

# German Freight Forwarders' Standard Terms and Conditions

## - ADSp -

Announcements no.59 dated July 6<sup>th</sup>, 1998 (in the Bundesanzeiger issue no.130 of July 17<sup>th</sup>, 1998) no.4 of January 13<sup>th</sup>, 1999 (Bundesanzeiger issue no.18 of January 28<sup>th</sup>, 1999) and no. 182 of September 19<sup>th</sup>, 2001 (Bundesanzeiger issue no 184 of September 29<sup>th</sup>, 2001).

**(The following text is a translation from the German language original. In case of disputes the German language original of the ADSp are applicable)**

### **Preface**

The terms and conditions are recommended for use, starting January 1<sup>st</sup>, 2002, by the Federal Association of German Industry, the Federal Association of German Wholesalers and Exporters, the Federal Association of German Freight Forwarders and Logistics Operators, the Association of German Chambers of Industrie and Commerce, and the German Association of Retailers. This recommendation is not obligatory. Contract parties can formulate different agreements.

### **1. Interest of the principal and due care**

The freight forwarder shall act in the interest of his principal and fulfil his duties with due care.

### **2. Area of application**

- 2.1 The ADSp apply to all contracts for the transportation of goods, irrespective of whether they concern freight forwarding, carriage, warehousing or other services common to the forwarding trade; these also include logistical services commonly provided by freight forwarders in connection with the carriage or storage of goods.
- 2.2 In the case of forwarding services regulated by sections 453 to 466 of the German Commercial Law (HGB), the freight forwarder is only responsible for arranging the necessary contracts required for the performance of these services, unless other legal provisions take precedence.
- 2.3 The ADSp are not applicable for contracts that deal exclusively with
  - packaging,
  - the carriage of removal goods and their storage,
  - crane lifting, assembly jobs or heavy lift and high volume transports, except for normal transshipment services of the freight forwarder.
- 2.4 The ADSp are not applicable for transport contracts with consumers. Consumers are natural persons concluding the contract for reasons other than commercial or in pursuit of their professional activities.

- 2.5 If trade customs or legal provisions differ from the ADSp, the ADSp take precedence unless these legal provisions are mandatory.

For contracts of carriage by air, sea, inland waterways or for multi-modal transports different contractual arrangements may be made in accordance with the terms of carriage devised for these transports.

- 2.6 The freight forwarder is authorised to agree to normal standard terms and conditions of third parties.
- 2.7 In the relationship between a principal freight forwarder and an intermediate freight forwarder, the ADSp are deemed to be the general terms and conditions of the intermediate freight forwarder.

### **3. Instructions, transmission errors, contents, dangerous goods**

- 3.1 Forwarding instructions, other instructions, directives and communications are valid even if given informally. Subsequent modifications must be specifically identifiable as being amendments.

The burden of proof for the correct and complete transmission lies with the party referring to it.

- 3.2 If statements must be made in writing, they are deemed to having been made in writing when using electronic data communication or any other machine readable form for as long as the originator of the message is identifiable.

- 3.3 The principal must inform the freight forwarder, at the time of giving the instructions, that the transport contract concerns:

- dangerous goods
- live animals and plants
- perishables
- valuable goods
- currency, bonds and shares or official documents

- 3.4 The principal must specify in his instructions addresses, marks, numbers, quantity, nature and contents of the packages as well as declaring the properties of the goods, as required by section 3.3 and any other information relevant for the proper execution of the forwarding instructions.

- 3.5 In the case of dangerous goods, the principal must inform the freight forwarder in writing - at the time of giving the instructions - of the exact nature of the hazard and, if appropriate, about precautionary measures. In the case of dangerous goods subject to the law for the carriage of dangerous goods or other goods, the carriage of which is subject to specific regulations regarding dangerous goods, their handling or their disposal, the principal has to make the necessary declarations required for the proper execution of the forwarding instruction, especially the classification in accordance with the regulations for dangerous goods.

- 3.6 The freight forwarder is under no obligation to check or add to the specifications made in accordance with sections 3.3 to 3.5.

- 3.7 The forwarder is under no obligation to verify signatures of statements regarding the goods or on any documents, or to verify the authority of the signatory, unless there is reasonable doubt about the authenticity or authority.

#### **4. Packaging, provision of loading and packaging aids, weighing and checking**

4.1 Unless specifically stated, the forwarding instruction does not cover

4.1.1 the packaging of the goods,

4.1.2 the weighing, checking, measures to preserve or enhance the goods and its packaging, unless this is customary for this kind of transaction,

4.1.3 the provision or exchange of pallets or other loading or packaging aids. If they are not swapped one-for-one, they are only picked up as part of a new forwarding instruction. This does not apply if the exchange is intentionally not carried out by the freight forwarder.

4.2 The services under section 4.1 are charged for separately.

#### **5. Customs clearance**

5.1 The instruction for shipment to a destination in another country includes instructions for customs clearance, if this is necessary for arranging the transport to the place of destination.

5.2 The freight forwarder is entitled to an extra fee for the customs clearance, over and above the actual costs incurred.

5.3 The instruction to forward bonded goods or to deliver them free house, authorises the freight forwarder to effect the customs clearance and to advance customs and excise duties and fees.

#### **6. Packaging and marking obligation of the principal**

6.1 The packages have to be clearly and durably marked by the principal to facilitate their proper handling, e.g. addresses, marks, numbers, symbols for handling and properties; old marks must be removed or made illegible.

