

# The German Freight Forwarders' Standard Terms and Conditions 2016

## ADSp 2016

### 1. APPLICABILITY OF THE ADSP 2016, PRECEDENCE OF MANDATORY LAW

- 1.1 The ADSp 2016 covers all contracts and services provided by the Freight Forwarder, unless the exceptions outlined in Article 2.3 and 2.4 apply. General terms and conditions or other pre-formulated contract terms used by the principal (Customer) do not apply, even if they simply contain additional provisions to the ADSp 2016.
- 1.2 Only mandatory statutory provisions take precedence over the ADSp 2016.

### 2. SCOPE OF APPLICATION

- 2.1 The ADSp 2016 cover all freight forwarding contracts (Verkehrsverträge) 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.
- 2.2 The ADSp 2016 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.
- 2.3 The ADSp 2016 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 of removal goods,
  - 2.3.4 warehousing of removal goods, if the General Terms and Conditions for Warehousing of the German Association of Movers and Logistics (Allgemeine Lagerbedingungen des Deutschen Möbeltransports – ALB) have been agreed,
  - 2.3.5 crane work, abnormal and heavy-load transports and associated assembly work, if the General Terms and Conditions of the German Federal Working Group Heavy Transport and Crane Work (AGB-BSK) have been agreed.
- 2.4 The ADSp 2016 do not apply to freight forwarding contracts with consumers as defined in Section 13 German Civil Code (BGB).

### 3. AWARDING OF CONTRACTS, INFORMATION REQUIREMENTS, SPECIAL GOODS

- 3.1 Prior to placing an order, the Customer is obliged to give timely notice of all relevant conditions and information affecting the carrying out of the same.
  - 3.1.1 This includes all relevant data required for carrying out the service, such as addresses, signs, numbering and amounts of packages or otherwise specified amounts, type, composition and characteristics of the goods (such as live animals and plants, perishability), the gross weight (including packaging and loading devices), delivery times and the value of the goods (for example for customs purposes or the in-

surance of goods according to Article 21).

- 3.1.2 In particular, the Customer must advise the Freight Forwarder regarding:
  - a. 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 statutes.
  - b. in case of carriage of goods by sea, all relevant data relating to safety statutes, such as the International Convention for the Safety of Life at Sea (SOLAS).
  - c. 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.
  - d. specific technical requirements for transportation and particular cargo securing means to be supplied by the Freight Forwarder.
- 3.2 In case of dangerous goods, the Customer must inform the Freight Forwarder in text form regarding the quantity and specific nature of the hazard including – if required – the necessary safety measures. Furthermore, the Customer must provide the relevant classification according to the relevant dangerous goods laws and, at the latest, during the handover of the goods, supply the required documentation.

Hazardous 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 in the scope of application of statutes and regulations relating to hazardous goods, such as provisions covering dangerous materials, water or garbage.
- 3.3 In case of valuable or theft-sensitive goods, the Customer 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. Valuable goods are classified as those that, at the time and place of taking over, have an actual value of at least 50 Euro/kg or 10,000 Euro/per packed item. 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.
- 3.4 In cases when an order issued to a Freight Forwarder does not comply with the ADSp 2016 requirements, the contractor is free to:
  - 3.4.1 refuse the receipt of goods,
  - 3.4.2 return goods already received and to keep it in readiness for collection, or
  - 3.4.3 complete the order without further information to the Customer and subsequently claim an appropriate additional charge, in cases where a safe and damage-free completion of the order increases costs.
- 3.5 The Freight Forwarder is not obliged to check the information supplied by the Customer, or to make additions to it.
- 3.6 Remarks, such as Trade Fair Goods or Urgent, contained in the order neither oblige the Freight Forwarder to arrange for faster completion of the order, such as via express delivery, nor to make preferential dispatch arrangements.

