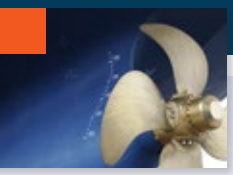
ADSp 2017

The following text is a translation of the German version of the ADSp 2017.
In case of doubts, the German version of the ADSp 2017 shall prevail.



The German Freight Forwarders' Standard Terms and Conditions 2017 *(Allgemeine Deutsche Spediteurbedingungen 2017* – ADSp 2017) are recommended for use as of January 1, 2017 by the Federation of German Industries (BDI), the Federation of German Wholesale, Foreign Trade and Services (BGA), the Federal Association of Road Haulage, Logistics and Disposal (BGL), the Federal Association of Furniture Forwarders and Logistics (AMÖ), the Federal Association of Transport and Logistics in Industry and Trade (BWVL), the Association of German Chambers of Commerce and Industry (DIHK), the German Association for Freight Forwarding and Logistics (DSLV) and the Confederation of German Retail (HDE). This advice is non-binding and the contract parties are free to make agreements that deviate from the contents of this recommendation.

1. Definitions[1]

(1.4) Consignee
Legal person to whom the goods shall be delivered according to the Freight Forwarding Contract or valid instruction of the Principal or other persons authorised to dispose of.

(1.11) Damage Case/Damage Event
Damage Case means, when, due to an external process, a claimant raises a claim on the basis of a Freight Forwarding Contract or in lieu of a freight forwarding claim; Damage Event means, when, due to an external process, several claimants raise claims on the basis of several Freight Forwarding Contracts.

(1.6) Dangerous Goods
Dangerous Goods are goods that have the potential to endanger people, Vehicles or legal interests of third parties during the course of standard transportation, warehousing or other activities. In particular, hazardous goods are defined as goods that fall into scope of application of statutes and regulations relating to hazardous goods, such as provisions covering dangerous materials, water or garbage.

(1.1) Delivery
The term of Delivery includes also the delivery in the warehouse business.

(1.13) Freight Forwarder
Legal person, which concludes a Freight Forwarding Contract with the Principal. Freight Forwarders are particularly carrier according to section 407, Freight Forwarder according to section 453, warehouse keeper according to section 467 and sea freight carrier according to sections 481, 527 HGB.

(1.14) Freight Forwarding Contracts ("Verkehrsverträge")
Freight Forwarding Contracts undertaken by the Freight Forwarder as contractor for all activities, regardless of whether they are freight forwarding, carriage of goods (by sea), warehousing or other, typical services pertaining to the freight forwarding business, such as customs handling, tracking of goods or cargo handling.

These contracts also apply to all typical logistical services included in freight forwarding, if these are in relation to the transport or warehousing of goods, in particular to activities such as the creation of loading units, consignments, labelling, weighing of goods and returns processing.

[1] For user-friendliness, Section 1 ADSp 2017 ("Definitions") is sorted in alphabetical order. The numbering is according to the German version of the ADSp 2017.

DSLV

Contracts about the presentation of manned motor Vehicles for use on instruction by the Principal shall also be deemed as Freight Forwarding Contracts *("Lohnfuhrverträge")*.

(1.12) Interfaces
After acceptance and before Delivery of the goods by the Freight Forwarder, Interfaces are defined as any transition of the goods from one legal person to another, any transhipment from one Vehicle to another, any (temporary) storage.

1.7 Loading Means
Means for the aggregation of Packages and for the creation of loading units, such as pallets, container, swap trailers, bins.

(1.16) Material Contractual Obligations
Material Contractual Obligations are defined as those that initially enable the contractually agreed fulfilment of the Freight Forwarding Contract and on which the contracting partner is entitled to reasonably rely on.

(1.10) Packages
Single items or units formed by the Principal for the fulfilment of the order with or without Loading Means, which the Freight Forwarder must handle as one ensemble (freight item as defined by sections 409, 431, 504 German Commercial Code (HGB).

(1.8) Place of Loading/Discharge
The postal address, if the parties have not agreed on a more precise location.

(1.19) Point of Time
Agreed Point of Time for the arrival of the Freight Forwarder at the Place of Loading or Place of Discharge.

(1.2) Principal
Legal person which concludes a Freight Forwarding Contract with the Freight Forwarder.

(1.15) Shipper
Legal Person, which hands over the goods for transportation according to the Freight Forwarding Contract or on a valid instruction.

(1.3) Theft-Sensitive Goods
Theft-Sensitive Goods are those exposed to an increased risk of robbery and theft, such as money, precious metals, jewellery, watches, precious minerals, art, antiques, check books, credit cards and/or other payment means, stocks and security papers, documents, spirits, tobacco, entertainment electronic goods, telecommunications goods, IT equipment and accessories as well as smart cards.

(1.18) Time Frame
Agreed Time Frame for the arrival of the Freight Forwarder at the Place of Loading or Place of Discharge.

(1.9) Time of Performance
The time (date, time of day) up to a particular performance must be taken place, for example a Time Frame or Point of Time.