6.2 In addition, the principal is under obligation:

6.2.1 to mark all packages belonging to the same consignment in such a way that they are easily recognised as forming one consignment,

6.2.2 to prepare packages in such a way that they may not be accessed without leaving visible trace (adhesive tape, bands, etc. are only permissible when they are individually designed or otherwise difficult to imitate; foil wrapping must be thermally sealed);

6.2.3 in case of a consignment being part of a forwarders consolidation, to group the individual packages or units of this consignment into larger units if their strap length (largest circumference plus longest side) is less than 1 metre;

6.2.4 to combine a consignment of hanging garments consisting of several individual units into wrapped units for easier handling;

6.2.5 to mark packing units with a gross weight of at least 1,000 kilograms with the weight specification as prescribed for heavy loads to be transported by ship.

- 6.3 Packages are single packages or units of packages, formed by the principal for the purpose of being carried according to the forwarding instruction, e.g., boxes, wireboxes, pallets, handling units, enclosed loading units such as covered wagons, wagons with tarpaulin covers, semi-trailers, swap bodies, containers or igloos.

## **7. Supervisory duties of the freight forwarder**

- 7.1 At specific interfaces the freight forwarder is under the obligation to:
- 7.1.1 check packages regarding their quantity, identity and apparent good order and whether seals and fastenings are intact;
  - 7.1.2 document irregularities (e.g. in the accompanying document or by special notification)
- 7.2 An interface is any point at which the responsibility for the packages is passed on to another operator/agent or the handing over point at the end of each stage of the transportation process.

## **8. Receipt**

- 8.1 Upon request by the principal, the freight forwarder shall issue a certificate of receipt.

With this certificate the freight forwarder confirms the quantity and type of packages, but not their contents, value or weight. In the case of bulk goods, full loads and such like the certificate of receipt does not state the gross weight or any other description of the quantity of the goods.

- 8.2 As proof of delivery the freight forwarder requests from the consignee a receipt of the packages as named in the forwarding instruction or other accompanying transport documents. Should the consignee refuse to sign for the receipt of the goods, the freight forwarder must request further instructions. If the goods have already been unloaded at the consignee, the freight forwarder is entitled to regain possession.

## **9. Instructions**

- 9.1 An instruction remains valid for the freight forwarder until revoked by the principal.
- 9.2 In the case of insufficient or impractical instructions the freight forwarder may use his professional judgement.
- 9.3 An instruction to hold goods at the disposal of a third party can no longer be revoked after instructions from the third party have been received by the freight forwarder.

## **10. Freight payment, cash on delivery**

- 10.1 The statement by the principal that the instruction is to be executed freight unpaid or that the costs are to be paid by the consignee or a third party does not affect his liability for payment of all charges.
- 10.2 The statement in section 10.1 does not concern cash on delivery instructions.

## **11. Deadlines**

- 11.1 In the absence of specific agreements, neither loading or delivery deadlines are guaranteed, nor the sequence of the handling of goods of the same means of transport.
- 11.2 This does not affect the freight forwarder's statutory liability with regard to missing deadlines.

## **12. Obstacles**

- 12.1 Obstacles beyond the freight forwarder's control relieve him, for their duration, from the duties that are affected by these obstacles.

In the case of such obstacles, the freight forwarder or the principal have the right to withdraw from the contract even if it has already been partially performed.

If the freight forwarder or the principal withdraws from the contract, the freight forwarder is entitled to the costs which he deemed to be necessary to be incurred or which were incurred in the interest of the principal.

- 12.2 The freight forwarder is only obliged within the framework of his ordinary professional care to advise the principal about legal or official restrictions concerning the shipment (e.g., import/export restrictions). If, however, the freight forwarder, through public statements or in the course of negotiations, created the impression that he has expert knowledge about specific circumstances, he has to act appropriately to this knowledge and expertise.
- 12.3 Governmental and/or official acts beyond the freight forwarder's control do not affect the rights of the freight forwarder towards his principal; the principal is liable towards the freight forwarder for all claims arising out of such acts. Claims of the freight forwarder against the state or third parties are not affected.

## **13. Delivery**

Delivery is deemed to have been affected when the goods are handed over to any person present on the premises of the consignee, unless there are apparent reasonable doubts about their authority to receive goods on behalf of the consignee.

## **14. Right to information**

- 14.1 The freight forwarder is obliged to provide the principal with all necessary information, to inform him, upon request, about the status of the transaction and to provide information about all transactions so far, however, he is only obliged to reveal the costs incurred if he acted in the name of the principal.
- 14.2 The freight forwarder is obliged to pass everything he receives/obtains while acting for him to the principal.

## **15. Warehousing**

- 15.1 The choice of warehousing location (own or third party) lies with the freight forwarder. In case of a third party warehouse the freight forwarder must notify the principal in writing and immediately of the warehouse company and its address, or, in case of a warehouse warrant, to mark these on the warrant.
- 15.2 The principal is at liberty to inspect the warehouse. Objections or complaints about the storage of the goods must be made immediately. If he does not exercise the right

of inspection, he waves all rights to objections against the storage and warehousing, for as long as the choice and type of storage complies with the usual professional care of a freight forwarder.

- 15.3 Access to the warehouse is only granted to the principal during the normal working hours of the freight forwarder and in his company.
- 15.4 If the principal handles the goods (e.g. sample taking) the freight forwarder may demand that the number, the weight and the status of the goods be inspected together with the principal. If the principal does not agree to this, the freight forwarder is not liable for damage discovered later, unless the damage was clearly not caused by such handling of the goods.
- 15.5 The principal is liable for all damage caused by him or his staff or agents to the freight forwarder, other warehouse clients or third parties whilst on the premises of the warehouse, unless he, his staff or agents are not responsible for such damage.
- 15.6 In case of inventory discrepancies, the freight forwarder is entitled to balance shortages and surpluses of the same principal.
- 15.7 If the freight forwarder has reasonable doubt about the security of his claim upon the value of the goods he is entitled to set a reasonable time limit for the principal to either secure the claims of the freight forwarder or to make alternative provisions for the storage of the goods. If the principal does not comply with this, the freight forwarder is entitled to terminate the contract without further notice.

