

RECEIVED  
2008 APR 24 PM 1:11  
OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMMISSION

“K” Line/YML/HJS ECSA Space Charter

A Space Charter Agreement

012041

Expiration Date : None

This Agreement has not been published previously.



TABLE OF CONTENTS

<u>Article</u>	<u>Name</u>	<u>Page</u>
1	Name of the Agreement	1
2	Purpose of the Agreement	1
3	Parties to the Agreement	1
4	Scope of the Agreement	1
5	Agreement Authority	2
6	Administration and Delegation of Authority	3
7	Membership and Withdrawal	3
8	Voting	4
9	Duration and Termination	4
10	Force Majeure	4
11	Applicable Law and Arbitration	5
12	Non-Assignment	6
13	Miscellaneous	6

ARTICLE 1: NAME OF THE AGREEMENT

The full name of this Agreement is the “K” Line/YML/HJS ECSA Space Charter (“Agreement”).

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize the parties to exchange space on their respective vessels in the Trade (as hereinafter defined).

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter “party” or “parties”) are:

1. Kawasaki Kisen Kaisha, Ltd. (“K-Line”)  
Hibiya Central Building  
2-9, Nishi-Shinbashi 1-Chome  
Minato-ku, Tokyo 105  
Japan
2. Yang Ming Marine Transport Corp.  
271 Ming De 1st road, Chidu ,  
Keelung, Taiwan 206, R.O.C.
3. HANJIN SHIPPING CO., LTD.  
Hanjin Shipping Building, 25-11, Yoido-dong,  
Youngdeungpo-ku, Seoul, Korea

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement shall cover the trade, direct or via direct service between ports on the East Coast of the United States (Eastport, Maine to Key West, Florida range inclusive) and inland and coastal points in the United States, served via such ports, on the one hand, and ports

in Argentina, Brazil, Paraguay, Uruguay, and Venezuela, and inland and coastal points in the aforementioned countries and other Latin America and Caribbean countries served via such ports, on the other hand (“the Trade”).

ARTICLE 5: AGREEMENT AUTHORITY

5.1 YML and HJS are authorized to provide/purchase slots on KL’s services in the Trade as follows:

(a) YML shall receive a basic allocation of 130 TEUs on each sailing of vessels on which “K” Line charters space pursuant to FMC Agreement No. 012038

(b) HJS shall receive a basic allocation of 230 TEUs on each sailing of vessels on which “K” Line charters space pursuant to FMC Agreement No. 012038

5.2 The basic allocations set forth in Article 5.1 may be adjusted up or down by mutual agreement of all parties. Slots in excess of a party’s basic allocation may be purchased at rates and on terms and conditions to be agreed by the parties from time to time, subject to space availability.

5.3 The parties agree that interport cargo shall not be transported in space made available under this Agreement, but the parties can reposition empties within Brazil and carry loaded containers from Brazil to Venezuela, both only in compliance with local law. Puerto Cabello shall not be covered under this Agreement for one year after 28 April 2008.

5.4 The parties shall maintain their own identities and tariffs and shall issue their own bills of lading. Each party may separately advertise sailings of the vessels

subject to this Agreement. Nothing in this Agreement shall be construed as creating a partnership, association or joint venture between the parties.

5.5 The parties are authorized to discuss and agree upon such general operational and administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties, procedures for allocating space, forecasting, terminal operations, stowage planning, schedule adjustments, financial procedures, record-keeping, claims procedures and responsibility for loss or damage, insurance, liabilities, indemnification, consequences for delays, and treatment of hazardous and dangerous cargoes.

5.6 Pursuant to 46 C.F.R. § 535.407, any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, except to the extent that such agreement concerns routine operational or administrative matters.

ARTICLE 6: ADMINISTRATION AND DELEGATION OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission on behalf of a party:

- (i) Any authorized officer of a party; and
- (ii) Legal counsel for a party

ARTICLE 7: MEMBERSHIP AND WITHDRAWAL

7.1 Membership is limited to the parties hereto except that additional carriers offering regular service in the Trade may be admitted by unanimous agreement of the parties and by amendment of the Agreement pursuant to the Shipping Act of 1984, as amended.

