consignee neglected or refused to take delivery of the goods, the consignee may nevertheless require delivery so long as the carrier has not received instructions to the contrary.
- 4- The carrier shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act of the carrier.
- 5- With effect from the notification provided for in paragraph 1 above, the carrier may unload the goods on account of the claimant and thereupon the carriage shall be deemed to be at an end. The carrier shall thereafter hold the goods on behalf of the claimant, and shall be entitled to reasonable compensation for keeping or storing the goods. The carrier may, however, entrust the goods to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.
- 6- The carrier may sell the goods, without awaiting instructions, if the goods are perishable or their condition warrants such a course, or when the storage expenses would be out of proportion to the value of the goods. He may proceed to the sale of the goods in the other cases if he did not receive any instructions within fifteen days of the notice. The procedure in the case of sale shall be determined by the law or custom of the place where the goods are found. The proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the claimant. If these charges exceed the proceeds of sale, the carrier shall be entitled to the difference.

### **Delivery of the goods**

#### **ARTICLE 13**

- 1- The carrier is required to deliver the goods to the consignee at the place designated for delivery, and to hand him a copy of the consignment note accompanying the goods, against a receipt. Delivery must be done at the agreed time or, failing an agreed time-limit, within the time-limit it would be reasonable to require a diligent carrier to deliver, having regard to the circumstances of the case.
- 2- After arrival of the goods at the place designated for delivery, the carrier is required to notify the consignee of the arrival of the goods and of the time-limit for collecting them, unless the goods are delivered at the residence or place of business of the consignee.
- 3- Before taking delivery of the goods, the consignee shall pay the charges shown to be due on the consignment note, but in the event of dispute on this matter the carrier shall not be required to deliver the goods unless security has been furnished by the consignee.

- 4- Without prejudice to the rights and obligations of the sender, the consignee through his express or tacit acceptance of the goods or the contract of carriage, acquires the rights arising from the contract of carriage and may avail himself of them in his own name against the carrier. However, the carrier shall not indemnify both the sender and the consignee in respect of the same loss or damage.

### **Condition of the Goods and Delay in Delivery**

#### **ARTICLE 14**

- 1- When the carrier and the consignee agree on the condition of the goods at the time of delivery, they may draft a joint written statement. In such a case, evidence contradicting the result of this statement shall only be admissible in the case of loss or damage which is not apparent and provided that the consignee has duly sent a written notice mentioning the nature of the loss or damage to the carrier within seven days following the drafting of such joint statement, Sundays and public holidays excepted.
- 2- When there is no joint written statement on the condition of the goods at the time of delivery, the consignee shall send to the carrier a written notice indicating the nature of the loss or damage:
- a) not later than on the first business day following delivery in the case of apparent loss or damage; or
  - b) within seven days following the time of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent.
- 3- Failing a notice within the aforesaid time-limits, it shall be presumed that the goods were received in the condition described in the consignment note. Written indication of the loss or damage on the consignment note or on any other carriage documents at the time of delivery fulfils the notice requirements provided in this paragraph.
- 4- No compensation shall be payable for delay in delivery unless a written notice has been sent to the carrier, within twenty-one days following the date of the notice of arrival of the goods at the place designated for delivery, or, where applicable, the date of the arrival of the goods at the place of residence or place of business of the consignee where the goods are to be delivered there.

## **Payment of the charges shown to be due on the consignment note**

### **ARTICLE 15**

- 1- Unless provided otherwise on the consignment note, the charges shown to be due on the consignment note are payable by the Principal before delivery.
- 2- If the goods are not of the same kind as that described in the contract or if the value of the goods is higher than the declared value, the carrier shall be entitled to claim payment of the price he could otherwise have requested for such carriage.
- 3- In accordance with paragraph 3 of Article 13 above, the carrier shall be entitled to retain the carried goods until payment of the charges shown to be due on the consignment note. If the consignment note shows those charges are due by the consignee, the carrier who fails to claim payment thereof before delivery loses his right to claim payment from the Principal. Should the consignee refuse to pay, the carrier shall inform the Principal thereof and ask him for instructions.
- 4- The carrier shall have a lien on the goods carried in relation to any sum payable to him, provided there is a causal link between the goods carried and the sums due.

## **CHAPTER IV LIABILITY OF THE CARRIER BASIS OF LIABILITY**

### **ARTICLE 16**

- 1- The carrier shall deliver the goods at the place designated for delivery. The carrier shall be liable for damage to the goods or for the total or partial loss thereof occurring during the time of carriage, as well as for any delay in delivery.
- 2- Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time limit or, failing an agreed time-limit, within the time-limit it would be reasonable to allow a diligent carrier, having regard to the circumstances of the case.
- 3- The claimant may, without furnishing further proof, treat the goods as totally or partially lost, as the case may be, if they have not been delivered or have been only partially delivered thirty days after expiry of the agreed time limit for delivery or, if there is no agreed time limit, within, sixty days from the time the carrier took over the goods.
- 4- The carrier shall be responsible for the acts and omissions of his agents and servants and of any other persons whose services he makes use of for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