## **16. Offers and Payment**

- 16.1 Offers from the freight forwarder and agreements with him regarding price and services always refer to specified own services or those of third parties, and to goods of normal size, weight and nature; they presume normal unfettered transport situations, unimpeded access, the possibility of immediate on-shipment and that freight rates, exchange rates and tariffs upon which the quotation was based remain valid, unless changes could be foreseen under the current circumstances. The note "plus the usual ancillary charges" entitles the freight forwarder to charge for supplements and surcharges.
- 16.2 All quotations made by the freight forwarder are valid only for immediate acceptance and immediate execution of the relevant task, unless otherwise specified in the quotation, and when the instructions refer to the quotation.
- 16.3 In case of a cancellation of or withdrawal from the instruction the freight forwarder is entitled to the claims in accordance with §§ 415, 417 of the German Commercial Law (HGB).
- 16.4 In case of a COD- or other collection instruction being withdrawn retrospectively or if the money is not paid, the forwarder is still entitled to his collection fee.
- 16.5 If the consignee refuses to accept a consignment destined for him or, if the delivery is impossible for reasons beyond the control of the freight forwarder, the freight forwarder is entitled to the cartage charges for the return of the consignment.

## **17. Disbursements of the freight forwarder, exemption from third party claims**

- 17.1 The freight forwarder is entitled to reimbursement for outlays which he could reasonably consider appropriate.

- 17.2 The instruction to accept incoming consignments entitles the freight forwarder - but does not oblige him – to advance freight, COD-sums, duties, taxes and other dues in connection with such consignments.
- 17.3 The principal has to relieve the freight forwarder immediately of demands regarding freight, average demands, customs duties, taxes or other dues directed against the freight forwarder as being agent for or possessor of the goods owned by third parties, when the freight forwarder is not responsible for such payments. The freight forwarder is entitled to take reasonable measures appropriate to protect himself. If the circumstances do not require immediate action, the freight forwarder must request instructions from his principal.
- 17.4 The principal must inform the freight forwarder in an appropriate way about all public/legal obligations, e.g. regarding customs regulations or trademark obligations, arising from the possession of the goods, unless it may reasonably be deduced from the quotation of the freight forwarder that he is aware of such obligations.

## **18. Invoices, arrears, foreign currencies**

- 18.1 freight forwarders' invoices are due immediately.
- 18.2 The debtor is in arrears, without the need of a reminder or any other precondition, ten days after receipt of the invoice, unless legal provisions prescribe a shorter period.
- 18.3 In the case of his debtor being in arrears, the freight forwarder is entitled to interest of 3% above the base rate charged by the Deutsche Bundesbank (German Federal Reserve Bank) at the time of the debtor being in arrears.
- 18.4 The freight forwarder can demand from his foreign principals payment either in local or German currency.
- 18.5 If the freight forwarder owes foreign currency amounts, or if he advances sums in foreign currencies, he can demand payment either in German or in foreign currency. If he demands payment in German currency, the current exchange rate will be used, unless it can be proven that a different rate of exchange must be used or was used.

## **19. Settlement**

Claims arising out of the forwarding contract and other related claims may only be set off against counter claims, if these are undisputed.

## **20. Lien and retention**

- 20.1 The freight forwarder has a lien on all goods in his possession or other valuables in connection with any claim, whether due or not for any services for his principal in accordance with section 2.1. This lien does not exceed the general legal lien which applies.
- 20.2 The freight forwarder may exercise his lien for claims arising out of other contracts with the principal only if they are undisputed or if the financial situation of the debtor puts the claims of the freight forwarder at risk.
- 20.3 The time limit of one month as specified in section 1234 of the German commercial Law is superseded in all cases by a time limit of two weeks.

20.4 If the principal is in arrears, the freight forwarder is entitled, after due notice, to sell such a portion of the principal's goods in his possession as is necessary, after appropriate consideration, to meet his claims.

20.5 The freight forwarder is entitled to the usual sales commission on the net proceeds of the sale when exercising his lien.

## **21. Insurance of the goods**

21.1 Irrespective of section 29, the freight forwarder only arranges for the insurance of the goods (e.g. transit or warehousing insurance) if instructed in writing and upon receipt of specifications about the sum to be insured and the risks to be covered. If in doubt, the freight forwarder can use his professional judgement about the type and scope of insurance and to arrange it for the usual terms and conditions.

21.2 If the freight forwarder himself is the policy holder he authorises the principal, upon request, to make claims directly against the insurers. The freight forwarder is then obliged to follow-up these claims only upon written instructions and at the expense and risk of the principal.

21.3 The freight forwarder is entitled to a special fee, apart from his reimbursements, for arranging the insurance, handling claims and other administrative tasks in connection with claims and averages.

## **22. Liability of the freight forwarder, cession of claims**

22.1 The freight forwarder bears liability for all his services (section 2.1) according to legal regulations. Unless specified otherwise, however, the following shall apply.

22.2 If the freight forwarder is only responsible for arranging the contracts required for the services requested, his responsibility is limited to the careful choice of such third party service providers.

22.3 In all cases where the freight forwarder is liable for loss of or damage to goods, his liability will be in accordance with §§ 429, 430 of the German Commercial Law.