7.2 Any party may withdraw from this Agreement for any reason on not less than 6 months' prior written notice to the other party.

ARTICLE 8: VOTING

All actions taken pursuant to this Agreement shall require unanimous agreement of the parties.

ARTICLE 9: DURATION AND TERMINATION

9.1 This Agreement shall take effect on the date it becomes effective pursuant to the Shipping Act of 1984, as amended and shall remain in effect until terminated by mutual agreement or pursuant to Article 7.2 above.

9.2 The Federal Maritime Commission shall be promptly notified in writing of any termination date of this Agreement.

ARTICLE 10: FORCE MAJEURE

Neither of the parties shall be responsible for its failure to perform any terms or conditions of this Agreement if such failure is caused by civil commotion, invasion, rebellion, hostilities, strikes, labor disputes, sabotage, other work stoppage, governmental (national, state, municipal or other) regulations or controls,

Acts of God, inability to obtain materials or services, or any other cause beyond the control of such party. In the event of force majeure circumstances, the obligations of the parties shall be suspended to the extent and for the duration of such circumstances.

ARTICLE 11: GOVERNING LAW AND ARBITRATION

11.1 This Agreement is governed by and shall be under the general maritime law of the United States; provided, however, that nothing herein shall relieve the parties of their obligation to comply with the U.S. Shipping Act of 1984, as amended.

11.2 A dispute or claim arising hereunder which is not amicably settled by the parties shall be settled by arbitration. Arbitration shall be held in New York, New York, before an arbitrator familiar with ocean container shipping who shall have no financial or personal interest whatsoever in or with any party and shall not have acquired a detailed prior knowledge of the matter in dispute. Upon unanimous agreement among the parties involved in the dispute, arbitration may be held in any other place.

Any party hereto may call for such arbitration by service upon the other of a written notice specifying a brief description of the disputes, the monetary amount involved, if any, the differences which such party desires to put to arbitration and the remedy sought. Within fifteen (15) days after service of such notice, the parties shall jointly agree upon an arbitrator of the aforesaid qualifications, failing which within five days thereafter, they shall request the Society of Maritime Arbitrators (“SMA”) to appoint an arbitrator. The arbitration shall thereafter be conducted under the SMA Rules.

The arbitrator’s decision, including his written findings of fact and conclusions, shall be rendered within the period provided in the SMA’s Rules. Judgment may be entered on an award of the arbitrator and shall be enforceable in a court of competent

jurisdiction. The arbitrator may allocate the costs of arbitration to one or more participating parties in a manner consistent with the award or decision. The arbitrator may not award exemplary or punitive damages and may not order specific performance. A copy of the decision shall be served by the arbitrator on the said parties.

ARTICLE 12: NON-ASSIGNMENT

The rights and obligations of each party under this Agreement shall not be assignable except to subsidiaries, parent companies or fellow subsidiaries or with the prior consent of all other parties.

ARTICLE 13: MISCELLANEOUS

13.1 This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

13.2 In the event any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of the Agreement shall continue in force and effect unless the parties would not have entered into the Agreement without that provision which may be proven to be illegal or unenforceable.

13.3. The terms of this Agreement may not be altered, amended, or otherwise changed, except in writing signed by all parties.

"K" Line/YML/HJS ECSA Space Charter

FMC Agreement No. 012041  
Original Page No. 7

Signature Page

IN WITNESS WHEREOF, the parties have agreed this 23<sup>rd</sup> day of April, 2008, to amend this Agreement as per the attached page and file same with the U.S. Federal Maritime Commission.

KAWASAKI KISEN KAISHA, LTD.

YANG MING MARINE  
TRANSPORT CORP.

By: J. P. Meade  
Name: J. P. MEADE  
Title: Attorney

By: J. P. Meade  
Name: J. P. MEADE  
Title: Attorney

HANJIN SHIPPING CO., LTD.

By: J. P. Meade  
Name: J. P. MEADE  
Title: Attorney