

**General Terms & Conditions for Road Haulage,  
Freight Forwarding and Logistics Companies – (VBGL) –**  
Version dated 13 June, 2013

**Preamble**

The Federal Association of Road Haulage, Logistics and Disposal (Bundesverband Güterkraftverkehr Logistik und Entsorgung – BGL) e.V. recommends its associated road haulage and logistics companies, on a non-binding basis, apply the following General Terms & Conditions in their business dealings with their principals/contractors. The companies shall be free to either follow these recommendations or to apply other general Terms & Conditions.

**§ 1 Scope**

- (1) These Terms & Conditions apply to companies that
  1. conclude contracts of carriage in their capacity as commercial road haulage carriers,
  2. conclude forwarding contracts whilst acting as carrier (§ 458 HGB – German Commercial Code) at fixed costs (§ 459 HGB), and contracts for collective consignments (§ 460 HGB), as well as warehousing contracts in their capacity as freight forwarders,
  3. provide services related to the transportation or warehousing of goods, including those that may not commonly be provided by forwarders (e.g. hanging garments, assembling parts, modifying goods) in their capacity as logistics companies.
- (2) These Terms & Conditions shall be applicable to domestic and cross-border transports, unless CMR regulations provide otherwise, as well as to cabotage in EU member states and the European Economic Area, unless mandatory rules of the host Member State in question stipulate otherwise. Furthermore, they are applicable to domestic combined-load transports and to intermodal transportation (§§ 452 – 452 d HGB), provided that at least one section of the journey is done by road haulage.
- (3) These Terms & Conditions shall also be applicable to cartage contracts pursuant to § 9, as well as to the transport of waste disposals, the specifics of which are stipulated in § 10. They shall also apply to

commercial vehicle transports, which are not governed by the provisions of the GüKG (German Road Haulage Law).

- (4) These Terms & Conditions shall not apply to commercial transactions pertaining to:
  1. Packaging work,
  2. The removal or storage of household goods,
  3. Cranage or assembly work, as well as exceptionally bulky or heavy loads, excluding such transport services which are performed on the basis of a permanent certificate of exemption pursuant to § 46, paragraph 1, number. 3 StVO (German Road Traffic Code), § 70, paragraph 1 StVZO (German Road Traffic Registration Ordinance), or those based on a permanent permit pursuant to § 29, paragraph 3 StVO. Furthermore, they shall not be applicable to contracts concluded with consumers.

**I. Freight Traffic, Including Acting as Principal in Forwarding**

In this section, entrepreneurs in the freight traffic or transportation business acting as a carrier on behalf of a forwarding company shall be named “carrier.”

**§ 2 Information Obligations of Principal and Provision of Vehicle**

- (1) The consignor shall inform the carrier of all factors that are essential for the proper performance of the contract in due time and prior to the transport in question. Apart from the type and condition of the goods, this shall include the weight, quantity, deadlines to be kept, technical vehicle requirements, and any equipment that may be required. The consignor shall also inform the carrier of the value of the goods if this information is important for the transportation of the goods, or the provision of vehicle, and/or equipment. The same shall apply if the carrier is required to provide extended liability insurance cover.
- (2) In the case of goods that are customarily excluded from insurance coverage, such as precious metals, jewels, money, securities, stocks, and certificates, the consignor shall inform the carrier accordingly in writing or text

form when placing the order. The same shall apply to theft-prone or valuable goods, specifically to works of art and antiques, tobacco products, liquors and technical EDP/telecommunication/media equipment. This shall not affect the consignor's obligations pursuant to §§ 5, 7 and 16.

- (3) The carrier shall undertake to provide appropriate and suitable vehicles.

### **§ 3 Handover of Goods**

- (1) The goods shall be handed to the carrier in a condition that is safe for transport pursuant to § 411 HGB. The required and duly completed accompanying documents (§§ 410, 413 HGB) shall also be submitted.
- (2) In the event that the carrier transports the goods even though the requirements as stated in paragraph 1 above were not met, and in case he/she has informed the consignor of such deficiencies accordingly, the carrier shall have to enter such reservation in the consignment note or other accompanying document. In this case, the consignor shall be liable for any and all damages that the carrier may suffer due to such deficiencies. This shall not affect the application of § 254 BGB.
- (3) The carrier shall examine the external condition of the packages, as well as its markings and numbers if at all possible or reasonable.
- (4) The carrier shall only be obliged to check the number of items, quantity or weight of the goods to be carried if this is reasonable or possible and has been agreed upon. Except for minor checks, the consignor shall have to reimburse any expenses incurred.
- (5) In the event that the carrier is required to submit a written acknowledgement of the examinations performed pursuant to paragraph 3 above, but cannot carry out such examinations, the carrier shall submit such confirmation under reserve.
- (6) If the carrier accepts goods with external damage for transportation, he/she can demand that the consignor specifically notes and confirms such damage in the

consignment note or any other accompanying document.