22.4 If §§ 425 pp and 461, section 1 of the German Commercial Law are not applicable, the freight forwarder is liable for damage resulting from:

22.4.1 - insufficient packaging or marking by the principal or third parties

22.4.2 - agreed or customary outdoor storage

22.4.3 - theft or robbery (§§ 243, 244, 249 German Penal Code)

22.4.4 - Acts of God, weather conditions, failure of appliances or wiring, influence of other goods, damage by animals, inherent vice

only, if there is evidence of the freight forwarder being at fault. If the damage could have arisen from one of the above circumstances it shall be deemed to have arisen from it.

22.5 If the freight forwarder has a claim against a third party for damage for which he is not liable, or if the freight forwarder has claims in excess of the sum for which he is

liable, he must, on request, cede such claim to his principal, unless the freight forwarder, by special agreement, had undertaken to pursue such claims at the cost and risk of his principal.

The principal may also demand that the freight forwarder cedes all claims against third parties to him. § 437 of the German Commercial Law remains unaffected.

If the claims of the principal have been met by the freight forwarder or by the forwarders' insurance, the claim to be ceded is limited to that portion which exceeds that already paid by the freight forwarder or his insurance.

## **23. Limitation of liability**

### **23.1 The liability of the freight forwarder for loss of or damage to goods, with the exception of warehousing on request, is limited:**

**23.1.1 to € 5 per kilogram of gross weight of the consignment;**

**23.1.2 in case of damage occurring to goods whilst being carried, the damage is limited - contrary to section 23.1.1 - to the legally limited maximum amount specified for this type of carriage;**

**23.1.3 in case of a contract of multi-modal carriage - including sea transport - to 2 SDR per kg;**

**23.1.4 to € 1 million or 2 SDR per kg per claim, whichever is the higher.**

### **23.2 If only individual packages or parts of the consignment were damaged or lost the maximum liability is calculated on the basis of the gross weight**

- of the whole consignment, if it is rendered valueless,
- of that part of the consignment that is rendered valueless.

**23.3 The liability of the freight forwarder for damage other than to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, is limited to three times the fee charged by him, per claim.**

**23.4 The liability of the freight forwarder, irrespective of the number of claims per event is limited to € 5 Millions per event or 2 SDR per kg of lost or damaged goods, whichever is the greater; in the case of more than one claimant the freight forwarder's liability is proportionate to their individual claims.**

**23.5. The SDR is calculated in accordance with § 431, section 4 of the German Commercial Law.**

## **24. Liability limitations in the case of warehousing upon instruction**

**24.1 The liability of the freight forwarder for loss of or damage to goods in the case of warehousing upon instruction is limited**

**24.1.1 to € 5 for each kg gross weight of the consignment,**

**24.1.2 to a maximum of € 5,000 per claim; if the claim of a principal is based upon the difference between the nominal and actual inventory (section 15.6) the liability is**

limited to € 25,000, irrespective of the number of events causing the inventory discrepancy. Section 24.1.1 is not affected.

24.2 Section 23.2 applies accordingly.

24.3 In the case of warehousing upon instruction the liability of the freight forwarder for claims other than for damage to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, is limited to € 5,000 per claim.

24.4 Irrespective of the number of claims arising from an event, the liability of a freight forwarder is limited to € 5 Millions per event; in the case of more than one claimant the freight forwarder's liability is distributed amongst them in proportion to their individual claims.

## **25. Burden of proof**

25.1 The principal must provide evidence that goods of a specified quantity and state were handed to the freight forwarder in apparent good order (§ 438 German Commercial Law). The freight forwarder must provide evidence that he delivered the goods as he received them.

25.2 The burden of proof that goods were damaged whilst being transported (Section 23.1.2) in the means of transport lies with the party claiming such damage. If the place where the damage occurred is unknown, the freight forwarder must specify the sequence of transportation by documenting the interfaces (Section 7) if requested by the principal or the consignee. It is to be assumed that the damage occurred during that stage of the transportation for which the freight forwarder cannot provide a clean receipt.

25.3 The freight forwarder is obliged to ascertain, through appropriate enquiries and obtaining evidence, where the damage occurred.

## **26. Non-contractual claims**

The aforementioned releases from and limitations of liability apply also, in accordance with §§ 434, 436 of the German Commercial Law, to claims not arising out of freight forwarding contracts.

## **27. Specific responsibility**

The aforementioned releases from and limitations of liability do not apply, if the damage was caused:

27.1 By intent or gross negligence of the freight forwarder or his management staff *or* by violation of fundamental duties of the contract in which case damage claims shall be limited to foreseeable, typical damage;

27.2 by the freight forwarder in cases covered by §§ 425 pp, 461 Abs. 1 of the German Commercial Law or by persons specified in §§ 428, 462 of the German Commercial Law acting intentionally or recklessly, knowing that damage to the goods would be probable.

## **28. Notification of a claim**

Claims have to be made in accordance with § 438 of the German Commercial Law.