#### **4. ASSUMPTION OF ADDITIONAL SERVICE DUTIES BY THE FREIGHT FORWARDER**

- 4.1 In the absence of a separate agreement in the order supplied to the Freight Forwarder, the service does not include:
- 4.1.1 the packaging of goods,
  - 4.1.2 weighing and inspection of goods, or measures to preserve or improve goods or their packaging, unless it is standard business practice,
  - 4.1.3 the supply or replacement of pallets or other loading and packaging support materials (pallets) In cases of doubt, when contracting parties have committed on a deviating agreement, the following applies:
    - a. a pallet and its goods represent one economic unit,
    - b. pallets are to be returned concurrently at the place of delivery,
    - c. a pallet receipt issued when pallets have not been returned can be understood as a formal receipt only and does not constitute further obligations of the Freight Forwarder,
    - d. only useable pallets are to be exchanged (average kind and quality according to Section 243 BGB). In the case of flat Euro-pallets, this implies a minimum quality of level C (according to quality classification EPAL/GS 1 Germany, 2015),
    - e. in case of not exchanged pallets, collection will only occur if a new order has been issued, unless the exchange did not take place on instruction by the Freight Forwarder.
  - 4.1.4 the loading and unloading of goods, unless otherwise indicated by circumstances or common usage. Drivers who assist in the loading or unloading of goods without a contractual agreement, act exclusively on the instructions and under the supervision of the Customer. They are servants of the Customer and come under their legal responsibility, except in cases when loading or unloading has occurred on driver's own initiative.
  - 4.1.5 returns, detours and hidden additional cargo,
  - 4.1.6 a transshipment ban (Section 486 German Commercial Code [HGB] does not apply),
  - 4.1.7 shipment tracking systems.
- 4.2 Whenever the Freight Forwarder arranges services in the interest of the Customer according to Article 4.1 or carries out such services, the Freight Forwarder is entitled to a remuneration according to local standards or otherwise an appropriate remuneration, even in the absence of a prior agreement.

#### **4A CONTACT PERSON, ELECTRONIC COMMUNICATION AND DOCUMENTS**

- 4.a.1 At the 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. 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.
- 4.a.2 In the absence of a written agreement, statements by warehousing or transport personnel require approval from the Freight Forwarder to be considered valid.
- 4.a.3 The Customer takes care of the required declarations to be supplied by the Customer's shipper or consignee during the fulfilment of the contract at the place of loading and delivery, and of real actions, such as delivery and receipt of the goods. Shipper is the person identified in the contract or in a valid instruction from which the goods are to be collected.
- 4.a.4 If the contracting parties have agreed to the electronic data exchan-

ge using electronic standards, such as Edifact, to fulfil the order, then either party is entitled to create, send and exchange declarations and notifications by electronic means (electronic data interchange), as long as the transmitting party is clearly identified. The transmitting party carries the responsibility for the validity and loss of any sent data. The electronic data interchange also includes electronic billing, in as much as tax regulations permit.

- 4.a.5 The contracting parties are responsible for ensuring their IT systems are 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. The transmitting party is responsible for the risk of loss, and the validity and integrity of sent data, up to the interface agreed, otherwise the interface commonly accepted. If the communication between two data processing systems requires the provision of a common IT-interface by the Freight Forwarder, the costs incurred for the necessary work shall be borne by the Customer. Each party is responsible for the costs associated with the establishment, operation and maintenance of their own IT system and their own electronic data interchange (EDI) and remote data transmission connections (DFÜ). All contracting parties are obliged to give timely notification of any changes to their IT systems that could affect the electronic data interchange.
- 4.a.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, always in consideration of the legal regulations regarding the same.