### **§ 4 Consignment Note/Accompanying Document**

- (1) The contract of carriage shall be included in the consignment note, which is to be signed on both sides. The consignment note shall include the provisions of § 408 HGB, and may also include further conditions. In the event that no consignment note is issued in view of the transportation procedures concerned, another accompanying document (e.g. delivery note, cartage note, etc.) may be used.
- (2) If the carrier fills in the consignment note at the request of the consignor, the consignor shall be liable for all damages arising from incorrect or incomplete statements made by him/her.
- (3) An electronic consignment note pursuant to paragraph 1 above shall also be deemed a consignment note pursuant to § 408, paragraph 3 HGB.

### **§ 5 Loading and Unloading**

- (1) The consignor shall have to load the goods in a manner that is safe for transport and in line with the relevant provisions of the law, and according to the state of the art, whereby the consignee shall have to unload the goods accordingly following their release upon his/her request. The consignor and/or consignee shall be responsible for any actions taken or omitted by persons acting on their behalf. The carrier shall strictly be obliged to ensure safety in loading. The carrier shall provide secure loading only against reasonable remuneration. The same shall apply to unloading.
- (2) A reasonable amount of time shall be allocated for loading and unloading the goods (loading time, unloading time). For full truck loads (excluding pourable mass products) of goods of one principal, and vehicles/vehicle units with a maximum permissible weight of 40 tons, the general loading and unloading times (with no more than one loading/unloading point each) shall generally be 2 hours maximum for each loading and unloading, unless agreed otherwise. In the case of vehicles/vehicle

units with a lower weight, the time periods may be shorter. In such cases, no extra reimbursement may be claimed.

- (3) The loading time shall commence at the time the vehicle is available, as agreed upon. In the event that the vehicle is available at a later stage, and if the principal agrees to such delay, the loading time shall commence once the vehicle is available.
- (4) The unloading time shall commence when the right of disposal of the goods has been transferred to the consignee. In case of doubt, this shall be deemed to be the time when the person entitled to the goods has received the relevant consignment note or other accompanying document.
- (5) In the event that the carrier has to wait for a period of time exceeding that of loading or unloading, either due to contractual agreements or for reasons other than the scope of risks to be borne by the carrier, he/she shall be entitled to reasonable remuneration (demurrage).

## **§ 6 Rights of Carrier in Case of Non-Compliance with Loading/Unloading Times**

- (1) If loading procedures have not commenced, even though the loading time has already elapsed, or if the goods are not available within the loading time in case the carrier is obliged to perform the loading, the carrier may set a reasonable deadline to the consignor for complying with his/her obligations. Once the deadline has expired without the desired result, the carrier shall be entitled to exercise his/her rights pursuant to § 417 HGB, specifically the right to terminate the contract.
- (2) Should the consignor seriously and definitely refuse to either load the goods or make such goods available for loading, or if it is unacceptable for the carrier to fulfill the contract due to particular circumstances or in consideration of mutual interests, the carrier may terminate the contract without notice pursuant to § 417, paragraph 4 HGB.
- (3) In the event that at least half of the load has been loaded after the loading time expired, a partial shipment pursuant to § 416 HGB shall

be made once the additional respite has expired. Otherwise, the carrier shall be entitled to termination without notice for reasons of unacceptable behaviour pursuant to § 417, paragraph 4 HGB:

- (4) If unloading procedures have not commenced upon expiry of the unloading time period, the carrier may treat this as a refusal by the consignee to accept delivery of the goods. In this case, he/she shall have to consult the consignor for instructions and comply with them. § 419, paragraphs 3 and 4 HGB shall apply accordingly.

