

# General Terms and Conditions for Ship Brokers and Ship Agents in Germany

(In case of doubt, the German wording is valid)

## Art. 1 Scope

- (1) The General Terms and Conditions set out below are applicable for all member companies, as indicated below, of the associations belonging to the German Ship Brokers' Association (Zentralverband Deutscher Schiffsmakler e.V.) (\*), which are active as brokers in marine freight, clearing, agency and sale and purchase of vessels, including activity as intermediaries in bunker sales, tug service, cargo handling, or other services in this context (hereinafter called "Ship Brokers").

(\*) Vereinigung Hamburger Schiffsmakler und Schiffsagenten e.V.  
Nord-Ostsee Küstenschiffsmakler Verein e.V.  
Vereinigung Bremer Schiffsmakler und Schiffsagenten e.V.  
Schiffsmakler-Vereinigung für Küsten- und Seeschiffsbefrachter e.V.  
Vereinigung Lübecker Schiffsmakler und Schiffsagenten e.V. zu Lübeck  
Schiffsmakler Vereinigung Kiel/Flensburg e.V.  
Vereinigung Wilhelmshavener Schiffsmakler und Schiffsagenten e.V.  
Schiffsmakler-Verband „EMS“ e.V.  
Schiffsmakler Verband Rhein-Ruhr e.V.  
Schiffsmaklerverband Mecklenburg-Vorpommern e.V.

- (2) The present General Terms and Conditions are applicable for all future business relations, regardless of whether the ship broker is constantly engaged in such business (Art. 84 HGB) or is occasionally engaged in it, or has been engaged in it.

## Art. 2 Activity characteristics

- (1) The Ship Broker acts in all cases on behalf of and for the account of another (hereinafter called "Client") and undertakes to exercise his activity with the diligence of a prudent businessman, and to select with care the persons acting for him in fulfilment of his obligations. The same shall also apply where he receives an order from his Client for conduct of upstream or downstream activities for marine transport (hereinafter called "Additional Business") or for auxiliary activities related to marine transport or to Additional Business.
- (2) The Ship Broker is entitled and empowered to take all measures which appear to him to be necessary for execution of an order, in particular to sign contracts with third parties with usual conditions, on behalf of and for the account of the Client.
- (3) The Ship Broker is exempted from the restrictions of Art. 181 Civil Code (BGB).

- (4) All offers made by the Ship Broker shall be without obligation until placement of order, unless explicitly agreed otherwise in writing.
- (5) *We operate exclusively in accordance with the latest version of the Allgemeinen Deutschen Spediteurbedingungen – ADSp – (German Freight Forwarders’ General Terms and Conditions).* These limit in clause 23 ADSp the legal liability for damage to goods in case of damage to goods whilst in the care of a forwarder to € 5/kg, in accordance with Art. 431 of the German Commercial Code (HGB), in case of multimodal transports including sea transport to 2 SDR/kg. In addition the liability is limited to € 1 Million per damage respectively to € 2 Million per event or 2 SDR/kg whichever is the greater. The parties agree subsidiary, that (1) clause 27 ADSp does neither extend the liability nor the responsibility of the forwarder for agents, servants, employees or crewmembers beyond legal regulations as Art. 507 HGB, Art. 25 MC<sup>1</sup>, Art. 36 CIM<sup>2</sup>, Art. 20, 21 CMNI<sup>3</sup> for the benefit of the principal, (2) the freight forwarder as a sea carrier is only liable for fault of his own part in case of risks provided in Art. 512 paragraph 2 no. 1 HGB such as default in navigation of the ship or fire on board and (3) the freight forwarder as a carrier defined in CMNI is relieved of liability in compliance with the requirements provided in Art. 25 paragraph 2 CMNI such as default in navigation of the ship, fire on board or defects of vessel.
- (6) Notification to the Ship Broker is required if the order includes goods which are subject to special treatment or to a requirement for permit or reporting for loading, storage, reception, transfer or transportation. This applies in particular for dangerous goods under the IMDG Code.
- (7) The Ship Broker is not required to give financial guarantees for his Client vis-à-vis third parties, or to provide securities, or to make any payment for which he does not have cover, or for which he has not received collateral to an extent which he considers sufficient.
- (8) The Ship Broker is required to treat as confidential only such information and data of the Client as are explicitly identified by the Client to him as confidential.

### **Art. 3 Liability**

- (1) Claims for damages or reimbursement of expenditures (hereinafter referred to in summary form as “Claims for Damages”) by the Client vis-à-vis the Ship Broker, his official bodies, his employees or other persons employed by him to fulfil obligations, are excluded, unless based on acts committed by the Ship Broker, his official bodies, employees or other persons employed to fulfil obligations that constitute
- a. intentional or grossly negligent violation of obligations;

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<sup>1</sup> Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention).