#### **5. CUSTOMS CLEARANCE AND OTHER STATUTORILY REQUIRED HANDLING OF GOODS**

- 5.1 The Freight Forwarder is entitled to make customs clearance dependent on issuance of a written power of attorney that assigns direct representation.
- 5.2 The Customer 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.
- 5.3 If the order to the Freight Forwarder relates to the shipping of goods to a foreign destination, the Freight Forwarder is entitled to act in regards to the customs, security 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
- 5.3.1 entitled to act in the name of the Customer, when such authority has been granted,
- 5.3.2 entitled to open packages whenever such action is necessary to comply with statutorily required controls (for example, Freight Forwarder as regulated agent), and to subsequently take all measures necessary to complete the order, such as repackaging the goods.
- 5.4 If the order to the Freight Forwarder relates to a shipment under customs supervision, the Freight Forwarder is entitled to fulfil all the formalities and to advance payments required by customs if, without such actions, the completion of the order and, in particular, the delivery of goods to the consignee, would be impossible.
- 5.5 Whenever the Freight Forwarder arranges services in the interest of the Customer according to Articles 5.3 and 5.4 or carries out such services, the Freight Forwarder is entitled to a remuneration according to local standards or otherwise an appropriate remuneration, even in the absence of a prior agreement.

## **6. PACKAGING AND LABELLING DUTIES OF THE CUSTOMER**

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- 6.1 The Customer must clearly and permanently label all packages with their required identifications, such as addresses, marks, numbers and symbols relating to the handling and characteristics of the goods. Obsolete identification marks must be removed or garbled.
- 6.2 Furthermore, the Customer is responsible for:
  - 6.2.1 identifying all items belonging to the same shipment, to ensure easy recognition,
  - 6.2.2 ensuring that the contents of packaged items cannot be accessed without leaving external traces. Packing tape, rings or similar securing methods are only sufficient if they are unique or otherwise difficult to copy. Foil packaging is only acceptable if it has been securely sealed,
  - 6.2.3 ensuring that combined shipments made up of multiple items or units with a girth dimension of less than 1 m (maximum volume plus the longest edge) are bundled together into larger items,
  - 6.2.4 consolidation of hanging shipments consisting of several items into sealed wrapped units for easier handling,
  - 6.2.5 marking packing units with a gross weight of at least 1,000 kilograms (kg) with the weight specification as statutorily prescribed for heavy loads to be transported by ship,
  - 6.2.6 to ensure neutral packaging for valuable or theft-sensitive goods.
- 6.3 Packages are single items or units formed by the Customer for the fulfilment of the order, for example boxes, grid boxes, palettes, handling units, closed loading bins, such as covered wagons, wagons with tarpaulin covers, semi-trailers, swap bodies, containers or igloos, which the Freight Forwarder must handle as one ensemble (freight item as defined by Sections §§ 409, 431, 504 HGB).
- 6.4 Whenever packages do not comply with the conditions listed in Articles 6.1 and 6.2, Article 3.4 applies accordingly.

## **7. SECURING CARGO AND SUPERVISORY DUTIES OF THE FREIGHT FORWARDER**

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- 7.1 In all cases where loading and discharge occurs at more than one location, the Freight Forwarder is responsible for the security of cargo at all times, whether loaded or not.
- 7.2 Upon receipt of goods, the Freight Forwarder is obliged at interfaces
  - 7.2.1 to check completeness and identity of the packages, their apparent good order and condition as well as all seals and locks and
  - 7.2.2 to record any irregularities in the accompanying documents or via separate notification.
- 7.3 Interfaces are defined as any transition of the packages from one legal person to another as well as from one liability regime to another.

## **8. RECEIPT**

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- 8.1 Upon request by the Customer, the Freight Forwarder has a duty to issue a certificate of receipt with reservations noted, if necessary. The certificate of receipt issued by the Freight Forwarder only confirms the number and type of packages, not their content, value, weight or other measurements.
  - 8.1.1 in case of previously loaded or sealed loading units, such as containers or swap bodies and previously transmitted data (Article 4a), the accuracy of the certificate of receipt regarding quantity and type of loaded packages is vitiated, if the Freight Forwarder notifies the Customer on differences (in quantity) or damages, immediately after unloading the loading unit.
  - 8.1.2 in case of doubt, the certificate of receipt does not confirm the gross weight or otherwise indicated measurements for mass goods, wagon-loads, containers or other, previously loaded units.