(1.17) Valuable Goods
Good, at the time and place of taking over, with an actual value of at least 100 Euro/kg.

(1.5) Vehicle
Means of transport for the transportation of goods on traffic routes.

2. Scope of application

2.1 The ADSp cover all Freight Forwarding Contracts undertaken by the Freight Forwarder as contractor.

2.2 Statutory provisions which cannot be modified by pre-formulated standard terms and conditions take precedence over the ADSp.

2.3 The ADSp do not apply to businesses that are exclusively dedicated to:

2.3.1 packaging,

2.3.2 transportation and warehousing of towed or salvaged goods,

2.3.3 transportation and warehousing of removal goods according to section 451 HGB,

2.3.4 storage and digitalisation of files; files are all types of embodied and digitalised business papers, documents, data storage mediums and similar objects for information collection,

2.3.5 abnormal and heavy-load transports, which require a transportation regulation permission or exception, crane services and associated assembly work,

2.4 The ADSp do not apply to Freight Forwarding Contracts with consumers as defined in Section 13 German Civil Code (BGB).

3. Obligation of the Principal regarding placing of orders, information requirements, special goods

3.1 The Principal shall timely inform the Freight Forwarder about all essential parameters known to him affecting the carrying out of the order.

These include

3.1.1 addresses, type and quality of the goods, the gross weight (including packaging and Loading Means of the Principal) or otherwise specified quantities, marks, numbering, quantities and type of Packages, specific characteristics of the goods (such as live animals and plants, perishability), the value of the goods (for example for customs purposes or the insurance of goods according to clause 21 ADSp) and Delivery times,

3.1.2 all public-legal duties and safety regulations, such as duties relating to customs, foreign trade regulations (particularly those relating to goods and people as well as specific country embargos) and legal safety obligations.

3.1.3 in case of carriage of goods by sea, all relevant data in the compulsory form relating to safety statutes (e. g. International Convention for the Safety of Life at Sea [SOLAS]).

3.1.4 intellectual property rights of third parties, such as trademark and license limitations which are connected to the possession of the goods, including legal or regulatory hindrances capable of prejudicing the processing of the order.

3.1.5 specific technical requirements for the means of transport and particular cargo securing means to be supplied by the Freight Forwarder.

3.2 In case of Dangerous Goods, the Principal must inform the Freight Forwarder in due time and in text form about the quantity and specific nature of the hazard including – if required – the necessary safety measures. If Dangerous Goods fall into scope of the law on the transport of dangerous goods *(Gesetz über die Beförderung gefährlicher Güter [GGBefG])* or if other transported and stored goods fall into scope of other Dangerous Goods or garbage related statutes or regulations, the Principal must provide the relevant information, in particular the classification according to the relevant Dangerous Goods laws, and, at the latest, during the handover of the goods, supply the required documentation.

3.3 In case of Valuable or Theft-Sensitive Goods, the Principal must inform the Freight Forwarder in text form regarding the type and value of the goods and the current risks involved to enable the Freight Forwarder to assess the acceptance of the order or take appropriate measures for the safe and damage-free completion of said order. In case of acceptance of the order, the Freight Forwarder is obliged to undertake appropriate safety measures for protecting the goods.

3.4 The Principal is responsible for supplying the Freight Forwarder with all information, certificates and other documentation required, such as customs classification, for the correct processing of customs or other statutorily required handling of the goods, including, but not limited to, security checks for air freight shipments.

4. Rights and duties of the Freight Forwarder

4.1 The Freight Forwarder shall act in the interest of the Principal, check the placed order for obvious faults and immediately inform the Principal, if required, about all dangers known by the Freight Forwarder for the fulfilment of the order. If required, the Freight Forwarder shall ask for instructions.

4.2 The Freight Forwarder takes care that the Vehicles, loading safety means and, if their presentation is agreed, Loading Means are in a technically perfect condition, comply with statutory provisions and the requirements of the Freight Forwarding Contract. Vehicles and Loading Means shall be equipped with the typical appliances, equipment or methods for the protection of the goods, in particular loading safety means. Vehicles shall have low emissions and noise as well as low energy consumption.

4.3 The Freight Forwarder shall deploy reliable, appropriate and, for the particular task in question, suitable and duly employed, qualified and trained drivers and, if required, with a driver certification.

4.4 On foreign premises, the Freight Forwarder shall comply with the house rules, plant or construction site regulations in force, if they were announced to the Freight Forwarder. Section 419 HGB remains unaffected.

4.5 The Freight Forwarder is entitled to make customs clearance dependent on issuance of a written power of attorney that enables direct representation.

4.6 If the Freight Forwarder is assigned with the cross-border transportation of the goods or the import or export customs clearance, the Freight Forwarder is, in case of doubt, also entitled to act in regards to the customs or other statutorily required handling of the goods, if the transport of the goods to the agreed destination would be impossible without such action.

The Freight Forwarder is hereby entitled

4.6.1 to open packaging whenever such action is necessary to comply with statutorily required controls (for example, Freight Forwarder as regulated agent), and,

subsequently, to undertake all measures necessary to complete the order, such as repackaging the goods.

