

## General Conditions of Transport

For services rendered by Hapag-Lloyd AG for and on behalf of the Customer where such Services are not covered by bills of lading, air or sea waybills or any other contract for carriage or for any other Services to the Goods.

### **1. Definitions**

Hapag-Lloyd AG (hereinafter "HLAG") means HLAG or its subsidiaries and associated companies except in those instances where such affiliates and/or subsidiaries are acting on their own behalf.

"Customer" means any person to whom HLAG provides any Services and shall include the owner of the Goods and any person who may acquire an interest in the Goods.

"Person" includes individuals, groups, companies or any other legal entity.

"Owner" means the Owner of the Goods to which HLAG provides any Services and any other person who has or may acquire an interest in them.

"Goods" means all or any part of the Goods (including any packaging, containers or equipment supplied by the Customers, which are the subject of any Services.

"Services" means all or any business undertaken by HLAG for the Customer including the provision of transportation, storage advice, information or any services whatsoever.

### **2. Application**

Except as provided below, any Services provided by HLAG, whether gratuitous or otherwise shall be subject to these conditions.

Exceptions - the provisions herein shall not apply:

(A) When the Services provided herein are already covered by the terms and conditions of bills of lading, air or sea waybills or any other contract for carriage or any other Services to the Goods.

(B) If any conditions contained herein are contrary to any mandatory applicable law relating to the Services undertaken by HLAG or behalf of the Customer.

(C) When the Services being performed by a subsidiary or affiliate of HLAG are being performed by such affiliate or subsidiary on its own behalf in which event local law or subsequent subsidiaries or affiliates own business conditions applicable to the Services being performed will be applied.

(D) In the event of any inconsistency between the conditions contained herein and local law. To the extent of any such inconsistency, mandatory local law will be applicable but no further.

### **3. HLAG as agent**

(A) Unless agreed in writing between the Customer and HLAG prior to the performance of any Services contained herein, and unless agreed in writing to the contrary, the Customer hereby agrees that HLAG in obtaining the Services provided for herein shall at all times be acting as Agent for the Customer. The agreement between HLAG and the Customer of a price for the Services shall not affect HLAG's role as Agent in providing the Services herein.

(B) When acting as Agent for the Customer, HLAG does not make or purport to make any contract with the Customer for the carriage, storage, packing or handling of any Goods nor for any other physical Service in relation to the Goods and HLAG acts solely on behalf of the Customer in securing Services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

(C) To the extent that HLAG in accordance with these conditions, is acting as Agent on behalf of the Customer, HLAG shall be entitled and the Customer hereby expressly authorises, HLAG to enter into agreements on behalf of the Customer

- i. For the carriage of Goods by any other route or means or person;
- ii. For the storage, packing, transshipment, loading, unloading or handling of the Goods by any person and any place for any length of time;

- iii. For the carriage or storage of any Goods in or on transport units and with other Goods of whatever nature;
- iv. To do such acts as may in the opinion of the HLAG be reasonably necessary in the performance of its obligations to the Customer.

#### **4. Reservations**

HLAG reserves to itself, whether it is acting as Agent or principal, a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of the Goods pursuant to these conditions.

#### **5. HLAG's liability as agent**

HLAG shall have no liability whatsoever for loss or damage to the Goods when it is acting as Agent for the Customer except where such loss or damage is caused by the gross negligence or wilful misconduct of HLAG. In no event whatsoever shall HLAG be liable for any delay in delivery of the Goods and HLAG makes no guaranty as to deliveries of the Goods which are performed by third parties.

#### **6. Lien**

HLAG, whether acting as Agent or principal, shall have a general lien on all Goods and any documents relating to Goods in its possession, custody or control for all sums due at any time from the Customer and shall be entitled to sell or dispose of such Goods or documents as Agent for and at the expense of the Customer. HLAG is authorised to apply the proceeds in or towards the payment of such sums on 28 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sum due to HLAG and the cost of sale or disposal, HLAG shall be discharged of any liability whatsoever in respect to the Goods or documents.

#### **7. Perishable goods**

When the Goods are liable to perish or deteriorate, HLAG whether acting as Agent or principal, has the right to sell or dispose of the Goods and this

right shall arise immediately upon any sum becoming due to HLAG subject only to HLAG'S taking reasonable steps beforehand to bring to the Customers attention its intention of selling or disposing of the Goods.

### **8. Failure to take delivery**

(A) Where the Customer fails to take delivery of the Goods, or any part thereof, at the time and place specified by HLAG, then HLAG shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer and the liability of HLAG in respect of the Goods, or that part thereof stored as aforesaid, shall wholly cease and the cost of such storage shall forthwith upon demand be paid by the Customer to HLAG.

(B) Where the Goods have been held by HLAG for 90 days or more and cannot be delivered as instructed; HLAG shall be entitled at the expense of the Customer to dispose of the Goods by sale or otherwise as may be reasonable on 28 days written notice to the Customer, or where the Customer cannot be located then to any party who may reasonably be supposed by HLAG to have any interest in the Goods.

(C) Without prior notice HLAG shall be entitled at the expense of the Customer to dispose of the Goods by sale or otherwise as may be reasonable if the Goods have perished, deteriorated or been altered or are in immediate danger thereof or where such conditions may reasonably be expected to cause loss or damage to third parties or may be deemed to contravene any applicable law or regulation.

### **9. Insurance**

HLAG shall be under no responsibility whatsoever to obtain insurance coverage for the Customer in regard to the Goods for any services performed pursuant to this agreement. Notwithstanding the foregoing, in the event HLAG agrees to arrange insurance, HLAG shall act only as Agent for the Customer using its best endeavours to arrange such insurance and does so subject to the limits of liability contained in clause 17 infra.