## **§ 6a Provision of Vehicle**

- (1) In the event that the carrier cannot provide a vehicle or cannot provide it at the time agreed upon, he/she shall promptly inform the consignor accordingly. The consignor shall immediately inform the carrier, as to whether he/she agrees to a later provision of vehicle, or whether he/she wishes to terminate the contract of carriage.
- (2) If the non-provision or late provision of vehicle is due to negligence by the carrier, he/she shall have to reimburse the consignor with an amount equivalent to the loss that may typically be expected.
- (3) Liability shall be limited to an amount equal to three times the freight.

## **§ 7 Dangerous Goods**

The consignor shall have to submit all information available for each individual contract about the precise nature of the danger of the goods in writing or text form and, if required, of the precautionary measures to be taken. If dangerous goods according to ADR/GGVSEB are concerned, the respective UN number, category and packing group of the dangerous goods in question have to be stated pursuant to ADR/GGVSEB in their the latest version of each, as well as the protective equipment required.

## **§ 8 Delivery Note**

After the arrival the goods at the place designated for delivery, the consignee shall be entitled to request the carrier delivers them to him in exchange for an acknowledgement of a receipt in writing or text form (receipt) and the performance of any other obligations resulting from the contract of carriage that the consignee may have.

**§ 9 Cartage Contract**

- (1) A cartage contract shall be deemed concluded once the entrepreneur and the principal have agreed upon the provision of a manned vehicle by the entrepreneur to be used in accordance with the instructions given by the principal.
- (2) The provisions pertaining to the contract of carriage of these Terms & Conditions shall be applicable to cartage contracts, provided that the entrepreneur shall not be liable for damages caused by the principal. In lieu of a consignment note, other evidence is required for cartage contracts, particularly with a view to operation time.
- (3) In the event that the entrepreneur suffers a loss caused by the principal, the principal shall be liable pursuant to the provisions of the BGB (German Civil Code).

**§ 10 Waste and Disposal Transports**

These Terms & Conditions shall also be applicable to the transport of disposals (transport of waste for disposal and/or recycling purposes). The principal and the carrier shall undertake compliance with all valid provisions of public law pertaining to the disposal of waste materials. The principal in particular shall be obliged to properly declare waste materials in accordance with the provisions of the Recycling Law and relevant ordinances, and to inform the carrier accordingly in text form – upon conclusion of the transport contract at the latest – and to submit all accompanying documents required by waste legislation (e.g. proof of disposal/recycling, chain of custody records). The carrier must keep all legally required permits available. The regulations pursuant to § 7 of these Terms & Conditions shall have to be observed for the transport of dangerous waste.

**II Freight Forwarding, Logistics, and Warehousing**

The entrepreneur in the business of forwarding, providing of logistical services and warehousing shall hereinafter be named forwarder.

**§ 11 Safeguarding Interests and Due Diligence**

The forwarder shall safeguard the interests of the principal, and shall perform his/her duties with the diligence of a reputable businessman/woman.

**§ 12 Scope of Services**

Unless mandatory regulations or statutory provisions are not to be modified by standard form contractual conditions stipulating otherwise, the forwarder shall only be obliged to conclude the contracts required for performing his/her contractual forwarding services pursuant to §§ 453 – 466 HGB. This shall also apply to customary forwarding services and additional logistics services.

**§ 13 Agreeing Special Conditions**

The forwarder shall be authorized to agree to customary third-party Terms & Conditions. In the relationship between a principal forwarder and an intermediate forwarder the terms and conditions of the intermediate forwarder shall be deemed to be VBGL Terms

**§ 14 Orders, Transmission Errors, Contents, Goods of Great Value, and Hazardous Goods**

- (1) Orders, instructions, statements and notifications shall be valid informally. Any subsequent amendments shall be clearly marked as such. The burden of proof of their contents, as well as the correct and complete transmission thereof, shall lie with those persons referring to them.
- (2) For each individual consignment, the principal shall inform the forwarder whether the contract pertains to
  1. dangerous goods
  2. live animals and plants
  3. perishable goods
  4. goods of great value
- (3) In the contract, the principal shall specify the addresses, marks, numbers, quantity, type and contents of packages, and the characteristics of the goods in accordance with paragraph 2 above, as well as all other particulars that are relevant to the proper execution of the order.
- (4) The goods of great value are deemed to be those listed in § 2, paragraph 2 above. If and when such goods are the subject matter of contract, the principal shall have to inform the forwarder accordingly in writing or text form pursuant to § 14, paragraph 3.
- (5) In the case of dangerous goods, the principal shall inform the forwarder for each individual

consignment in writing or text form of the exact nature of the danger involved, and, if necessary, of the precautionary measures to be taken. Should the goods be dangerous in line with ADR/GGVSEB for the transportation of dangerous or other goods, which are subject to special regulations for the transport and warehousing of dangerous goods, as well as the handling or disposal thereof, the principal shall have to submit all the details required for properly executing the order, specifically the UN number, type and packaging group, in accordance with the legislation applicable to dangerous goods.