- 8.2 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 Customer. In cases where the cargo has already been unloaded, the Freight Forwarder has the right to take it back into his possession. The Customer can only demand the delivery receipt for a period of six months after the goods have been delivered.
- 8.3 In cases where a consignment note, sea way bill, consignment bill or a bill of lading have been issued, these count as certificate of receipt or delivery receipt. Article 8.1 and 8.2 apply accordingly.
- 8.4 The certificate of receipt and delivery receipt can also be issued electronically or digitally, unless the Customer requests the issuing of a consignment note, sea way bill, consignment bill or bill of lading.

## **9. INSTRUCTIONS**

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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 customers or consignees.

## **10. FREIGHT PAYMENT, CASH ON DELIVERY**

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- 10.1 Notifications by the Customer 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 Customer from his obligation to pay the Freight Forwarder its remuneration and outlays, including freights, customs charges and other expenses.
- 10.2 The notification according to Article 10.1 does not concern cash on delivery instructions.

## **11. DEFAULT OF LOADING AND DELIVERY TIMES, DEMURRAGE**

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- 11.1 In cases where the Customer must load or unload the vehicle, the Customer has the obligation to do so within the agreed, otherwise within a reasonable time.
- 11.2 In the absence of a separate agreement, the time for loading and unloading road transport vehicles – irrespective of the number of shipments per loading or unloading location – shall be
  - 11.2.1 for goods of any kind loaded on pallets:
    - a. up to ten Euro-pallet storing positions:  
maximum 30 minutes
    - b. up to twenty Euro-pallet storing positions:  
maximum 60 minutes
    - c. more than twenty Euro-pallet storing positions:  
maximum 90 minutes
  - 11.2.2 in all other cases, for goods (excluding bulk goods) with a handling weight
    - a. up to three tons: maximum 30 minutes,
    - b. up to seven tons: maximum 60 minutes,
    - c. more than seven tons: maximum 120 minutes.
- 11.3 The loading or unloading time begins with the arrival of the road vehicle at the designated loading or unloading location (for example, by notifying the gate keeper), and ends when the Customer has completed all its duties and has cleared the departure of the road vehicle. However, if the using of a time slot management system has been agreed for the arrival of road vehicles at the loading and unloading location, 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 client must pay the Freight Forwarder the agreed otherwise commonly accepted demurrage fees.
- 11.5 The aforementioned provisions apply accordingly
- 11.5.1 when the Customer is committed to prepare the goods for loading or to accept them after unloading,
- 11.5.2 in case of transport interruptions beyond the Freight Forwarder's scope of responsibility, contrary to the statement in Article 11.2 and in the absence of a deviating agreement, a waiting time of 30 minutes is deemed to be agreed.

## **12. PERFORMANCE HINDRANCES AND FORCE MAJEURE**

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- 12.1 In cases where 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 instruction from the Customer. Section 419 HGB applies accordingly.
- 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. Section 412 (3) HGB applies accordingly. Such performance hindrances are defined as force majeure, civil unrest, war or acts of terrorism, strikes and lock-outs, official measures by authorities, 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.

## **13. DELIVERY**

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- 13.1 In cases where unloading does not begin within the unloading time (Article 11), the Freight Forwarder is entitled to interpret that as a delivery hindrance. In this case, the Freight Forwarder must immediately notify the Customer and request for relevant instructions. Section 419 HGB applies accordingly.
- 13.2 In cases where the consignee is absent at the designated home, business or shared location address and if the consignee lives therein, the goods may be delivered to:
- a. an adult family member; a family employee; or an adult with permanent residence at the designated home address,
  - b. an employee at the designated business location.
  - c. to a manager or representative authorised to receive the goods at the designated shared location. always assuming there are no obvious doubts regarding the entitlement to receive the goods of the person in question.
- 13.3 In cases where the Freight Forwarder and Customer have agreed on delivery without the presentation to an actual person (for example, night storage and garage facilities or assembly line deliveries), delivery is deemed to have taken place on the actual physical deposit of the goods at the agreed location.

## **14. INFORMATION AND RESTITUTION DUTIES OF THE FREIGHT FORWARDER**

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- 14.1 The Freight Forwarder has the duty to supply the Customer with the required information and, upon request, with the status of the business as well as to demand accountability upon completion. However, the Freight Forwarder is only obliged to reveal costs, if the Freight Forwarder was working on client's account.
- 14.2 The Freight Forwarder has the duty to give anything to the Customer

what he has received by carrying out and managing the business.