## Exemption from Liability

### ARTICLE 17

- 1- The carrier shall be relieved of liability if he proves that the loss, damage or delay was caused by a wrongful act or instruction by the claimant, inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.
- 2- The carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one or more of the following circumstances:
  - a) use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;
  - b) the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not properly packed or when not packed ;
  - c) handling, loading, stowage or unloading of the goods by the sender, the consignee or a person acting on behalf of the sender or the consignee;
  - d) the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage , especially through breakage, rust, decay, desiccation, leakage or normal wastage;
  - e) insufficiency or inadequacy of marks or numbers on the packages;
  - f) the carriage of livestock.
- 3- The carrier shall not be relieved of his liability by reason of the defective condition of the vehicle used to perform the carriage.
- 4- When the carrier proves that in the circumstances of the case, the loss or damage could be attributed to one or more of those special risks; it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks. The presumption shall not apply in the circumstances set out in paragraph 2 above if there has been an abnormal shortage, or a loss of any package.
- 5- If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of the exemption from liability provided in paragraph 2 d) above, unless he proves that all steps incumbent on him, having regard to the circumstances of the case, with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him.
- 6- The carrier shall not be entitled to claim the benefit of paragraph 2(f) of this article , unless he proves that all steps normally incumbent on him, having regard to the circumstances of the case, were taken and that he complied with any special instructions issued to him.

- 7- If the carrier is not liable in respect of some of the factors causing the loss, damage or delay, he shall only be liable to the extent that those factors for which he is liable have contributed to the damage.

### **Limits of Liability.**

#### **ARTICLE 18**

- 1- The compensation in respect of damage, or of total or partial loss of the goods, shall be calculated by reference to the value of the goods, and shall not exceed CFAF 5,000 per kilogram of gross weight of the goods. However, where the value of the goods or a special interest in delivery has been declared by the sender in the consignment note, the compensation for the loss suffered shall not exceed the amount declared.
- 2- If a declaration of a special interest in delivery has been made, compensation equivalent to the additional loss or damage proved may be claimed, up to the total amount of the special interest declared, independently of the compensation provided for in paragraph 1 above.
- 3- In the case of delay, independently of the compensation provided for in paragraph 1 of this article in respect of loss or damage to the goods, and if the claimant proves that additional loss or damage has resulted from such delay, the carrier shall pay compensation for such damage not exceeding the carriage charges.

### **Calculation of compensation**

#### **ARTICLE 19**

- 1- The value of the goods shall be fixed according to the current market price of goods of the same kind and quality at the place and time at which the goods were taken over by the carrier. For the purposes of calculating the compensation, the value of the goods shall also include the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods, which shall be refunded in full in case of total loss and in proportion to the loss sustained in case of damage or partial loss.
- 2- In case of damage, the carrier shall pay the amount by which the goods have depreciated, calculated by reference to the value of the goods. However, the compensation for damage may not, exceed:
  - a) the amount payable in the case of total loss, if the whole consignment has been depreciated by damage;
  - b) the amount payable in the case of loss of the depreciated part, if part only of the consignment has been damaged.



- 3- The claimant shall be entitled to claim interest on compensation payable. Such interest, calculated at five per cent per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which judicial proceedings were instituted or on which arbitration was requested.
- 4- In the event of inter-States carriage, when the amounts on which the calculation of the compensation is based are not expressed in CFA Francs, conversion shall be at the rate of exchange applicable on the day and at the place of payment of compensation or, where applicable, the date of the judgment or arbitral award.

### **Extra-contractual liability**

#### **ARTICLE 20**

- 1- The exemptions and limits of liability provided for in this Uniform Act shall apply to any action brought against the carrier for damage resulting from loss of or damage to the goods or from a delay in delivery, whether the action is based on contractual or extra-contractual liability.
- 2- Where the action for loss, damage or delay is brought against a person for whom the carrier is responsible under Article 16 paragraph 4 above, such person may also avail himself of the exemptions and limits of liability provided for the carrier in this Uniform Act.

### **Loss of right of exemption and limitation of liability**

#### **ARTICLE 21**

- 1- The carrier shall not be entitled to avail himself of the exemption and limitation of liability provided for in this Uniform Act, nor to the period of limitation of action laid down in Article 25 below, if it is proved that the loss, damage or delay results from an act or omission of the carrier, which was done with intent to cause such loss, damage or delay, or recklessly and with the knowledge that such loss, damage or delay would probably result.
- 2- Notwithstanding the provisions of Article 20, paragraph 2 above, a servant or an agent of the carrier or any other person whose services he makes use of for the performance of the contract of carriage, shall not be entitled to avail himself of the exemption and or limitation of liability laid down in this Uniform Act, nor to the period of limitation of action provided in Article 25 below, if it is proved that the loss, damage or delay results from an act or omission of the agent or servant in the performance of his duties, which was done either with intent to cause such loss, damage or delay, or recklessly and with the knowledge that such loss, damage or delay would probably result.