## **29. Freight forwarding insurance**

- 29.1 The freight forwarder is obliged, with an insurance company of his choice:
- 29.1.1 to cover his transport-related liability according to the ADSp and general legal requirements by obtaining insurance cover (liability insurance),
  - 29.1.2 to cover claims which could arise for the principal out of the transportation contract (damage insurance) if the minimal requirements for the forwarding insurance attached to these ADSp apply.
- 29.2 There is no obligation to arrange insurance cover against damage if:
- 29.2.1 the principal declares in writing that he does not wish for such insurance cover,
  - 29.2.2 the principal arranges with the freight forwarder a separate agreement in writing about the alternative insurance policy differing wholly or in part from the minimal conditions for the forwarding insurance as attached to these ADSp, being disadvantageous to the principal,
  - 29.2.3 the principal is a freight forwarder applying the conditions of the ADSp.
- 29.3 The insurance contract to be affected by the freight forwarder in accordance with 29.1 may not differ to the disadvantage of the principal from the minimal conditions for the forwarding insurance as appended to the ADSp, with regard to
- the coverage of the liability insurance including the mandatory insurance and the conditions relating to direct claims
  - the coverage of the damage insurance and the persons covered
- 29.4 If the freight forwarder has not taken out a liability insurance in accordance with section 29.1.2 he may not refer to the ADSp in his dealings with his principal. The same applies if he does not arrange for goods-in-transit-insurance in accordance with section 29.1.2; section 29.2 remains unaffected.
- 29.5 The freight forwarder must inform his principal which type of forwarding insurance he has taken out with which insurance company.
- 29.6 The freight forwarder as insured party owes the insurer the premium for the liability and the goods-in-transit-insurance. The premium for the liability insurance is paid by the freight forwarder himself. The premium for the goods-in-transit insurance, which the freight forwarder must charge, document and fully pay to the insurer for each forwarding contract, is to be reimbursed to the freight forwarder by the principal.
- 29.7 The duty of the principal to reimburse the premium of the goods-in-transit insurance in accordance with section 29.6 is limited to that part of the premium which relates to the coverage of risks not falling under the liability of the freight forwarder, is calculated appropriately for the risk and customary for the market.
- 29.8 If the premium exceeds the level customary for the market of the minimal conditions for the forwarding insurance as attached to these ADSp, it need only be paid by the principal if the higher premium is due to an extended cover which is objectively in the interest of the principal.

- 29.9 The burden of proof whether the premium charged to the principal is customary for the market lies with the freight forwarder. This applies also to the question of the objective interest of the principal in section 29.8.
- 29.10 If there is reasonable doubt about the premium sum, both freight forwarder and principal can appeal to an arbitrator appointed by the recommending organisations and in consultation with the insurance industry.
- 29.11 Due to the volume of claims against the insurer, the need arises for a reinstatement of the policy for the goods-in-transit insurance (section 29.1.2) the freight forwarder is entitled to charge the principal over and above the premium due plus insurance tax an appropriate extra fee for his additional work.

If no agreement can be reached about this, the freight forwarder is entitled to exclude the principal from the insurance cover of the goods-in-transit policy by giving one months' notice in writing.

- 29.12 The principal subjects himself and all persons in whose name and account he is acting to all clauses of the insurance in accordance with this section, for as long as these correspond to the minimal forwarding insurance conditions attached to these ADSp. In particular is he obliged to notify the insurer or the freight forwarder without delay of any insured event. The freight forwarder, if thus informed, is obliged to notify the insurer immediately.

### **30. Place of fulfilment, place of jurisdiction, applicable law**

- 30.1 The place of fulfilment for all parties to the contract is the location of that branch office of the freight forwarder at which the instructions are directed.
- 30.2 The place of jurisdiction for all disputes arising out the instruction is for all participants, so far as they are business people, the location of that branch office of the freight forwarder at which the instructions are directed.
- 30.3 The legal relationship between the freight forwarder and the principal or his legal successors is governed by the law of the Federal Republic of Germany.

## **Minimal conditions for the forwarding insurance (SpV)**

- I. General
- II. Forwarder's liability insurance
- III. Goods-in-transit insurance
- IV. Premium, declaration, payment and claims settlement
- V. Conclusion

**(This is a translation of the German language original; in case of disputes the German language original text shall be applicable)**

### **I. General**

#### **1. Subject of the insurance**

##### **1.1 Contracts of transportation**

Subjects of the insurance are contracts of transportation of the freight forwarder as contractor for any type of activity, be they forwarding-, transport-, warehousing- or any other activity commonly carried out by the forwarding industry. They also include logistics services commonly carried out by freight forwarders, when they are connected with the carriage or warehousing of goods.

##### **1.2 Policy holder**

The insurance covers contracts of transportation (1.1) of the freight forwarder as a legal entity including all his main offices and branches. Other offices may, upon request, be included in the insurance contract.

#### **2. Dual function of the insurance**

Insured are:

- 2.1 the freight forwarder (policy holder) against his liability arising from contracts of transportation (1.1) (liability insurance II) and
- 2.2 the party with an interest in the goods against damage to or loss of the goods, consequential damage and loss of earnings (goods-in-transit insurance III); the insured party has the right of disposal of his insurance claims.

### **II. Liability insurance of the freight forwarder**

#### **3. Scope and contents of the insurance**

- 3.1 Subject of the insurance is the liability of the freight forwarder as contractor in contracts of transportation (1.1) according to the ADSp if and as far as they are applicable; otherwise the ordinary legal liability for contracts of transportation (1.1) will be applied.
- 3.2 The insurance covers reasonable claims as well as the defence against unreasonable claims made against the freight forwarder as contractor in a forwarding contract.

- 3.3 The insurer compensates the freight forwarder for expenses incurred for the prevention or reduction of an indemnifiable damage, if these were appropriate to the situation.

The insurer reimburses the freight forwarder the sum he had payed as contribution to a general average in accordance with legal requirements, the York-Antwerp Rules or the Rhine-Rules IVR 1979, if through the general average damage to the insurer could be avoided.

- 3.4 The insurer reimburses the freight forwarder costs due to misdirection to the extent of 50% of the value of the goods, but to the maximum of € 5.000,00 per consignment.