4.6.2 to advance payments required by customs.

4.7 In case of lost or damaged goods or for delay in delivery and upon request by the Principal or Consignee, the Freight Forwarder must procure immediately all required and known information for securing their compensation claims.

4.8 In the absence of a separate agreement in the order supplied to the Freight Forwarder, the service does not include:

4.8.1 the supply or replacement of pallets or other Loading Means,

4.8.2 the loading and unloading of goods, unless otherwise indicated by circumstances or common practice.

4.8.3 a transhipment ban (section 486 HGB does not apply),

4.8.4 the allocation of a shipment tracking system, unless it is in line for this sector of industry, whereas clause 14 remains unaffected.

4.8.5 returns, detours and hidden additional cargo.

If in deviation to the actual order, one or more Packages are handed over and accepted for transportation by the Freight Forwarder, then the Freight Forwarder and the Principal conclude a new Freight Forwarding Contract on these goods. In case of returns or hidden additional cargo and in absence of a separate agreement, the terms and conditions of the original Freight Forwarding Contract will apply. Clause 5.2 remains unaffected.

4.9 Further service and information obligations, for example quality management measures and their auditing, monitoring and evaluation systems as well as key performance indicators need to be expressly agreed.

5. Contact person, electronic communication and documents

5.1 Upon request of a contracting party, each side will nominate one or more contact persons to receive information, explanations and enquiries regarding the fulfilment of the contract and exchange names and addresses. This information needs to be updated in case of changes. If either contracting party fails to provide details for a contact person, then the relevant signatory to the contract shall be the designated contact person.

Information obligations, which exceed the obligation in statutory provisions, for example measures of the Freight Forwarder in case of disruptions, in particular, an imminent delay during takeover or Delivery, obstacles to carriage and Delivery, damages to the goods or other disruptions (emergency concept) need to be agreed separately.

5.2 In the absence of an expressly agreement, contractual statements by warehousing or transport personnel require approval from the respective party to be considered valid.

5.3 The Principal takes care of the required declarations to be supplied by the Principal's Shipper or Consignee during the fulfilment of the Freight Forwarding Contract at the Place of Loading and Place of Delivery, and of real actions, such as Delivery and receipt of the goods.

5.4 If agreed between the Principal and the Freight Forwarder, the parties will transmit and receive the shipping details, including the creation of the invoice, by electronic means (electronic data interchange/ remote transmission).
The transmitting party carries the responsibility for the loss, completeness and validity of any sent data.

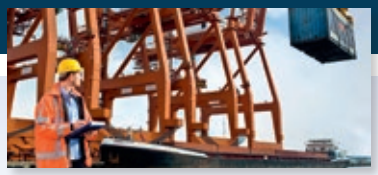
5.5 In case of an agreement according to clause 5.4 ADSp, the parties ensure that their IT system is ready for operation and that data can be processed appropriately, including the usual safety and control measures, to protect the electronic data exchange and prevent unauthorized access, modification, loss or destruction by third parties. All parties are obliged to give timely notification of any changes to their IT systems that could affect the electronic data interchange.

5.6 Electronic or digital documents, in particular proof of deliveries, shall be considered equal to written documents.

Furthermore, each party is entitled to archive written documentation in exclusively electronic or digital format and to eliminate originals, the latter always in consideration of the legal regulations regarding the same.

6. Packaging and labelling duties of the Principal

6.1 The Principal shall pack the goods, and if required, clearly and permanently label all goods with their required identifications, such as addresses, marks, numbers and symbols relating to the handling and characteristics of the goods. Old identification marks



must be removed or garbled. The same applies for Packages.

6.2 Furthermore, the Principal is responsible for:

6.2.1 identifying all Packages belonging to the same shipment, to ensure easy recognition,

6.2.2 ensuring that Packages, if required, cannot be accessed without leaving external traces.

7. Securing cargo and supervisory duties of the Freight Forwarder

7.1 In all cases where loading and discharge occurs at more than one location, the Freight Forwarder takes care for the security of cargo until the last Place of Discharge and at all times, but not before the completion of loading in a transport safety manner.

7.2 The Freight Forwarder shall conduct controls at all Interfaces. The Freight Forwarder shall check completeness and identity of the goods, their apparent good order and condition as well as all seals, locks and record any irregularities.

8. Receipt

8.1 The Freight Forwarder shall issue a certificate of receipt with reservations noted, if necessary.

In case of doubt, the certificate of receipt issued by the Freight Forwarder only confirms the number and type of Packages, but not their content, value, weight or other measurements.

8.2 Previously loaded or sealed loading units, such as containers or swap bodies and previously transmitted data, the accuracy of the certificate of receipt regarding quantity and type of loaded Packages is vitiated, if the Freight Forwarder notifies the Principal on differences (in quantity) or damages, immediately after unloading the loading unit.

8.3 The Freight Forwarder must request proof of Delivery from the Consignee in form of a Delivery receipt listing all Packages as outlined in the order or other accompanying documentation. Should the Consignee refuse to issue a Delivery receipt, the Freight Forwarder must request instructions from the Principal.

