

A Guide to Due Diligence on Release of Bills of Lading and Freight



Bills of Lading are the main documents used in the transport of goods by sea. It can be confusing to complete or give instructions on completion and to use bills of lading correctly. In this brief Guide, we focus on the main types of bill of lading, what information should be contained within them, the pitfalls Members may encounter and how to avoid them. The final area that is covered suggests prudent steps that are applicable to the physical release of cargo.

Types of Bill of Lading

There are numerous types of bills of lading however, for the purposes of this guide we will give a brief overview of the purpose of a bill of lading and the main differences between the four most commonly issued types. It is important to remember that bills may either be issued by the carrier, a non-vessel operator (NVO) or a consolidator which will lead to variations in format.

The Purpose of a Bill of Lading

A bill of lading fulfils three main purposes: -

- 1** It is evidence that a contract exists between a shipper and a carrier (bills of lading should only be issued once the goods have been collected or received by the carrier)
- 2** It is a receipt issued by the carrier to the shipper: the goods are in the carrier's possession
- 3** The bill of lading may be a document of title if made to order and show who has the right to have possession of documents and/or freight. If it is not negotiable it is known as a straight bill of lading.

The Main types of Bills of Lading

In broad terms bills of lading fall into two groups in terms of title -

A negotiable Bill of Lading is a document of title, which may be used to transfer ownership of the goods from one party to another. The original consignee, by endorsing (signing) the back of the bill, transfers title in the goods to another party (the new consignee). The new consignee may transfer title another party and so on. For a bill of lading to be negotiable it must be "Clean" and drawn "to Order" of the consignee.

As a document of title, the bill is in favour of the party to whom it has been endorsed and the carrier should release the cargo to the party who presents the correctly endorsed original bill of lading to the carrier with proof that they are the endorsee or authorised by them. It is essential that the party receiving the endorsed bill of lading has adequate procedures in place to check the bill's authenticity and the holder's authority as endorsee or authorised agent prior to releasing any cargo.

A non-negotiable Bill of Lading is not a document of title and does not permit ownership to be transferred from one party to another as previously described. Where original bills of lading have been issued the release of the cargo at destination can only be to the named consignee upon receipt of at least one of the original bills issued.

Title aside, there are upwards of 37 different types of Bill of Lading, many being variations on a common theme. Below we cover the main four specific types.

An Ocean Bill of Lading is issued by an actual carrier and covers the sea transport from the port of loading to the port of destination. In these circumstances it does not cover inland movements.

A Through Transport Bill of Lading may include inland transport, whether collection in the exporting country and/or delivery in the importing country. For it to include collection, it should state the collection point in the "Place of receipt" or "From" box. For it to include delivery it should state the delivery point in the "Final destination" box.

Under a "Through transport bill of lading" the carrier only accepts liability whilst the goods are on their vessel. In the event of a claim for loss or damage, the claimant holds all parties responsible including those contracted by the carrier and these parties may be difficult to identify.

A Combined Bill of Lading (Multimodal) this type of bill of lading may also include inland collection and /or final delivery. However, under combined bill of lading, the carrier accepts liability for the entire journey. Therefore, in the event of a claim for loss or damage the claimant need only hold the carrier responsible.

A House or NVO Bill of Lading is issued by a party who is not operating the vessel but takes on carrier responsibilities.

Waybills are often used rather than bills of lading. These are sometimes referred to as sea or express waybills. They are non-negotiable documents and should only be used where there is no intention to transfer title. The carrier may release cargo to the named consignee without presentation of the bill of lading. A waybill fulfils the following two functions, it is a receipt for the goods and evidence of the contract of carriage.

FIATA Bills of Lading

There are specific rules regulating the issuance of FIATA bills of lading. Pre-numbered FIATA bills of lading may be issued by BIFA to Members and should only be used by the party to whom they are issued and are not transferable to any other parties. As an alternative, a print licence may also be purchased but strict rules regarding colours, watermarks and layout must be adhered to.

Contents of a Bill of Lading

Bills of lading should include the following information: -

1. Name, address and contact details of shipper
2. Name, address and contact details of carrier
3. Name of vessel
4. Loading and unloading port or place of receipt and/or final destination (“orders”)
5. Name and address of the person or entity to be notified upon the goods’ arrival
6. Nature and condition of the goods (number of packages or pieces, quantity or weight, identifying marks)
7. Apparent condition of the cargo
8. Terms and place of payment (if already paid, it will state “pre-paid” and if not, it will read “collect”)
9. Number of original copies submitted

10. Place, date, and signature of either the carrier, shipping company, vessel operator or captain of the ship or authorised agent of any of these.