#### **4. Area of validity**

The liability insurance of the freight forwarder covers contracts of transportation (1.1) anywhere in the world. Warehousing upon instruction by the principal, however, are only covered in the European areas of the country list in accordance with section 12.1.

#### **5. Compulsory insurance / direct claims**

- 5.1 The provisions of the compulsory insurance (§§ 158 c pp VVG) apply, to the extent to which the freight forwarder is legally obliged to take up insurance cover (duty of the insurer to indemnify the injured party even if he is free from any obligation towards the freight forwarder, due to failure to pay premiums or other obligations).

- 5.2 The injured party may direct its claim directly to the insurer (direct claim).

#### **6. Exclusion or limitations from the insurance cover**

The following claims are excluded:

- 6.1 damage or loss due to war, war-like events, civil war, commotion, strike or nuclear energy;
- 6.2 events that are commonly subject of a environmental, product, vehicle or general liability insurance policy;
- 6.4 agreements not common for the forwarding industry, like breach of contract clauses, guaranteed delivery deadlines, etc. if they go beyond the liability according to the ADSp or the liability stipulated by law for contracts of transportation (1.1), like, for example, value- or interest agreements in accordance with Sections 24, 26 of the CMR;
- 6.5 damage due to an offence, e.g., fines, administrative levies, penalties;
- 6.6 damage arising directly from advances, reimbursements or similar not being used properly, passed on or repaid. The liability for further damage arising from this remains unaffected;
- 6.7 if the freight forwarder or his representative intentionally causes the insured event; also, if the claims are made in connection with contracts of transportation (1.1) containing illegal services and claims in connection with illegal actions by the forwarder or his representative;

6.8 personal injuries.

## 7. Obligations

The forwarder is obliged,

7.1 before an insured event:

7.1.1 to fit own vehicles used in international transports with two separate, independent anti-theft devices (excluding door locks);

7.1.2 to secure loaded vehicles, containers, swap bodies or other containers against theft and robbery, especially when parked at night, at weekends or holidays or during rest periods;

7.1.3 to carry out and document the interface checks as agreed in the ADSp.

7.2 after an insured event:

7.2.1 to notify the insurer immediately, but not later than within one month, of the occurrence of an insured event and to present all documentation required for the settlement;

7.2.2 to take appropriate measures for the prevention or minimising of damage, to provide the insurer with all required information and to follow instructions;

7.2.3 to inform the insurer without delay of any legal actions taken against him in the course of the insured activity and to take the required legal counter measures , especially appeals against court orders for payments;

7.2.4 not to accept or settle any claim without the consent of the insurer, unless he could not, under the circumstances, refuse the acceptance or settlement without suffering hardship;

7.2.5 to enter, on request of the insurer and at their cost, into legal proceedings and authorise the insurer to conduct the proceedings;

7.2.6 to report every theft, robbery and every traffic accident which might have affected the load to the police station in charge and to notify the insurer without delay and to inform the average commissioner and follow his instructions;

7.2.7 to protect against possible claims the originator of the damage, especially subcontractors or other carriers.

7.3 Exemptions in cases of neglected duty

If the freight forwarder or one of his representatives neglect a duty, the insurer is released from his duty to provide an insurance cover, unless the neglect is neither based on intent nor on negligence. In cases of gross negligence the insurer still has to provide insurance cover as far as the misdemeanour neither influenced the occurrence or its discovery, nor the scope of the services to be provided by the insurer.

If an obligation to be performed before an insured event is not performed, the insurer is exempt even without cancellation of the insurance contract.

#### 7.4 Extra stock taking

The insurer is entitled to demand, after consultation, extra stock taking - over and above the annual stock taking - when the freight forwarder maintains distribution warehouses.

### 8. Limitation of insurance

8.1 For each insured event the insurance cover is limited to:

8.1.1 for warehousing upon instruction, to € 1 millions;

8.1.2 for other transport contracts to € 1 millions or 2 SDR per kg, whichever is the higher, in accordance with § 431 of the German Commercial Law.

8.2 For each insured event the insurer will provide compensation to a maximum of € 7,5 millions. If an event causing damage in excess of this maximum sum affects several parties, the compensation is distributed among them in proportion to their individual claims, irrespective of the number of parties and the transport contracts.

### 8. Excess

It may be agreed that the freight forwarder makes a contribution to the settlement of a claim.

### III. Goods-in-transit insurance

#### 10. Effective date

The goods-in-transit insurance cover is effected by the first freight forwarder acting in accordance with the ADSp. It becomes effective with the agreement on the contract of transportation.

#### 9. Insured party/party interested in the goods

Insured as a party interested in the goods are the principal of the freight forwarder and anybody who bears the risk for the goods transported or warehoused or otherwise has a pecuniary interest in the goods surviving the perils of transportation or warehousing and that the transport contracts with the freight forwarder and the carriers are executed properly. Therefore, freight forwarders, warehousemen, terminal operators, carriers, charterers and other transport operators or insurers are not considered an insured party/a party interested in the goods.

#### 10. Geographical area

12.1 The goods-in-transit insurance covers contracts of transportation with pick-up and delivery places or the location of warehousing within the European territories of the following countries: Andorra, Belgium, Denmark (without Greenland), Germany, Finland, France, Greece, Great Britain (incl. Northern Ireland, Channel Islands and Gibraltar), Ireland, Italy incl. San Marino, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Austria, Portugal (excl. Azores and Madeira), Sweden, Switzerland, Spain (excl. Canary Islands), Vatican.