The Principal can demand the Delivery receipt for a period of one year after the goods have been delivered.

8.4 As receipt for takeover or Delivery of the goods counts any signed document which gives evidence for fulfilment of the order, such as Delivery notes, forwarders certificate of receipt, consignment note, sea way bill, consignment bill or a bill of lading.

8.5 The certificate of receipt and Delivery receipt can also be issued electronically or digitally, unless the Principal requests the issuing of a consignment note, sea way bill, consignment bill or bill of lading.

9. Instructions

Upon conclusion of the contract, the Freight Forwarder must follow all instructions regarding the cargo, unless carrying out such instructions poses disadvantages to his business or damages to consignments of other Principals or Consignees. If the Freight Forwarder intends not to follow an instruction, then the Freight Forwarder shall inform the instructor immediately.

10. Freight payment, cash on Delivery

10.1 Notifications by the Principal to the effect that the order should be executed freight collect or for the account of the Consignee or a third party, for example according to Incoterms, do not exempt the Principal from his obligation to pay the Freight Forwarder its remuneration and outlays, including freights, customs charges and other expenses. Freight collect instructions, for example according to section 422 HGB, Article 21 CMR, remain unaffected.

11. Default of loading and Delivery times, demurrage

11.1 In cases where the Principal must load or unload the Vehicle, the Principal has the obligation to do so within the agreed, otherwise within a reasonable loading and unloading time.

11.2 If, in case of carriage of goods by road, the parties agree on a Time Frame or Point of Time or is such notified by the Freight Forwarder without objection by the Principal, Shipper or Consignee, the loading and unloading time – irrespective of the number of shipments per Place of Loading and Discharge – for full truck loads, but with the exception for bulk goods, for Vehicles with 40 tons maximum permissible weight shall be maximum 2 hours per loading and per unloading in general. The times shall be reduced appropriately for Vehicles with a lower maximum permissible weight in the individual case.

11.3 The loading or unloading time begins with the arrival of the road vehicle at the designated Place of Loading and Discharge (for example, by notifying the gate keeper), and ends when the Principal has completed all its duties.

However, if a Time of Performance has been agreed for the arrival of road Vehicles at the Place of Loading and Discharge, the loading and unloading time does not begin before the agreed presentation time.

11.4 In cases where the contractually agreed loading and unloading time are not maintained due to reasons beyond the Freight Forwarder's scope of responsibility, the Principal must pay the Freight Forwarder the agreed, otherwise commonly accepted, demurrage fees.

11.5 The aforementioned provisions apply accordingly, when the Freight Forwarder is obliged to load and unload the goods, and when the Principal is exclusively committed to prepare the goods for loading or to accept them after unloading.

12. Performance hindrances and *force majeure*

12.1 If the Freight Forwarder is unable to take over the goods, or unable to take them over on time, the Freight Forwarder must immediately notify and seek instructions from the Principal. Section 419 HGB applies accordingly. The Principal remains entitled to terminate the Freight Forwarding Contract, whereas the Freight Forwarder is not entitled to ask for compensation according to section 415 (2) HGB.

12.2 Performance hindrances that do not fall within the scope of responsibility of either contracting party, free said parties of their performance duties for the duration of the hindrance and the extent of its impact. Such performance hindrances are defined as force majeure, civil unrest, war or acts of terrorism, strikes and lock-outs, transport route blockades, and any other unforeseeable, unavoidable and serious events. In case of a performance hindrance, the contracting parties are obliged to notify the other party immediately. Additionally, the Freight Forwarder is obliged to ask the Principal for instructions.

13. Delivery

13.1 If, after arrival at the Place of Discharge, it becomes apparent that the unloading cannot take place within the time of unloading, the Freight Forwarder must immediately notify the Principal and request for relevant instructions. Section 419 HGB applies accordingly.

13.2 If, the Freight Forwarder cannot adhere to the agreed Time of Performance or – in the absence of an agreement – to a reasonable time for Delivery, the Freight Forwarder shall request instructions from the Principal or the Consignee.

13.3 Should the Consignee not be located at his residence, business premises, or in an institution in which he is a resident, the goods, always assuming there are no obvious doubts regarding the entitlement to receive the goods of the person in question, may be delivered to:

13.3.1 at the residence: on an adult family member, a person employed by the family or an adult resident permanently sharing the accommodations,

13.3.2 at business premises: on a person employed there,

13.3.3 in institutions: on the head of the institution or a correspondingly authorised attorney-in-fact.

13.4 In cases where the Freight Forwarder and Principal have agreed on Delivery without the presentation to an actual person (for example, night, garage or assembly line deliveries), Delivery is deemed to have taken place on the actual physical deposit of the goods at the agreed location.

13.5 The Delivery can only take place under supervision of the Principal, Consignee or a third party authorised for reception. Clauses 13.3 and 13.4 ADSp remain unaffected.