- (6) The forwarder shall not be obliged to check or complete the details according to paragraphs 2 through 5 above.
- (7) The forwarder shall not be obliged to verify the authenticity of signatures on any notes or other documents pertaining to the goods, or whether the signatory is authorised to sign, unless there is reasonable doubt as to the lack of authenticity and authorization to sign.

#### **§ 15 Customs Clearance**

- (1) The order for the transportation of goods to a destination abroad shall be deemed to include the order for customs clearance whenever the delivery of the goods to the respective destination is not possible without such clearance.
- (2) Apart from the reimbursement of actual costs incurred for customs clearance, the forwarder shall be entitled to charge an extra fee.
- (3) In order to transport bonded cargo, or to deliver such cargo free buyer's address, the forwarder shall be authorised to determine the customs formalities required, and payment on behalf of the principal of all charges imposed by customs authorities.

#### **§ 16 Packaging and Labelling Obligations of the Forwarder**

- (1) The principal shall mark the packages in a clear and durable manner with the features required for handling the goods according to order, such as addresses, marks, numbers, handling symbols, and characteristics; old markings shall be removed or effaced.
- (2) Furthermore, the principal shall be obliged to

- 1. mark packages pertaining to one consignment in such a way that they may easily be recognisable as part of one consignment,
- 2. prepare packages in such a manner to prevent tampering with their contents without leaving any visible external traces (adhesive tape, strapping, etc. are only sufficient if they are individually designed or difficult to copy; foil wrapping shall be used only if/when sealed),
- 3. group several packages or units with a strap length of less than 1 metre (largest circumference plus longest side) into larger units, in case the consignment is part of consolidated cargo,
- 4. combine a consignment of hanging garments consisting of several units into sealed wrapped units for easy handling,
- 5. indicate the weight on packages with a gross weight of at least 1,000 kilogrammes, pursuant to the law on the marking of weights of heavy sea freight cargo.

- (3) Packages are deemed to be individual units, or units that are combined by the principal for consignment purposes, e.g. cases, lattice boxes, pallets, handlebar units, and closed containers, such as covered or canopied wagons, trailers or swap bodies, containers, and igloos.

#### **§ 17 Checking Obligation of the Forwarder**

- (1) At interfaces, the forwarder shall be obliged to
  - 1. check the parcels of freight for completeness and identification, as well as for externally recognizable damage, and to ensure that the seals and fastenings are intact, and
  - 2. document any irregularities (e.g. in accompanying documents or by means of special notification).
- (2) An interface shall be deemed to be the point at which the parcels of freight are transferred from one legal entity to another, or at the end of each section of the journey.

#### **§ 18 Receipt**

- (1) Upon request by the principal, the forwarder shall issue a receipt for the goods. In this receipt, the forwarder shall only confirm the

number and type of packages, however, excluding the contents, value or weight thereof. In the case of bulk goods, truckloads or similar, the gross weight or any other quantity stated shall, in case of doubt, not be noted in the receipt.

- (2) As proof of delivery, the forwarder shall request the consignee to acknowledge the receipt of the packages listed in the order or in other accompanying documents. Should the consignee refuse to issue an acknowledgement of receipt, the forwarder shall ask the consignor for instructions. If the goods have already been unloaded, the forwarder shall be entitled to retrieve them.

#### **§ 19 Instructions**

- (1) Any instruction given to the forwarder regarding the goods shall be considered binding until such time that it is revoked by the principal, unless this is not in the perceived interest of the principal.
- (2) If instructions are insufficient, or if it is not feasible to follow them, the forwarder shall be entitled to dutifully act at their own discretion.
- (3) Any order to keep goods at the disposal of a third party can no longer be revoked, once such third party has claimed the goods from the forwarder.