<sup>2</sup> Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM).

<sup>3</sup> Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI).

- b. culpable violation of obligations resulting in injury or death, or damage to health to the Client;
  - c. non-fulfilment of a warranted characteristic; or
  - d. culpable violation of principal contractual duties.
- (2) Where none of the liability cases indicated in the above clause 1 sub-clause a., b. or c. are present, the liability of the Ship Broker, his official bodies, his employee or other persons employed to fulfil his obligations, is limited to such damage as is foreseeable and may typically occur in such contracts.
- The liability for such foreseeable damage as may typically occur in such contracts is limited to a maximum of EUR 50,000.00 per case of damage.
- (3) The above regulations are not linked with reversal of the burden of proof to the disadvantage of the Client.
- (4) The risk of incomplete, incorrect and/or delayed communication of information between Client and Ship Broker, in particular by the use of postal or electronic means of communication, shall be borne by the Client, subject to the liability cases set out in clause 1 of this Article.

#### **Art. 4 Remuneration/Claims**

- (1) The Ship Broker shall receive as remuneration for his activity an amount which is subject to free negotiation, where there is no tariff or statutory requirement. Payment of the remuneration falls due on receipt of the invoice.
- (2) For any financial guarantees and/or disbursements provided by the Ship Broker, the Ship Broker is entitled to receive payment of a commission of at least 2.5% related to the nominal value of the respective services, in addition to the reimbursement claim for all expenditures, such as interest, bank charges, etc. which are related to such services.
- (3) Any claims by the Ship Broker in foreign currency or invoices drawn up by him in foreign currency, entitle the Ship Broker at his option either to require payments in the respective foreign currency, or in euros at the daily exchange rate – again at his option – either as valid on the invoice date or as valid on the date of payment.
- (4) The Ship Broker has the right to pay out freight or other charges collected by him for his Client in foreign currency to his Client in Euro, at the rate of the date of payment.
- (5) Any outstanding payment claims of the Ship Broker which are not settled by the Client within 30 days from the invoice date shall be subject to interest for delay, amounting to 8 percentage points p.a. above the base rate applicable at the time of such delay, from the date of the invoice.

- (6) The Ship Broker may demand reasonable advance payments.
- (7) All costs incurred in connection with or as a result of transfer by, to or for the Client, shall be borne by the Client.

#### **Art. 5 Offset, Retention right, Lien**

- (1) The Ship Broker is entitled to obtain satisfaction of his claims at any time from the due date of his claims, by offset with counterclaims of the Client. The Ship Broker is in particular entitled to satisfy his claims from amounts collected by him for the Client (e.g. freight charges) for all claims he has against the Client and any companies in which the Client has a direct or indirect majority holding. The Ship Broker also has the right of retention.
- (2) On conclusion of the respective contract of which these conditions are a part, the Ship Broker shall have a contractually agreed right of lien with respect to all assets of his Client which are in the possession of the Ship Broker or come into his possession, regardless of the reason for which and time at which such claims arose.
- (3) The Ship Broker shall be entitled to realise, at his own option either by private sale or by auction sale, all assets of the Client which are in his possession, if the Client has not, within 30 days at the latest following reminder by registered letter setting a final date for payment within 20 days, either made payment in full or granted the Ship Broker other securities which appear to the Ship Broker to be sufficient.

#### **Art. 6 Limitation of time**

All claims against the Ship Broker, his official bodies, his employees or other persons employed for fulfilment of his obligations, for any legal cause whatsoever, shall be limited by the statute of limitations within one year, counting from the statutory beginning of the period of limitation, provided that none of the liability cases as set out in Art. 3 clause 1 of the present Terms and Conditions are applicable.

#### **Art. 7 Place of jurisdiction, Law applicable**

- (1) Any disputes with the Ship Broker on the basis of a contract of which these conditions are a part, shall be decided exclusively by the ordinary court of law responsible for the location of his registered office as entered in the Commercial Register.
- (2) The activity of the Ship Broker is exclusively governed by German law, even if it is wholly or partly executed abroad.

## **Art. 8 Final provisions**

- (1) Any amendments or additions to these Terms and Conditions and/or the contract of which these Conditions are a part, are valid only if agreed in written form. The same applies also for cancellation or amendment of the requirement for written form itself.
  
- (2) In the event that a provision of these General Terms and Conditions and/or the respective contract of which these Terms and Conditions are a part is or becomes invalid, such invalid provision shall be replaced by a provision that fully or as far as possible complies with what the parties wanted, in legally valid form.

Hamburg, April 2013

### **Copyright and sole distribution right:**

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