14. Information and restitution duties of the Freight Forwarder

14.1 The Freight Forwarder is obliged to provide the Principal with the required reports and, on demand, to provide information on the status of the transaction and after carrying out the business to render account for it. However, the Freight Forwarder is only obliged to reveal costs, if the Freight Forwarder works on Principal's account.

14.2 The Freight Forwarder has the duty to give anything to the Principal what he has received by carrying out and managing the business.

15. Warehousing

15.1 The Principal has the duty to pack and mark the goods, if required, and to make available all documents and information to the Freight Forwarder for an appropriate storage.

15.2 The Freight Forwarder decides in its sole discretion if warehousing takes place in its own facilities or, if not otherwise agreed, those of third parties. Whenever warehousing takes place at third party warehouses, the Freight Forwarder must supply timely information regarding its name and location to the Principal or, whenever a warehouse warrant has been issued, to make a note of the information on the same.

15.3 The Freight Forwarder takes care for the duly maintenance and care of the warehouse and storage space, the drives on the premises and for securing the goods, in particular theft protection. Additional security measures, for example measures exceeding the statutory fire protection laws, must be expressly agreed.

15.4 Unless otherwise agreed:

15.4.1 takeover of the goods for warehousing begins with the unloading of the goods from the Vehicle by the Freight Forwarder and the Delivery ends with the completion of the loading of the goods by the Freight Forwarder.

15.4.2 inventory management is via the Freight Forwarder's inventory accounting,

15.4.3 there is one physical inventory inspection per year. On instruction of the Principal, the Freight Forwarder shall conduct further physical inventories against compensation.

15.5 With taking over the goods and if appropriate examination means are available, the Freight Forwarder is obliged to conduct a receiving inspection on types, quantities, marks, numbering, quantities of Packages as well as outer visible damages according to section 438 HGB.

15.6 The Freight Forwarder shall conduct regular inspections with appropriate personnel for securing the goods.

15.7 In case of stock shortfall and imminent changes at the goods, the Freight Forwarder shall immediately inform the Principal and ask for instructions. Section 471 (2) HGB remains unaffected.

15.8 Additional service and information obligations require an explicit agreement.

16. Remuneration

16.1 The services according to the Freight Forwarding Contract are compensated with the agreed remuneration, if this remuneration includes the costs for transportation and warehousing. Supplemental claims for costs occurred during regular transportation or warehousing and which were foreseeable at the time of the offer, cannot be claimed separately, unless otherwise agreed. Calculation errors are at the expense of the calculator. Sections 412, 418, 419, 491, 492, 588 until 595 HGB and comparable provisions of international conventions remain unaffected.

17. Compensation claims and right of recourse

17.1 The Freight Forwarder is, if not caused by his fault, entitled to ask for refund of expenses properly incurred, in particular those relating to average contributions, detention or demurrage charges, including additional packaging for protecting the goods.

17.2 If the Principal instructs the Freight Forwarder to receive goods and if, on reception of the goods by the Freight Forwarder, freight, cash on delivery, customs duties, taxes, or other expenses and charges are demanded, the Freight Forwarder is entitled – but not obliged – to pay these costs according to the circumstances he has properly assessed, and to claim reimbursement from the Principal, unless otherwise agreed.

17.3 On request, the Principal must immediately indemnify the Freight Forwarder for expenditures, such as freight, average contributions, customs duties, taxes and other fees demanded from the Freight Forwarder, in particular acting as a person authorised to dispose or as possessor of goods belonging to third parties, unless the Freight Forwarder is responsible for their accrual.

18. Invoices, foreign currencies

18.1 Remuneration claims of the Freight Forwarder require the reception of an invoice or payment schedule in accordance to statutory requirements. If not otherwise agreed, the maturity is not dependent on presenting a delivery receipt in case of an uncontested Delivery.

18.2 Regarding foreign Principals or Consignees, the Freight Forwarder is entitled to ask whether to receive payment in the relevant foreign currency or in Euro (EUR).

18.3 If the Freight Forwarder owes foreign currency or has advanced foreign currency amounts, the Freight Forwarder is entitled to ask for payment in either the relevant foreign currency or in Euro (EUR). In case of

Euro (EUR), currency conversion is made according to the official exchange rate on the day of payment, which shall be evidenced by the Freight Forwarder.

18.4 Payment according to a credit memo procedure must be expressly agreed. In case of doubt, all credit memos are to be issued immediately, upon completion of services. Clause 18.1 first sentence ADSp is not applicable for credit memo procedures.

19. Set-off, Retention

In the face of claims arising from the Freight Forwarding Contract and associated non-contractual claims, set-off or retention is only permitted when the claim is due, uncontested, ready for decision or legally established.

20. Lien and retention rights

20.1 The Freight Forwarder is entitled to secure its demands arising from freight forwarding services according to the legally permitted regulations regarding lien and retention rights.

20.2 Lien rights can be exercised according to the legally established provisions, providing:

20.2.1 the threat and the required notifications about the exercise of the legitimate lien and the sale of the pledged items by the carrier shall be forwarded to the Consignee,

20.2.2 the time limit of one month as specified in section 1234 BGB is superseded by a time limit of one week.