## **15. WAREHOUSING**

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- 15.1 The Freight Forwarder decides in its sole discretion if warehousing takes place in its own facilities or those of third parties. Whenever warehousing take place at third party warehouses, the Freight Forwarder must supply timely information regarding its name and location to the Customer or, whenever a warehouse warrant has been issued, to make a note of the information on the same.
- 15.2 Customers who inspect or commission an inspection of the warehouse must immediately impose all objections or complaints regarding the storage of the goods or the choice of the warehouse. If the Customer does not make use of his inspection right, he endorses the objections regarding the type and nature of storage, if these objections could have been observed during an inspection and if the Freight Forwarder has chosen the warehouse location and accommodation with the due diligence of a prudent Freight Forwarder.
- 15.3 Customer's inspecting goods or commissioning an inspection must respect the normal business hours of the Freight Forwarder and, on Freight Forwarder's request, must accept to an inspection in company of the Freight Forwarder.
- 15.4 Customers who undertake actions with the goods, such as taking test samples, must agree, on request by the Freight Forwarder, to a joint inspection and determination of the number, weight and characteristics of the goods. If the Customer refuses this request, the Freight Forwarder is not liable for any damages determined later, unless the action undertaken did not cause the damage.
- 15.5 The Customer is liable for all damages to the Freight Forwarder, customers or other third parties caused by him, his employees or representatives entering the warehouse or entering or driving on the warehouse premises, unless the damage was not the fault of the Customer, his employees or representatives.
- 15.6 Unless otherwise agreed:
- 15.6.1 warehousing begins with the unloading of the delivery vehicle and ends with the loading of the receiving vehicle,
- 15.6.2 inventory management is via the Freight Forwarder's inventory accounting,
- 15.6.3 there is one physical inventory inspection per year.
- 15.7 If the Freight Forwarder, upon conclusion of the contract, develops reasonable doubts that the value of the goods assures its claims, the Freight Forwarder is entitled to give the Customer a reasonable deadline to either secure the claims of the Freight Forwarder or to seek alternative warehousing arrangements. Should the Customer fail to do so, the Freight Forwarder is entitled to terminate the contract with immediate effect.

## **16. QUOTATION AND REMUNERATION**

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- 16.1 Quotations of the Freight Forwarder and agreements with the Freight Forwarder about prices and services refer exclusively to expressly listed services, goods of standard dimensions and weights as well as an essentially unchanged cargo, order quantity or quantity structure. Quotations presume normal, unmodified transport conditions, unimpeded connecting ways, the possibility of immediate forwarding, the remaining validity of the underlying freight, exchange rates and tariffs of the agreement, rates and tariffs, unchanged data processing requirements, quality assurance arrangements and operational instructions. Furthermore, they presume unmodified public taxes, fuel and personnel costs, unless such changes were predictable, given the circumstances, at the time of conclusion of the contract.
- 16.2 In case of cash on delivery or other collection order being cancelled after shipping has begun, or the consignee does not pay, the Freight

Forwarder is still entitled to ask for commission.

## **17. EXPENDITURES AND RIGHT OF RECOURSE BY THE FREIGHT FORWARDER**

- 17.1 The Freight Forwarder is entitled to ask for refund of expenses properly incurred, in particular those relating to average contributions, detention or demurrage charges, including additional packaging to protect the goods.
- 17.2 If the Customer 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 incurred, the Freight Forwarder is entitled – but not obliged – to pay them according to the circumstances he has properly assessed, and to claim reimbursement from the Customer.
- 17.3 On request, the Customer 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 not responsible for their accrual.
- 17.4 The Customer must also indemnify the Freight Forwarder and its vicarious agents from all claims made by third parties provided that these claims are assigned to the Customer and its vicarious agents.