12.2 Upon agreement the geographical area may be extended.

### **13. Insured events**

Insured are:

- 13.1 Damage to or loss of goods that are subject of the transport contract;
- 13.2 subsequential damage, i.e. pecuniary losses arising from damage to or loss of the goods;
- 13.3 financial loss, i.e. damage not arising from physical damage to the goods or some other physical impact, if these, according to German legal regulations relating to the transport contract, are under the responsibility of the freight forwarder
- 13.4 Events in accordance with sections 13.1 to 13.3 are covered even if they were caused by the freight forwarder or his representative with intent or gross negligence.

### **14. Compensation**

- 14.1 The insurer provides compensation for the sum which the insured had to contribute to a general average in accordance with a legal requirement or the York-Antwerp Rules or on the basis of the Rhine Rules IVR 1979, if through the general average some damage affecting the insurer was intended to be avoided. If the contribution exceeds the insured value, the insurer will provide compensation to the extent of the insured value. The rules regarding underinsurance remain unaffected unless the value exceeds € 1 millions.
- 14.2 The insurer reimburses the freight forwarder and the insured for costs incurred for the prevention or minimising of an insured event to the extent that this could be deemed necessary under the circumstances. In the case of under-insurance these costs are reimbursed in the ratio of the insurance sum to the value, unless the value exceeds € 1 Mio.

### **15. Start and end of the goods-in-transit insurance**

- 15.1 The goods-in-transit insurance takes effect as soon as the goods, in execution of the transport contract, are moved from the place where they were hitherto kept. The insurance cover ends as soon as the goods, in execution of the transport contract, have been placed in the location specified by the consignee. The insurance includes, however, services rendered prior or later if they are connected with the transport contract.

Loading and unloading are only covered if they are part of the transport contract.

- 15.2 In the case of warehousing by the freight forwarder upon instruction by the principal, the goods-in-transit insurance starts with the moment at which the warehouse company receive the goods into their care and ends as soon as they release the goods from their care in accordance with the contractually agreed retrieval.
- 15.3 Intermediate storing due to breaks in the transport chain are covered by the insurance.

### **16. Excluded goods, risks and types of damage**

Unless a special agreement has been reached, the following are excluded from the insurance cover:

- 16.1 removal goods, paintings, objects of art, precious stones, genuine pearls, cash, currency, documents, official documents and live animals or plants;
- 16.2 damage through inherent decay, inherent vice of the goods, normal humidity, normal temperature variations;
- 16.3 normal discrepancies in and loss of numbers, weight and measurements;
- 16.4 damage due to missing or inadequate packaging, unless the freight forwarder or a third party (packaging agent) was responsible for the packaging;
- 16.5 damage due to war, civil war, warlike events, or events that, independent from any declaration of war, result from the hostile use of articles of war or from the presence of articles of war;
- 16.6 damage due to strike, lock-outs, workforce unrest, terrorist or political acts of violence, irrespective of the number of persons involved, civil commotion or other civil unrest;
- 16.7 damage due to seizure, withdrawals or other official acts;
- 16.8 damage caused by nuclear energy;
- 16.9 damage of a penal character, e.g., fines, administrative levies, penalties;
- 16.10 damage due to insolvency or delay of payment by the shipowner, charterer or operator of a seagoing vessel or any other financial dispute with these parties;
- 16.11 damage arising from advances, reimbursements, or similar not being duly used, passed on or repaid; subsequent damage caused by such an event remains unaffected;
- 16.12 damage due to contractual agreements not common in the forwarding trade, like breach of contract, guaranteed delivery deadlines of a carrier;
- 16.13 damage that is covered by another insurance policy;
- 16.14 damage caused intentionally or through gross negligence on the part of the insured party or his representative;
- 16.15 personal injury.

## **17. Obligations**

- 17.1 In the case of a insured event occurring, the freight forwarder and the insured party are obliged:
  - 17.1.1 to report in writing immediately any damage to the insurer, in any case not later than within one month; this obligation is deemed to have been satisfied by the insured party if he notifies the freight forwarder who is obliged to pass it on to the insurer;
  - 17.1.2 to prevent or minimise a damage, to maintain recourse against third parties, to provide all necessary information for the insurer, to provide documents and to follow the instructions of the insurer;

- 17.2 If the insured party or his representative violates an obligation with intent or gross negligence, the insurer will be released from his duty for compensation in accordance with § 6 of the VVG.
- 17.3 If the freight forwarder or his representative violates an obligation with intent or gross negligence, the insurer is entitled to take recourse against the freight forwarder; § 6 section 3 sentence 2 of the VVG shall be applicable.
- 17.4 The insurer is entitled to demand from the freight forwarder and the insured party, in the case of distribution warehouses, upon arrangement, stock taking over and above the annual inventory.

## **18. Scope and limitation of the insurance benefit**

- 18.1 Per insured event the provision by the insurer is limited to
- 18.1.1 the sales price of the goods, if they were sold, otherwise to the common value which the goods had at the place and time of the insurance taking effect, plus the costs incurred by the transportation and minus costs saved, with reference to the insured value.
- 18.1.2 for subsequential damage, apart from the damage to the goods, twice the insured value to a maximum of twice the insurance sum;
- 18.1.3 twice the insured value to a maximum of twice the insurance sum in case of pure financial loss;
- 18.1.4 a maximum of € 1 millions
- 18.2 In cases of under-insurance the insurer compensates to the proportion of the insured value to the insurance sum. Under-insurance is excluded, if the insured value exceeds the insurance sum of € 1 millions.
- 18.3 For each insured event the insurer pays a maximum of € 5 millions. If an event causes damage for more than one insured party, they are compensated, irrespective of the number of insured parties and transport contracts, in proportion to their claims, if these exceed the maximum compensation limit.