20.3 The Principal is entitled to prohibit the exercise of the lien by granting an equivalent security for its claims, such as a directly enforceable bank guarantee.

21. Insurance of goods

21.1 The Freight Forwarder arranges the insurance of the goods (e. g. goods in transit or warehousing insurance) with an insurer of its choice, when the Principal assigns the Freight Forwarder to do so prior to handing over the goods.

21.2 The Freight Forwarder shall arrange insurance for the goods, if this is in the interest of the Principal. The Freight Forwarder can assume that insurance is in the interest of the Principal, in particular when:

21.2.1 the Freight Forwarder has arranged insurance for a previous Freight Forwarding Contract for the same Principal in the course of an ongoing business relationship,

21.2.2 the Principal has declared a value of the goods for the purpose of insurance.

21.3 The assumption that insurance is in the interest of the Principal according to clause 21.2 ADSp is discounted, in particular when:

21.3.1 the Principal has prohibited the purchase,

21.3.2 the Principal is a Freight Forwarder, carrier or warehouse keeper.

21.4 In case of purchasing insurance cover, the Freight Forwarder shall observe instructions of the Principal, in particular the amount insured and risks to be covered. In the absence of such an instruction, the Freight Forwarder must assess the type and scope of insurance in its sole discretion and purchase insurance cover at the usual market conditions.

21.5 If, due to the nature of the goods to be insured, or for another reason, the Freight Forwarder is unable to purchase insurance cover, the Freight Forwarder will notify the Principal immediately.

21.6 If the Freight Forwarder purchases an insurance after conclusion of the Freight Forwarding Contract and upon instruction of the Principal or recovers a claim or acts otherwise on behalf of the Principal regarding carrying out insurance claims or averages, the Freight Forwarder is entitled to a reasonable remuneration according to local standards, otherwise, an appropriate remuneration, in addition to the compensation of its expenses, even in the absence of a prior agreement.

22. Liability of the Freight Forwarder, Subrogation of claims of reimbursement

22.1 The Freight Forwarder is liable for damages according to the statutory provisions. However, the following provisions shall apply, in as much as they do not contradict mandatory regulations, in particular the law of pre-formulated terms and conditions.

22.2 In all cases, where the Freight Forwarder is fault-based liable for losses or damages to the goods *("Güterschaden")* according to clause 23.3 and 24, the Freight Forwarder must only pay the value and reimburse the costs according to sections 429, 430, 432 HGB instead of damage compensation.

22.3 In case of inventory divergences, the Freight Forwarder is entitled to balance the inventory with positive stock balance differences and stock shortfall of the

same Principal for value evaluation in cases as set out in clause 24 ADSp.

22.5 If the Freight Forwarder has claims, for which the Freight Forwarder is not liable for, against a third party in case of damages, or in cases when the Freight Forwarder has claims exceeding the sum for which the Freight Forwarder is liable, the Freight Forwarder must subrogate such claims to the Principal upon request, unless the Freight Forwarder has a separate agreement to pursue claims on behalf and at the expense of the Principal. Sections 437, 509 HGB remain unaffected.

23. Liability limitations

23.1 Except in case of damages during carriage of goods by sea or ordered warehousing, the Freight Forwarder's liability for damages to goods is limited according to section 431 (1), (2) and (4) HGB, to:

23.1.1 8.33 *Special Drawing Rights* (SDR) for every kg, whenever the Freight Forwarder is:

- a carrier, as defined by section 407 HGB,
- acting as principal *("Spediteur im Selbsteintritt")*, fixed costs freight forwarder *(Fixkostenspediteur)* or consolidator *("Sammelladungsspediteur")*, according to sections 458 to 460 HGB or
- care, custody and control Freight Forwarder *("Obhutsspediteur")* according to Section 461 (1) HGB.

23.1.2 2 instead of 8.33 SDR for every kg, whenever the Principal has agreed to a Freight Forwarding Contract which is subject to a variety of transport means and includes carriage of goods by sea and an unknown damage place.

In case of a known damage place, the liability according to section 452a HGB is subject to the liability exclusion and liability limitation of the ADSp.

23.1.3 Whenever Freight Forwarder's liability according to clause 23.1.1 ADSp exceeds an amount of EUR 1.25 million per Damage Case, this liability is furthermore limited to EUR 1.25 million per Damage Case, or to 2 SDR for every kg, whichever amount is higher.

23.2 The liability of the Freight Forwarder for damages to the goods in its custody for Freight Forwarding Contracts which are subject to carriage of goods by sea and cross-border transportation is limited to the maximum statutory liability amount. Clause 25 ADSp remains unaffected.

23.3 For all cases out of scope of clauses 23.1 and 23.2, such as section 461 (2) HGB, 280 ff BGB, the liability of the Freight Forwarder for damages to goods is limited according to section 431 (1), (2) und (4) HGB to a maximum of:

23.3.1 2 SDR per kg for Freight Forwarding Contracts relating to carriage of goods by sea or a transportation by a variety of transport means, but including carriage of goods by sea,

23.3.2 8.33 SDR per kg for all other Freight Forwarding Contracts.