## **18. INVOICES, FOREIGN CURRENCIES**

- 18.1 Invoices of the Freight Forwarder are due immediately and its maturity is not dependent on presenting a delivery receipt.
- 18.2 Regarding foreign Customers or consignees, the Freight Forwarder is entitled to ask whether to receive payment in the relevant foreign or in German currency.
- 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 German currency. In the case of German currency, currency conversion is made according to the official exchange rate on the day of payment, unless it can be proven that a different exchange rate must be used or was paid.
- 18.4 Payment according to a credit memo procedure must be expressly agreed. Irrespective of this, all credit memos are to be issued and paid immediately, upon completion of services.

## **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 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 provided 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 lien exercise 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 two weeks.
- 20.3 The Customer 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 (c. f. goods in transit or warehousing insurance) with an insurer of its choice, when the Customer assigns the Freight Forwarder to do so prior to handing over the goods. If, due to the nature of the goods to be insured, or for another reason, the Freight Forwarder is unable to purchase insurance, the Freight Forwarder will notify the client immediately.
- 21.2 The Freight Forwarder is entitled, but not obliged, to arrange insurance for the goods, if this is in the interests of the client. The Freight Forwarder can assume that insurance is in the interests of the client, in particular when:
- the Freight Forwarder has arranged insurance for a previous Freight Forwarding Contract for the same Customer,
  - the Customer has declared a value of the goods for the purpose of insurance.
- The assumption that insurance is in the interest of the Customer can be discounted, in particular if:
- the Customer has prohibited such action in writing,
  - the Customer is a Freight Forwarder, carrier or warehouse keeper.
- 21.3 The Freight Forwarder must assess the type and scope of insurance in its sole discretion and purchase insurance cover at the usual market rates, unless instructed otherwise in text form by the Customer stating the amount insured and risks to be covered.
- 21.4 In case of Freight Forwarder purchases an insurance for the benefit of the Customer, recovers a claim or acts otherwise on behalf of the Customer 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 Article 23.3 and 24, the Freight Forwarder must only pay the value and reimburse the costs according to Sections 429, 430, 432 sentence 1 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 Customer for value evaluation in cases as set out in Article 24.
- 22.4 Whenever a freight forwarding contract is subject to a variety of transport means and includes carriage of goods by sea, Sections 429 to 439 HGB always apply, regardless of the transport leg where the damage occurs.
- 22.5 If the Freight Forwarder has claims against a third party in case of damages, for which the Freight Forwarder is not liable for, 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 Customer upon request, unless the Freight Forwarder has a separate agreement to pursue claims on behalf and at the expense of the Customer.

## **23. LIABILITY LIMITATIONS**

- 23.1 Except in case of damages during pure 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. a carrier, as defined by Section 407 HGB,
  - b. acting as principal (Spediteur im Selbsteintritt), fixed costs freight forwarder (Fixkostenspediteur) or consolidator (Sammelladungsspediteur), according to Sections 458 to 460 HGB or
  - c. 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 Customer has agreed to a freight forwarding contract which is subject to a variety of transport means and includes carriage of goods by sea equivalent to Article 22.4.
- 23.1.3 Whenever Freight Forwarder's liability according to Article 23.1.1 exceeds an amount of 1 million Euros per damage case, this liability is furthermore limited to 1 million Euros 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 for freight forwarding contracts which are subject to pure carriage of goods by sea and cross-border transportation, is limited to the maximum statutory liability amount.
- 23.3 23.3 For all cases out of scope of Articles 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 pure 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 1 million Euros 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 Articles 23.3.1 or 23.3.2.
- 23.4.1 Furthermore, the Freight Forwarder's liability is limited for each case of damage to the maximum amount of 100,000 Euros.
- 23.4.2 Sections 413 (2), 418 (6), 422 (3), 431 (3), 433, 466, 487 (2), 491 (5), 520 (2), 521 (4), 523 HGB as well as any relevant liability provisions in international conventions shall remain unaffected.
- 23.5 If Freight Forwarder's liability according to Articles 23.1, 23.3 and 23.4 exceeds the amount of 2 million Euros 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 2 million Euros 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 431 (1), (2) and (4) HGB,
- 24.1.2 a maximum of 25,000 Euros per damage case.
- 24.1.3 50,000 Euros per year, in cases where the damage claimed by the Customer bases, contrary to Article 24.1.2, 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 Customer can specify a value in text form for an increased liability that differs from the maximum amounts stipulated in Article 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 25,000 Euros 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 2 million Euros 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. Article 24.2 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) of the Convention de Budapest relative au contract de transport de marchandises en navigation intérieure (CMNI) it is agreed that the Freight Forwarder in its position as carrier or actual carrier is not liable for damages:
- 25.2.1 25.2.1 caused by 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 caused by 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.