## **Liability in case of combined transport**

### **ARTICLE 22**

This Uniform Act shall apply to all combined transport. However, where damage, loss or delay occurs during the portion of carriage not by road without the carrier by road being at fault, the liability of the carrier by road shall be determined in accordance with the mandatory rules of the law governing that other means of transport. In the absence of such rules, the liability of the carrier by road remains governed by this Uniform Act.

## **Liability in case of successive carriage**

### **ARTICLE 23**

- 1- In successive carriage, each succeeding carrier becomes a party to the contract of carriage by reason of his acceptance of the goods and the consignment note.
- 2- In case of successive carriage, legal proceedings in respect of liability for loss, damage or delay may only be brought against the first carrier, the carrier who was performing that portion of the carriage during which the event causing the damage occurred, or the last carrier. An action may be brought against several of these carriers, their liability being joint and several.
- 3- In case of apparent loss or damage, the intermediate carrier shall enter in the consignment note handed to him by the other carrier a reservation that is analogous to the one provided in Article 10, paragraph 2 above. He shall then immediately inform the sender and to the carrier who issued the consignment note of the reservation he has entered.
- 4- The provisions of Articles 4, 5 (paragraph 2) and 10 (paragraph 4) above shall apply between successive carriers.

## **CHAPTER V DISPUTES - Actions between carriers**

### **ARTICLE 24**

- 1- A carrier who has paid compensation in compliance with the provisions of this Uniform Act, shall be entitled to recover the principal, together with interest thereon and costs incurred by reason of the claim, from the other carriers who have taken part in the carriage, in accordance with the following provisions:
  - a) the carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier;

- b) when the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him;
  - c) if it cannot be ascertained to which carrier liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers as laid down in paragraph 1(b) above;
- 2- If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them.
- 3- Carriers shall be free to agree among themselves on provisions other than those laid down in this article .

### **Time-limit for claims and actions**

#### **ARTICLE 25**

- 1- The period of limitation for any action arising out of a carriage under this Uniform Act shall be one year from the date of delivery or, in case of non-delivery from the date on which the delivery should have taken place. However, in the case of wilful misconduct, or such default considered as equivalent to wilful misconduct, the period of limitation shall be three years.
- 2- The action shall be admissible only if a written claim has been made to the first carrier or the last carrier no later than sixty (60) days after the date of delivery of the goods or, failing delivery, not later than six (6) months after the date on which the goods were taken over.

### **Arbitration**

#### **ARTICLE 26**

Any dispute arising from a contract of carriage governed by this Uniform Act may be settled by way of arbitration.

### **Competent Jurisdiction in matters of inter-States Carriage**

#### **ARTICLE 27**

- 1- In any legal proceedings arising out of inter-States carriage under this Uniform Act, where the parties did not designate an arbitral tribunal or national court, the plaintiff may bring an action in the courts or tribunals of a country within whose territory:

- a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made;
  - b) the goods were taken over by the carrier or the place designated for delivery is situated.
- 2- Where an action is pending before a competent court, or where a judgment has been entered by such court, no new action may be brought between the same parties on the same grounds unless the judgment of the court before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.
- 3- When a judgment entered by a court of a State Party has become enforceable in that State, it shall also become enforceable in each of the other States Parties, as soon as the formalities required in the State concerned have been complied with. These formalities shall not constitute a basis for the review of the case.
- 4- The provisions of paragraph 3 of this article shall apply to judgments delivered after full hearing, judgments by default and settlements confirmed by an order of the court. They shall not apply to interim judgments or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

## CHAPTER VI

### Miscellaneous Provisions

#### NULLITY OF STIPULATIONS CONTRARY TO THE UNIFORM ACT

##### ARTICLE 28

- 1- Subject to the provisions of Article s 2 c), 15 paragraph 1, 24 paragraph 3 and 27 above, any stipulation which would directly or indirectly derogate from the provisions of this Uniform Act shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.
- 2- In particular, a benefit of insurance in favour of the carrier or any other similar clause, or any clause shifting the burden of proof shall be null and void.

### Currency conversion

##### ARTICLE 29

For States outside the CFA zone, the sums mentioned in Article 18 above shall be converted into the national currency according to the exchange rate on the date of the judgment or arbitral award or on a date agreed upon by the parties.

**CHAPTER VII**  
**TRANSITIONAL AND FINAL PROVISIONS**

**ARTICLE 30**

Contracts for the carriage of goods by road, which were concluded prior to the entry into force of this Uniform Act, shall remain governed by the laws which were applicable at the time they were concluded.

**ARTICLE 31**

This Uniform Act shall be published in the OHADA Official Gazette; it shall also be published in the Official Gazette of the States Parties or by any equivalent means.

**It shall come into force on 1 January 2004.**

Adopted on 22nd March 2003 IN Yaoundé and published in the OHADA Official Gazette No. 13 dated

Of 31 July 2003