#### **§ 20 Freight Payment, Cash on Delivery**

- (1) Any instruction given by the principal to execute the order on a freight collection basis, for the account of the consignee, or a third party shall not affect the principal's obligation towards the forwarder to remunerate him/her, and bear other costs incurred.
- (2) Paragraph 1 above does not pertain to Cash on Delivery instructions.

#### **§ 21 Deadlines**

If not agreed upon, no deadlines for loading and delivery shall be guaranteed; the same shall apply to the clearance of goods in a particular order that were transported in the same manner.

#### **§ 22 Obstacles**

- (1) Any obstacles beyond the scope of risks to be borne by the forwarder, that prevent him/her from performing his/her duties, shall

exempt the forwarder from his/her obligations for as long as such obstacles exists.

In the event of an exemption according to sentence 1 above, the forwarder and the principal shall be entitled to terminate the agreement, even if the order has already been partly carried out.

If the forwarder or the principal terminate the agreement, the forwarder shall be reimbursed with the costs that he/she may require, or which the principal finds agreeable.

- (2) It is only within the scope of due diligence on the part of the forwarder that he/she may be required to check and inform the principal, as to whether there are any statutory or official rules posing an obstacle to the shipment of the goods (e.g. import/export restrictions). Should the forwarder, however, have conveyed the impression, either by public announcement or in contract negotiations, that he/she is skilled in specific business fields, he/she shall have to comply with the aforementioned obligation to check and inform.
- (3) Any acts under public law that are beyond the control of the forwarder shall not affect the rights of the forwarder vis-à-vis the principal; within the scope of risks to be borne by the principal, he/she shall be liable for the consequences of such acts. This shall not affect any claims that the forwarder may have against the State or any other third party.

#### **§ 23 Delivery of Goods**

The goods shall be discharged to any person on the consignee's premises or in his/her household, unless there is reasonable doubt that such person is authorised to accept such delivery.

#### **§ 24 Warehousing**

- (1) The forwarder shall be free to decide whether to provide warehousing at his/her own facilities or elsewhere. If the forwarder does not store the goods at his/her own warehouse, he/she shall immediately inform the principal of the name and location of such warehouse, either in writing or text form, or in case a warehouse warrant has been issued, make a note of this data on the warehouse warrant.

- (2) The principal shall reserve the right to inspect such warehousing facilities, or have them inspected. If he/she objects to the storage of the goods or the warehouse chosen, he/she shall immediately make this fact known. If the principal does not grant himself/herself the right to inspect the facilities, he/she shall not object to the storage method if the warehouse was chosen and storage of the goods was made with the diligence of a reputable forwarder.
- (3) The principal shall be entitled to enter the warehouse only in the company of the forwarder during the latter's business hours.
- (4) If the principal performs any action with the goods in question (e.g. sample taking), the forwarder shall reserve the right to demand that the quantity, weight and condition of the goods are determined together with the principal. In the event that the principal refuses to do so, the forwarder shall not assume any liability for any damage found later on, unless such damage was not caused by the action performed by the principal.
- (5) The principal shall be liable for all damages caused to the forwarder by the principal, his/her staff or representatives, other warehouse keepers or third parties, either in the warehouse, or while being or driving on site, unless the principal, his/her staff or representatives are not responsible for such damage.
- (6) In case of inventory discrepancies, the forwarder shall be entitled to balance any shortages with surpluses of the same principal.
- (7) Should the forwarder have reasonable doubt as to whether his/her claims are secured by the value of the goods, he/she shall be entitled to set a reasonable deadline for the principal to either secure the claims of the forwarder, or to make alternative arrangements for the storage of the goods. If the principal does not comply with this request, the forwarder shall be entitled to termination without notice.

## **§ 25 Obligation to Provide Information and Surrender Documents**

- (1) The forwarder shall be obliged to provide the principal with all necessary information, and, on request, to keep him/her informed of the state of the transaction, and to report to the principal upon completion of the order; however, the forwarder shall not be obliged to reveal the costs, in case he/she acts for account of the principal.
- (2) The forwarder shall be obliged to return to the principal any documents or other items received from the principal's Management for the purpose of the transaction and to deliver to him whatever he obtains therefrom.