23.3.3 Furthermore, the Freight Forwarder's liability is limited to the maximum amount of EUR 1.25 million for each case of damage.

23.4 The liability of the Freight Forwarder for all other damages than damages to the goods with the exception of damages during ordered warehousing or damages to personal injury or goods of third parties is limited to three times the amount that would be payable for the loss of goods according to clauses 23.3.1 or 23.3.2 ADSp. Furthermore, the Freight Forwarder's liability is limited for each case of damage to the maximum amount of EUR 125,000.

23.4.1 Sections 413 (2), 418 (6), 422 (3), 431 (3), 433, 445 (3), 446 (2), 487 (2), 491 (5), 520 (2), 521 (4), 523 HGB as well as any relevant mandatory liability provisions in international conventions shall remain unaffected.

23.4.2 Clause 23.4 ADSp is not applicable on statutory provisions, such as Article 25 *Montreal Convention* (MC), Article 5 *Règles uniformes concernant le Contrat de transport international ferroviaire des marchandises* (CIM) or Article 20 *Convention de Budapest relative au contract de transport de marchandises en navigation intérieure* (CMNI), which extend Freight Forwarder's liability or permit to extend.

23.5 If Freight Forwarder's liability according to Articles 23.1, 23.3 and 23.4 ADSp exceeds the amount of EUR 2.5 million per Damage Event, then Freight Forwarder's liability is, irrespective of how many claims arise from a single Damage Event, further limited to a maximum amount of EUR 2.5 million per Damage Event or to 2 SDR per kg for lost or damaged goods, whichever amount is the higher. When there is more than one claimant, the Freight Forwarder's liability shall be proportionate to individual claims.

24. Liability limitations for ordered warehousing, inventories and declaration of value

24.1 In the case of ordered warehousing, the liability of the Freight Forwarder for damages to goods is limited to:

24.1.1 8.33 SDR for every kg corresponding to sections 431 (1), (2) and (4) HGB,

24.1.2 a maximum of EUR 35,000 per Damage Case.

24.1.3 EUR 70,000 per year, in cases where the damage claimed by the Principal bases, contrary to clause 24.1.2 ADSp, on a difference between calculated stock and actual stock of the inventory, irrespective of the amount and type of inventory taking and the amount of Damage Cases causing the difference in inventory.

24.2 Upon payment of an agreed supplement and prior to warehousing of goods, the Principal can specify a value in text form for an increased liability that differs from the maximum amounts stipulated in clause 24.1. In this case, the specified value replaces the relevant maximum amount.

24.3 In case of warehousing upon instruction, the Freight Forwarder's liability for other damages, excluding damages to personal injury or goods of third parties, is limited to EUR 35,000 per case of damage.

24.4 In case of warehousing upon instruction, but excluding personal injury or damages to goods of third parties, the Freight Forwarder's liability is always limited to EUR 2.5 million per Damage Event, irrespective of how many claims arise from a single Damage Event. When there is more than one claimant, the Freight Forwarder's liability shall be proportionate to individual claims. Clause 24.2 ADSp remains unaffected.

25. Exclusion of liability for carriage of goods by sea and inland waterway transportation

25.1 In accordance with section 512 (2) No. 1 HGB, it is agreed that:

The Freight Forwarder in its position as carrier is not responsible for any fault or neglect on the part of its servants or of the ship's company, insofar as the corresponding damage was caused in the course of steering or otherwise operating the ship, or was caused by fire or explosion on board the ship and the measures taken were not predominantly for the benefit of the cargo.

25.2 According to Article 25 (2) CMNI it is agreed that the Freight Forwarder in its position as carrier or actual carrier is not liable for damages and losses arising from:

25.2.1 an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the Freight Forwarder complied with the obligations set out for the crew in Article 3 (3) CMNI, unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result,

25.2.2 fire or an explosion on board the vessel, where it is not possible to prove that the fire or explosion resulted from a fault of the Freight Forwarder or the actual carrier or their servants or agents or a defect of the vessel,

25.2.3 the defects existing prior to the voyage of his vessel or of a rented or chartered vessel if he can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.

25.3 Clause 22.4 ADSp remains unaffected.

26. Non-contractual liability

In accordance with sections 434, 436 HGB, the above mentioned liability exclusions and limitations also apply to non-contractual claims. Clause 23.4.1 ADSp applies accordingly.

27. Qualified fault

27.1 Liability exclusions and limitations listed in clauses 22.2, 22.3, 23.3 and 23.4 in conjunction with 23.5, 24 as well as 26 ADSp do not apply when the damage has been caused by:

27.1.1 intent or gross negligence of the Freight Forwarder or vicarious agents or

27.1.2 infringement of Material Contractual Obligations, whereby such claims are limited to predictable and typical damages.

27.2 Divergent from clause 27.1.2 ADSp, only the liability limitations of clause 24.1 and 24.2 ADSp do not apply in case of gross negligent or intentional infringements of Material Contractual Obligations only.