Issuing an Export Bill of Lading

When issuing a bill of lading or giving instructions to the ocean carrier to draft the bill of lading for approval, the following must be considered in order to prevent problems at a later stage: -

1. Never accept unwritten or unclear instructions in any circumstances
2. Always check and satisfy yourself prior to moving shipments that letter of credit requirements may be met; if there are any doubts check with your principal
3. Do not issue or approve bills of lading containing details you know to be false, in particular: -
 - i. incorrect date of shipment
 - ii. incorrect name of vessel
 - iii. incorrect description of cargo (including any description such as clean when discrepancies or damage have been noted)
 - iv. incorrect port or voyage details
4. Wait until the shipping line has confirmed that the cargo has been loaded before issuing bills or asking for them to be issued and describe the voyage correctly on the documents. Never issue shipped on board bills of lading until the ocean carrier has issued their shipped on board documents.
5. Do not issue or ask that freight paid bills of lading be issued unless the freight has been paid. Always carefully check shipped on board bills of lading received by you against letters of credit for unacceptable endorsements and rectify problems immediately.
6. Do not issue bills of lading or ask for them to be issued for non-existent or promised cargo on the basis that your client “wants to check that the bank will accept them” (or similar story). If you do have to issue such bills, make sure they are clearly marked with

a diagonal cancellation not valid for carriage extending over at least two-thirds of the bill.

7. Never allow blank bills of lading to get into the hands of clients or other unauthorised personnel.
8. Ensure that the releasing agent named in the bill of lading is properly instructed and receives a copy of the bill in good time.
9. If you have no regular correspondent of your own at the destination, it may be possible to use the ocean carrier’s agent. If you do this there is a risk that the cargo may be released on the basis of the ocean carrier’s (rather than the NVO/NVOCC’s) bill. To avoid this, the ocean carrier’s bill must be endorsed: “Release only against presentation of (NVO/NVOCC’s name) bill of lading number...”
10. Take care when issuing bills to a named consignee or requesting such bills to be issued as the shipper has the right to change the consignee at any time up to delivery. To order bills must be released to the entitled party.
11. If the shipper wishes to stop the goods while they are in transit they may be entitled to do so but they must return all the original negotiable bills of lading. Always seek advice in case of doubt. The shipper should in such cases provide written instructions and confirmation that they will accept all associated costs.

Wait until the shipping line has confirmed that the cargo has been loaded before issuing bills or asking for them to be issued and describe the voyage correctly on the documents.



12. If the receiving agent asks for authority to release the cargo to a consignee who cannot present an original bill of lading, you must obtain authority and an indemnity supported by a bank guarantee from the shipper in writing before agreeing to the release. You must check and ensure that: -

- i. Any indemnity covers all parties that may seek to rely on it and is underwritten by a first-class bank as the effectiveness of any indemnity is dependent on the liquidity of the party providing it. If the issuer becomes insolvent you may be liable for improper release and will not be able to recover under the indemnity unless it is backed by a Bank who will pay if the issuer defaults
- ii. Your principal has agreed the wording and the level of security
- iii. It is addressed both to you and your principal
- iv. It is valid for a specific, sufficient period of time, to comply with law if you wish to limit its application in time
- v. It covers sufficient financial limits, thereby allowing for the worst possible scenario; in the event of a claim, with costs, it may need to be double the value
- vi. Ensure that the document is not a forgery – a facsimile or photocopy may seem to be a legitimate document, but it is not legally acceptable
- vii. The wording has been approved by your insurers. Insurers may not approve the acceptance of indemnities and may insist on the insured requiring the original bill of lading otherwise they may refuse cover for any consequences of accepting the indemnity. If you do not advise the insurers and take the indemnity, cover may be declined

Never accept promises – only valid documents – at any time and under any circumstances.