## **§ 26 Expenses Incurred by the Forwarder, Indemnification Claim**

- (1) The forwarder shall be entitled to reimbursement of any expenditures that he/she deems necessary under the given circumstances.
- (2) An order to accept incoming goods shall empower, but not oblige, the forwarder to advance any freight charges, COD amounts, customs duties, taxes and other levies imposed on the goods.
- (3) On request by the forwarder, and if the forwarder is not responsible for the costs incurred, the principal shall immediately indemnify the forwarder against any claims concerning freight, contributions and settlements of average, customs duties, taxes, and other levies that the forwarder may incur, specifically in his/her capacity as authorised agent or owner of third-party goods. After due consideration, the forwarder shall be entitled to take suitable measures for his/her security or indemnification. Unless prompt action is required, the forwarder shall ask for instructions.
- (4) In due course, and in a business-like manner, the principal shall draw the forwarder's attention to all obligations under public law, such as those pertaining to customs legislation or third parties, e.g. trademarks, with regard to the goods in the forwarder's possession, unless the forwarder's offer leads to the assumption that he/she is aware of such obligations.

### III Liability

#### § 27 Liability for Contracts of Carriage

- (1) The carrier shall be liable for the loss of or damage to the goods during the time between taking over the goods for consignment until their delivery. Liability shall be limited to 8.33 SDRs (special drawing rights) per kilogramme of gross weight. In the case of contracts for the entire carriage, this shall also apply to damages caused during temporary storage for reasons of transport.
- (2) If the claimant files a claim against the carrier in his/her capacity as the actual carrier, he/she shall be liable pursuant to § 437 HGB. Any further liability shall be excluded, irrespective of the legal grounds for such claims.

#### § 28 Basic Liability Principles for Freight Contracts

- (1) Pursuant to the provisions of the law, the forwarder shall be liable for all his/her actions. However, the following rules shall apply, unless mandatory or statutory regulations that may not be modified by standard form contractual conditions provide otherwise.
- (2) Should the forwarder only be responsible for concluding the necessary contracts for the provision of services, he/she shall only be held liable for carefully choosing the third party appointed by him/her.
- (3) Whenever the forwarder is liable for the loss of or damage to the goods, he/she shall have to reimburse costs incurred pursuant to §§ 429, 430 HGB.
- (4) In the event that §§ 425 ff and 461, paragraph 1 HGB are not applicable, the forwarder shall be liable for damages caused by
  1. the insufficient packaging or marking of the consignment by the principal or a third party,
  2. the agreed upon or customary outdoor storage of goods,
  3. grand larceny or robbery (§§ 243, 244, 249 StGB),
  4. force majeure, weather conditions, defective equipment or cables/pipes, the impact of other goods, damage caused

by animals, inherent changes of the goods

If it can be proven that the forwarder has culpably caused the damage. In the event that damage occurred for one of the aforementioned reasons, this shall be deemed to be the case.

- (5) Should the forwarder have a claim resulting from an event of damage or loss against a third party, for whom he/she does not assume any liability; the forwarder shall have to assign such claim to the principal on request, unless the forwarder pursues such claim for account and risk of the principal if specifically agreed upon.

#### § 28a Liability of the Principal

Pursuant to § 414 HGB, the principal shall assume liability for an amount that may not fall below € 1 million.

#### § 29 Limitation of Liability for Forwarding Contracts

- (1) Except for authorised storage, the forwarder's liability for the loss of or damage to goods (damage to goods) shall be limited to
  1. 8.33 SDRs per kilogramme in general, for forwarding contracts that are subject to these Terms & Conditions and include road haulage,
  2. 2 SDRs per kilogramme, and in contrast to 1 above, for contracts covering diverse modes of transport, including sea freight,
 an amount not exceeding € 1 million in each case.  
 Notwithstanding paragraph 1, number 2. above, the forwarder shall not be liable for consignments with diverse modes of transport, including shipments by sea, if the damage was caused by steering or operational procedures, or by fire or explosion aboard the ship, and if the measures taken were not beneficial to the load (§ 512, paragraph 2, number 1 HGB).
- (2) If only single packages or parts of the consignment were lost or damaged, the maximum amount of liability payable shall be based on the gross weight
  - of the entire consignment, in case the total consignment was destroyed



- of the destroyed part of the consignment, in case of partial destruction of the consignment
- (3) The forwarder's liability for delays shall be limited to an amount equal to three times the forwarder's remuneration for each event. This shall not affect the application of § 431, paragraph 3 HGB. The forwarder's liability for other damages, excluding personal injury, and for damage to third-party goods shall be limited to three times an amount payable in the event of loss of the goods, with a maximum amount of € 100,000 per claim.
- (4) Irrespective of the number of claims arising from an event, the forwarder's liability shall be limited to € 2.5 million per claim, or 2 SDRs per kilogramme of goods lost or damaged, depending on which amount is higher; in case of several claimants, the forwarder shall be liable on a pro-rata basis according to their individual claims.