## **19. Waiving of the insurance cover**

The goods-in-transit insurance is provided without the need for an application. The principal may, however, declare in writing to the freight forwarder, but at the latest when the forwarding contract is agreed on, that does not wish to have this insurance cover.

## **20. Term**

Claims out of this insurance become invalid if no legal action to obtain compensation have been started within two years after the insured event was declared. This term may be extended by agreement.

## **21. General terms**

- 21.1 If an insured event is covered by the goods-in-transit insurance the insurer will also compensate the freight forwarder, if the insured party makes a claim against the freight forwarder on the basis of the forwarding contract.

21.2 Upon compensation through the goods-in-transit insurance the freight forwarder's liability is deemed to have been settled.

#### **IV. Premium, declaration, payment and compensation**

##### **22. Premium payment according to function**

The portion of the premium relating to the liability insurance is paid by the freight forwarder (II), that portion for the goods-in-transit insurance is paid by the principal to the freight forwarder.

The freight forwarder as the party arranging the insurance cover owes the whole of the premium to the insurer and may reclaim that part to be paid by the principal, in accordance with the ADSp, as outlaid expense from the principal.

##### **23. Premium of the liability insurance (II)**

The premium will be agreed by special arrangement between freight forwarder and insurer. The insurance premium tax current at the time is additional.

##### **24. Premium for the goods-in-transit insurance (III)**

The premium will be agreed by special arrangement between freight forwarder and insurer. The insurance premium tax current at the time is additional.

##### **25. Insured value and insurance value of the goods-in-transit insurance (III)**

25.1 Insured value is the selling price or the common value of the goods at the place and time at the start of the insurance plus the freight and other costs in connection with their transport.

25.2 The maximum insured value of this goods-in-transit insurance is € 1 millions. Goods with higher values may be insured by prior arrangement.

25.3 A claim of underinsurance is not possible, if the insured value exceeds the insurance value of € 1 millions.

##### **26. Insurance declaration and payment of premiums for the goods-in-transit insurance (III)**

26.1 The principal is obliged to notify the freight forwarder of the required insurance sum and, upon request, give further details in writing. If this was not done the freight forwarder is entitled to estimate the insurance value up to the sum of € 1 millions.

26.2 The insured party suffers no disadvantage, if the freight forwarder made a mistake in his insurance declaration, a declaration of the required insurance sum was not made or the freight forwarder does not pay all or part of the insurance premium, for as long as the principal declared the required insurance sum on time and in writing.

Estimation errors of the freight forwarder are not part of this agreement. In any case, the freight forwarder is obliged to correct mistakes and to rectify omissions.

## **27. Assignment of premiums and damage**

- 27.1 The premiums declared and paid by the freight forwarder are assigned by the insurer in accordance with the declaration of the freight forwarder to the liability insurance and the goods-in-transit insurance.
- 27.2 In case of a goods-in-transit insurance the insurer assigns compensations and reserves for compensation to the liability insurance, if, without a goods-in-transit insurance, they would have been covered by the insured liability of the freight forwarder, otherwise they are assigned to the goods-in-transit insurance. If compensations, due to their cause and sum, are not subject of the forwarder's liability insurance, they will be solely assigned to the goods-in-transit insurance.
- 27.3 If there is no goods-in-transit insurance compensation and compensation reserves are assigned by the insurer to the liability insurance.
- 27.4 Costs of the insurer in connection with a claim, e.g. for average commissioners, surveyors, etc. will, after settlement of the claim, be assigned to the liability and goods-in-transit insurance in the relation of how the compensation was assigned.
- 27.5 After settlement of the claim the insurer informs the freight forwarder which sums were assigned to the liability and the goods-in-transit insurance. In case of disagreement the freight forwarder may appeal within one month after receiving the notification, stating his reasons.
- 27.6 Damage recovery less costs will be assigned in accordance with the above clauses.

## **28. Reinstatement of the insurance contract**

The insurer may arrange with the freight forwarder suitable measures for reinstatement of insurance contracts if the volume of claims necessitates this.

## **28 Payment of compensation**

- 29.1 The insurer is obliged to pay the compensation as soon as all necessary checks to ascertain the insured event and the extent of the appropriate compensation have been concluded.
- 29.2 The insurer has the right to pay the compensation through the freight forwarder if the insured of the goods in transit insurance (III) or the injured party in the liability insurance (II) did not request direct payment. In any case, the insurance claim of the insured and the general provision for the injured party provided by paragraphs 156 and 157 of the German Insurance Law remain unaffected.

## **29. Right of recourse of the insurer**

- 30.1 The insurer waives his right of recourse against the freight forwarder and his employees as the party effecting the insurance cover.
- 30.2 However, the insurer has the right of recourse against anybody who caused a damage intentionally.
- 30.3 The insurer is further entitled to recourse against the freight forwarder as the party effecting the insurance, if:

- 30.3.1 The freight forwarder in the liability insurance (II) intentionally breached his duties regarding declaration and payment and the insurer is still obliged to compensate the injured party (section 5.1)
- 30.3.2 The freight forwarder intentionally breached his other duties regarding declaration and payment and the insurer is still obliged to compensate the injured party (section 5.1)
- 30.3.3 The insurer of the liability insurance (II) is obliged to provide compensation although the freight forwarder breached his duties.

### **30. Termination**

- 31.1 Both the freight forwarder and the insurer are entitled to terminate the insurance contract in writing effective at the end of the insurance year. The notice of termination must be issued three months prior to the expiration of the contract.
- 31.2 The insurance cover is maintained for all insurance contracts signed before termination of the insurance policy until all duties arising out of them have been fulfilled. In case of warehousing on instruction the insurance cover ends at the latest three months after termination of the insurance contract.