Handling an Import Bill of Lading

When handling import consignments, it is important to remember the following points: -

1. Bills of lading may be documents of title and as such should be the proof that the person applying for the goods is the rightful owner provided they have not been stolen.
2. Carefully check the bill of lading against the copy you have been sent by the carrier/NVOC/NVOCC, or your correspondent for: -
 - i. Dates
 - ii. Ship's name
 - iii. Voyage details
 - iv. Cargo description, number of packages, weights, etc.
 - v. Container number(s)
 - vi. Seal number(s)
 - vii. Shipper and consignee/notify party names etc.
 - viii. Endorsements (on front and back of bill) for authenticity or qualification. Be vigilant about amendments to the bill of lading and identity of the receiver
3. Insist on receiving a full set of the original bills issued
4. Do not accept faxed copies or photocopies as "evidence" that the customer has an original bill in his possession. Insist on seeing the originals before authorising release of the cargo.
5. If an importer is unable to produce the original bills of lading:
 - i. Check with the shipper by fax or e-mail via your correspondent at origin, whether it is in order to release the goods, and
 - ii. Insist on receiving a guarantee, countersigned and stamped by a reputable local bank, under which the consignee undertakes to present the original bills once they have been received, and

- iii. Ensure this indemnifies you and all that may seek to rely upon it and that it is underwritten by a first-class bank (see above 12. i)
- iv. Under no circumstances should you accept a "guarantee" signed by the importer alone
- v. All such releases must be authorised by a Director or senior manager of your company before delivery orders are issued. The manager responsible must sign the file or manifest approving release. Any indemnities/guarantees must be kept safely
- vi. Check the wording is agreed by your insurers (see above 12.vii)
6. Ensure you collect any charges due to you or others (freight, duty/tax, shippers' disbursements, demurrage, etc.) before releasing the goods. Do not allow argument about such costs to blind you to the absence of original bills of lading.
7. Do not issue delivery orders or release notes before the original bill of lading or bank guarantee has been handed over to you and checked for accuracy – they could be misused or fall into the wrong hands.
8. Do not allow the client to inspect the cargo for any reason, until he has produced the original bill of lading, even if damage is suspected or known. In cases of difficulty check with the manager responsible.
9. Do not succumb to commercial pressure(s) to release the goods without appropriate documents.
10. Should goods be released in error, promptly advise your insurer and your correspondent at point of origin. People who have obtained cargo fraudulently may disappear quickly. Urgent action is necessary to correct the situation. Contact the police if the circumstances warrant such action.

Release of Cargo

External factors may significantly influence the processes to be adopted when physically releasing cargo, two of the most important being customs procedures and the ports own systems. In addition to the previously mentioned documentary procedures, companies should take care when releasing cargo either manually or electronically.

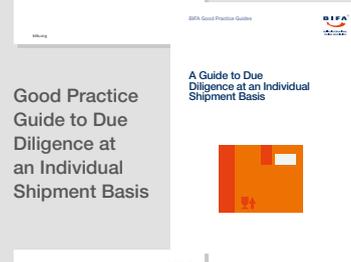
Key points to consider are: -

1. Ensure that all documents are accurately prepared and completed with full and accurate information to ensure efficient and effective customs clearance and release
2. Do not deal with customs clearance if you are not well versed in this area
3. It is essential to know who you are releasing collection documents to, preferably using a regular contractor with whom you have written mutually agreed procedures: -
 - i. If sending documents electronically check that the e-mail address is correct
 - ii. If a contractor collects the documents insist on seeing either an ID card or similar and/or driving licence
4. When manually providing documents to a contractor obtain
 - a signature from the person collecting them and record the details of their Identity card etc.
5. Have adequate procedures in place to ensure that blank documents can only be accessed by authorised personnel and issued in line with company policies - do not allow other parties to hold blank collection orders
6. If using the ports electronic collection systems only use contractors who are registered with that port
7. Where applicable ensure that the contractor is aware of the checks that need to be made prior to accepting a container: -
 - i. Container number
 - ii. Damage to the container
 - iii. Seal number
8. Internal procedures need to be in place to monitor collection and final delivery
9. Ensure that any haulier agreements that you have entered into either prohibit or limit the ability of the master haulage contractor to sub-contract the work
10. When organising haulage, it is important to ensure you are competent to advise your customer on the differing responsibilities and liabilities between “Merchant” and “Line” haulage.

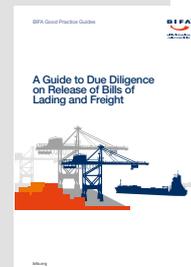
This guide forms part of a series of Good Practice Guides on the subject of Due Diligence. The individual guides are:



Good Practice Guide to Due Diligence regarding Credit Application Procedures



Good Practice Guide to Due Diligence at an Individual Shipment Basis



Good Practice Guide to Due Diligence on Release of Bills of Lading and Freight