## **26. NON-CONTRACTUAL LIABILITY**

In accordance with Sections 434, 436 HGB, the above mentioned liability exclusions and limitations also apply to non-contractual claims.

Sections 413 (2), 418 (6), 422 (3), 431 (3), 433, 466, 487 (2), 491 (5), 520 (2), 521 (4), 523 HGB as well as relevant liability provisions in international conventions shall remain unaffected.

## **27. QUALIFIED FAULT**

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- 27.1 Liability exclusions and limitations listed in Articles 22.2, 22.3, 23.3 and 23.4 in conjunction with 23.5 as well as 24 do not apply when the damage has been caused by:
- 27.1.1 intent or gross negligence of the Freight Forwarder or executive employee,
- 27.1.2 infringement of material contractual obligations, whereby such claims are limited to predictable and typical damages, 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.
- 27.1.3 Divergent from Article 27.1.2, the liability limitations of Article 24.1 and 24.2 only apply in case of gross negligent or intentional infringements of material contractual duties.
- 27.2 Section 435 HGB remains applicable within the application of Article 23.1 in conjunction with Article 23.5 and, if a freight forwarding contract is subject to carriage of good by sea, Section 507 HGB within the application of 23.2.
- 27.3 Article 27.1 is not applicable on statutory provisions, such as Article 25 Montreal Convention (MC), Article 36 Règles uniformes concernant le Contrat de transport international ferroviaire des marchandises (CIM) or Article 21 CMNI, which extend Freight Forwarder's liability or expand the imputation of fault of servants or third parties.

## **28. LIABILITY INSURANCE OF THE FREIGHT FORWARDER**

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- 28.1 The Freight Forwarder is obliged to purchase and maintain liability insurance 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.
- 28.2 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.
- 28.3 Upon request, the Freight Forwarder is obliged to provide evidence of the liability insurance and its validity. The presentation of an insurance confirmation is sufficient. Failure to provide such evidence within a reasonable time frame, or a lack of valid insurance cover, precludes the Freight Forwarder to plead on the liability regulations of the ADSp in his dealings with the Customer.

## **29. CONFIDENTIALITY, COMPLIANCE**

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- 29.1 Contractual parties are obliged to maintain confidentiality regarding all information marked as confidential and received during the execution of the freight forwarding contract. Information can only be used for the exclusive purpose of contract fulfilment. Information in the public domain or objectively not requiring secrecy for the other contracting party is excluded.
- 29.2 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:
- a. no child or forced labour
- b. comply to the relevant national laws and regulations regarding working hours, wages, salaries and, in particular, pay the statutory minimum wage, and to comply with any other obligations for employers,
- c. to comply to 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,

d. prohibit all discrimination based on race, religion, disability, age, sexual orientation or sex.

e. comply to international standards on corruption, such as those published in UNGC and to adhere to local anticorruption and bribery laws.

f. adhere to all current environmental protection laws and regulations.

## **30. PLACE OF FULFILMENT, JURISDICTION AND APPLICABLE LAW**

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30.1 The legal relationship between the freight forwarder and Customer 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 and all involved parties arising from the freight forwarding contract, an initial enquiry or are in relation to it, is the location of the Freight Forwarder's branch office dealing with the order or enquiry, in as far as all these parties are merchants. Claims against the Freight Forwarder are exclusively covered by this place of jurisdiction. Then, the aforementioned place of jurisdiction shall be deemed as an additional place of jurisdiction in case of 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).