### **§ 30 Liability for Goods in Authorised Storage**

- (1) The forwarder's liability for the loss of or damage to goods (damage to goods) in authorised storage shall be limited to
1. € 5 per kilogramme gross weight of the consignment for damage to goods, but not exceeding € 100,000 per claim
  2. € 25,000 for claims made by the principal based upon the nominal and actual inventory (§ 24, paragraph 6), irrespective of the number of events causing such inventory discrepancy
- (2) The forwarder's liability for damages other than damage to goods, excluding personal injury and damage to third-party goods, shall be limited to € 25,000 per claim for goods in authorised storage.
- (3) Irrespective of the number of claims arising from an event, the forwarder's liability shall be limited to € 1 million per claim; in case of several claimants, the forwarder shall be liable on a pro-rata basis according to their individual claims.

### **§ 31 Liability for Logistics Services**

- (1) The provisions of the BGB shall be applicable to logistics services required for the carriage or storage of goods that are not

commonly provided by forwarders (e.g. hanging garments, assembling parts, modifying goods), subject to claims being made only if the damage was caused by the negligence of the contractor or his/her staff.

- (2) The contractor's liability shall be limited to € 1 million per claim.
- (3) The contractor shall be liable for any other damages up to an amount of € 20,000 per claim. In case of more than four claims arising from the same event (e.g. assembly faults), affecting the production/shipment of goods due to such fault (serial damage), liability shall be limited to € 100,000, irrespective of the number of claims.
- (4) The aforementioned exemptions from and limitations of liability shall also apply to non-contractual claims against the contractor. They shall not apply to personal injury.

### **§ 32 Qualified Fault**

The aforementioned exemption from and limitations of liability shall not be applicable

1. if the claim was caused by intent or gross negligence on the part of the carrier or forwarder, or one of their managers, or by the violation of essential contractual duties, whereby all claims shall be limited to the damage that may typically be anticipated in the latter case,
2. in cases pursuant to §§ 425 ff, 461, paragraph 1 HGB if the carrier or forwarder or any person named in §§ 428, 462 HGB have intentionally or negligently acted in the knowledge that damage might be caused.

### **§ 32a Statutory Liability**

VBGL shall neither extend the liability of the forwarder nor the responsibility of individuals or third parties beyond legal regulations, such as article 25 MU, article 36 CIM, article 20 CMNI, or § 507 HGB, for the benefit of the principal.

## **IV Insurance**

### **§ 33 Liability Insurance**

The carrier and the forwarder, as described in § 1, shall have to take out an insurance at the scope of usual market terms to cover all damages they may be held liable for according to these Terms &

Conditions and the 4<sup>th</sup> Chapter of the HGB, to cover standard liability amounts.

#### **§ 34 Provision of Insurance Cover**

- (1) The forwarder shall take out insurance to cover the goods pursuant to §§ 454, paragraph 2, and 472, paragraph 1 HGB, with an insurance company of his/her choice only on the basis of a written agreement or one in text form. The forwarder shall exercise professional judgment in his/her decision on the type and scope of insurance to be taken out at generally accepted market rates, unless the principal gives instructions in writing or text form with a view to the type and scope of the insurance, whilst stating the amount to be insured and the risks to be covered.
- (2) Should the forwarder be unable to provide the required insurance cover, he/she shall have to immediately inform the principal accordingly.

#### **V Further Provisions**

The following provisions shall apply to freight, forwarding and logistics companies (hereinafter named entrepreneur).

#### **§ 35 Cash on Delivery**

- (1) Cash on Delivery shall be deemed an extra service agreed upon in writing at the time the order is placed or the vehicle required, or is to be stipulated in the consignment note or one of the other accompanying documents.
- (2) The respective COD amount shall be collected from the consignee in cash. In the event that the consignee is unable to comply with this method of payment, the entrepreneur shall obtain written instructions from the holder of the right of disposal. The consignment shall not be handed over to the consignee until such time that written instructions have been received. The entrepreneur shall be entitled to remuneration for the time he/she was on standby until written instructions were received. Furthermore, § 419, paragraph 3 HGB shall be applicable.