27.3 Sections 435, 507 HGB remain applicable within their scope of application.

27.4 Clause 27.1 ADSp is not applicable on statutory provisions, such as Article 25 MC, Article 36 CIM or Article 20, 21 CMNI, which extend Freight Forwarder's liability, allow extending or expanding the imputation of fault of servants or third parties.

28. Liability insurance of the Freight Forwarder

28.1 The Freight Forwarder is obliged to purchase and maintain liability insurance at the usual market conditions with an insurer of his choice that, as a minimum, covers the ordinary liability amounts of its freight forwarding liability according to ADSp and statutory provisions. The agreement of maximum insurance amounts per Damage Case, Damage Event and year is permitted as well as the agreement of reasonable deductibles for the Freight Forwarder.

28.2 Upon request, the Freight Forwarder is obliged to provide evidence of the liability insurance and its validity by presentation of an insurance confirmation within a reasonable Time Frame. In absence of such a presentation, the Principal is entitled to terminate the Freight Forwarding Contract extraordinarily.

28.3 The Freight Forwarder is only entitled to rely on the liability limitations of the ADSp, when the Freight Forwarder provides an appropriate insurance cover at the time of order.

29. Liability of the Principal

29.1 The liability of the Principal pursuant to sections 414, 455, 468, and 488 HGB is limited to EUR 200,000 per Damage Event.

29.2 The aforementioned liability limitation does not apply in case of personal injuries, such as injury of life, body and health, if the damage was caused by gross negligence or wilful intent of the Principal or its vicarious agents, or infringement of Material Contractual Obligations, whereas the latter is limited to predictable and typical damages.

30. Applicable law, place of fulfilment, place of jurisdiction

30.1 The legal relationship between the Freight Forwarder and Principal is governed by German law.

30.2 The place of fulfilment for all involved parties is the location of the Freight Forwarder's branch office dealing with the order or the enquiry.

30.3 The place of jurisdiction for all disputes arising from the Freight Forwarding Contract, an enquiry or in relation to it, is and all involved parties the location of the Principal or Freight Forwarder's branch office dealing with the order or enquiry, as far as all these parties are merchants. The aforementioned place of jurisdiction shall be deemed as an additional place of jurisdiction pursuant to Article 31 CMR and Article 46 § 1 CIM, but not in case of Article 39 CMR, Article 33 MC, Article 28 Convention for the Unification of certain rules relating to international carriage by air (WC).

31. Confidentiality

31.1 Contractual parties are obliged to maintain confidentiality regarding all unpublished information received during the execution of the Freight Forwarding Contract. This information can only be used for the exclusive purpose of contract fulfilment. The parties shall commit other legal persons with an equivalent confidentiality obligation, if these legal persons are deployed for contract fulfilment.

32. Compliance

32.1 The Freight Forwarder shall comply with minimum wage provisions and minimum conditions for workplaces and confirms the compliance in text form upon request of the Principal. The Freight Forwarder indemnifies the Principal for its liability for minimum wages, if the Freight Forwarder, its subcontractor or hirer during the course of fulfilment of the Freight Forwarding Contract, does not pay the minimum wages and the Principal is demanded to pay.

32.2 The Freight Forwarder shall ensure in case of transportation services, that himself or its executing subcontractor

32.2.1 possesses, within the scope of application of the *Güterkraftverkehrsgesetz* (GüKG), a permission according to section 3 GüKG, an entitlement according to section 6 GüKG or a community license or does not use such a permission, entitlement or license unlawfully.

32.2.2 deploys, within the scope of application of the GüKG driving personnel, which comply with the requirements of section 7b (1) sentence 1 GüKG, if applicable,

32.2.3 upon request provides all documents, which must be carried during transportation according to statutory

provisions, when the Principal or third parties must comply with statutory controlling obligations,

32.3 In case of transportation, the Freight Forwarder or its executing subcontractor is obliged to organise the activities of its driving personnel according to the compulsory working, driving and recreation times. During the driving of Vehicles, alcohol and drugs are generally prohibited.

32.4 Both contracting parties commit to carrying out their contractual duties and to act according to the legal regulations covering their business and to support and obey the principles of the United Nations Global Compact (UNGC), the United Nations Declaration of Human Rights, and the Declaration of the International Labour Organization regarding the 1998 Declaration on Fundamental Principles and Rights at Work, in accordance with national laws and customs. In particular, both parties will commit to:

32.4.1 no child or forced labour,

32.4.2 comply with the relevant national laws and regulations regarding working hours, wages, salaries and to comply with any other obligations for employers,

32.4.3 comply with the current regulations on health and safety at work, and to provide a safe and healthy workplace to ensure the health of employees and to avoid accidents, injuries and work-related illness,

32.4.4 omit all discrimination based on race, religion, disability, age, sexual orientation or sex,

32.4.5 comply with international standards on corruption, such as those published in UNGC and to adhere to local anti-corruption and bribery laws,

32.4.6 adhere to all current environmental protection laws and regulations,

32.4.7 engage its business partners and subcontractors according to the aforementioned principles.

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