#### **§ 36 Rights of Lien or Retention**

- (1) The entrepreneur shall have the rights of lien or retention of the goods in his/her possession, or any other assets, for all

claims, whether due or not yet due, arising from the provision of services according to these Terms & Conditions. The rights of lien or retention shall not go beyond the statutory rights of lien or retention.

- (2) In accordance with these Terms & Conditions, the entrepreneur shall be entitled to exercise his/her rights of lien or retention for claims arising from other contracts concluded with the principal, only if such claims are undisputed.
- (3) Instead of the one month deadline stipulated in § 1234 BGB, a deadline of two weeks shall apply in all instances.
- (4) If the principal is in arrears with payments, the entrepreneur shall be entitled, upon giving due notice, to sell such portion of the goods or assets in his/her possession, as he deems necessary after careful consideration, to meet his/her claims.
- (5) In all instances, the entrepreneur shall be entitled to a commission at the prevailing local rate on the net proceeds of a sale, resulting from exercising the rights of lien or distress sale.

#### **§ 37 Packaging, Weighing and Examining Goods as a Special Service**

- (1) Unless agreed upon, the order placed with the forwarder shall not include:
  1. the packaging of goods,
  2. the weighing and examining of goods, as well as measures to preserve and/or maintain or enhance the goods and/or packaging, unless this is common practice. This shall have no bearing on the regulation pursuant to § 3, paragraph 4.
- (2) Services rendered according to paragraph 1, above are to be remunerated separately.

#### **§ 38 Pallets, Loading Devices and Packaging Material**

- (1) In accordance with these Terms & Conditions, the entrepreneur shall not be required to provide loading devices and packaging materials, or pallets in particular.
- (2) In the event that pallets are to be exchanged, this shall be agreed upon in writing at the

time the contract is concluded or the vehicle is required, or shall be stipulated in the consignment note or any other accompanying document, or in a separate pallet identification voucher. The exchange of pallets shall be deemed an extra service provided by the entrepreneur, which is not covered by his/her fee and has to be remunerated separately. This shall also apply to the step-by-step exchange of pallets according to paragraph 3.

- (3) The contract for the transport of goods on pallets shall be performed once the goods have been delivered to the consignee. Empty pallets shall only be returned if a separate contract to this effect has been concluded. Sentences 1 and 2 above shall not be applicable to a step-by-step exchange of pallets.
- (4) With regard to other loading devices, paragraphs 2 and 3 shall apply accordingly.

#### **§ 39 Arrears, Set-Off**

- (1) Unless a delay in payment has occurred before, according to law, payments shall be deemed to be in arrears after 10 days from receipt of the invoice, or a similar demand for payment at the latest, whereby no reminder shall be necessary.
- (2) Any claims for standby time, additional fees, and the reimbursement of other expenses incurred in the performance of the contract according to these Terms & Conditions, shall be made in writing by the entrepreneur. Paragraph 1 shall apply accordingly to late payment of such claims.

- (3) Any claims arising from a contract concluded subject to these Terms & Conditions, and any related claims resulting from tort or unjustified enrichment, may only be offset against due and undisputed or legally binding claims.

#### **§ 40 Place of Performance**

The place of performance shall be the registered office of the entrepreneur. Should the entrepreneur have several subsidiaries, the place of performance shall be deemed the subsidiary, which the contract was addressed to.

#### **§ 41 Place of Jurisdiction**

The place of jurisdiction for all claims arising from a contract concluded subject to these Terms & Conditions shall be the registered office of the entrepreneur if both the claimant and the debtor are businessmen/women. Should the entrepreneur have several subsidiaries, the place of performance shall be deemed the subsidiary which the contract was addressed to.

#### **§ 42 Governing Law**

The law of the Federal Republic of Germany shall be applicable to all contracts concluded subject to these Terms & Conditions.

#### **§ 43 Severability Clause**

Should any provision of a contract be or become null and void, this shall not affect the validity of the remaining provisions of the contract. The parties to the contract shall undertake to draft contract terms to replace the legally void provisions that reflect the economic purpose of the contract.



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