### **10. Prohibited goods**

Except under special arrangements previously made in writing, HLAG will not provide services to any Goods consisting of bullion, coins, precious stones, jewellery, valuables, antiques, pictures, human remains, live stock or plants. Where such Goods are delivered to HLAG without special arrangements being made, HLAG shall be under no liability whatsoever for or in connection with such Goods.

### **11. Dangerous goods**

Except under special arrangements previously made in writing, HLAG will not accept or deal with Goods of a dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or effect other Goods. If such Goods are accepted pursuant to a special arrangement and if in the opinion of HLAG they constitute a risk to other Goods, property, life or health, HLAG shall, where reasonably practicable, contact the Customer, but further reserves the right at the expense of the Customer to remove or otherwise deal with the Goods.

### **12. Declared value**

Where there is a choice of rates according to the extent or degree of liability assumed by carriers, warehousemen or others, no declaration of value in regard to the services provided herein will be made by the Customer except under special arrangements previously made in writing with HLAG.

### **13. Customer warranties**

The Customer warrants:

- (A) That the description and particulars of any Goods furnished by or on behalf of the Customer are complete and accurate.
- (B) That the Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, in a manner appropriate to the Services that are being provided to the Goods.
- (C) That where HLAG receives the Goods from the Customer already stowed in or on a container, trailer, tank, or any other device specifically

constructed for the carriage of Goods by land, sea or air such equipment shall be in good condition and suitable for the performance of the Services provided herein.

#### **14. Indemnity**

The Customer shall indemnify HLAG:

(A) Against all penalties, claims, damages, costs and expenses which may arise as a result of the Customer delivering to HLAG, or causing HLAG to deal with or handle, Goods of a dangerous or damaging nature, or Goods likely to harbour or encourage vermin or other pests or Goods liable to taint or affect other Goods, which Goods are not the subject of special arrangements as per Clauses 10/11 above and HLAG further reserves the right to deal with such Goods in any manner as HLAG or any person in whose custody they may be at any relevant time shall think fit.

(B) Against all liability, loss damage, costs and expenses whatsoever (including but not limited to all duties, taxes, imposts, levies, deposits, penalties and outlays of whatsoever nature levied by any authority in relation to the Goods which arise out of HLAG's acting in accordance with the Customer's instructions or arising from any breach by the Customer of any warranty contained herein or from any breach by the Customer of any warranty contained herein or from any negligence of the Customer, its employees, agents or subcontractors.

(C) Any liability that may be incurred by HLAG as a result of its carrying out Customer instructions.

#### **15. Payment for services**

The Customer shall pay to HLAG in cash or as otherwise agreed all sums which are due without reduction, deferment or set-off on account of any claim, counterclaim, etc. The Customer shall be liable to pay HLAG interest as calculated at 5 % above European Overnight Interest Average (EONIA). Failure by HLAG to collect freight, duties, charges or other expenses from the consignee or any other person shall not release the Customer of its obligation to pay for such services, duties, charges or expenses on receipt of evidence of proper demand. If for any reason a liability for general average arises in connection with the Goods the Customer shall promptly

provide security to HLAG or to any other party designated by HLAG in a form acceptable to HLAG.

### **16. Obligation as a principal**

When, and to the extent that HLAG has contracted as principal for the performance any services, HLAG undertakes in its own name to procure the performance of the services provided herein. HLAG shall subject to the conditions set forth herein, be liable for any loss of or damage to the Goods taken into its charge which occur between the time when it takes the Goods into its charge and the time when HLAG is entitled to call upon the Customer, consignee or owner to take delivery of the Goods. In no event whatsoever shall HLAG be responsible for delay in delivery of the Goods unless it has agreed in writing to a specific delivery date.

### **17. Liability and limitation**

(A) HLAG shall be relieved of liability for any loss or damage if and to the extent

that such loss or damage is caused by:

- i. Strike lockout, stoppage or restraint of labour, storm, earthquake, natural disaster, acts of God, blockade, ice, civil commotion, restraints, or any other cause the consequences of which HLAG is unable to avoid by the exercise of reasonable diligence.
- ii. Any cause or event which HLAG is unable to avoid and the consequences whereof HLAG is unable to prevent by the exercise of reasonable diligence.

(B) Subject to clauses 2 B), 2 D) and 5 above and Sub-Clause 19 below HLAG's liability for claims for loss or damage to the Goods whatsoever arising, notwithstanding that the cause of loss or damage is unexplained, shall not exceed the lesser of:

- i. The value of any Goods lost or damaged, or
- ii. a sum at the rate of two Special Drawing Rights ( 2 SDR´s) as defined by the International Monetary Fund per kilo of gross weight of any Goods lost or damaged, or

(C) In the case of all other claims HLAG's liability shall not exceed the lesser of

- i. the value of the Goods for which the services pursuant to this agreement have been provided, or
- ii. a sum at the rate of two SDR`s per kilo of the gross weight of the Goods which are the subject of Services provided herein, or
- iii. 75,000 SDR`s in respect of any one transaction.

For the purposes of these conditions the value of the Goods shall be their value when they were or should have been shipped and the value of SDR`s shall be calculated as of the date when the claim is received by HLAG in writing.

Notwithstanding anything else to the contrary contained herein, if HLAG shall be found liable for loss or damage as a result of its failure to deliver or arrange delivery of Goods in a reasonable time where, pursuant to clause 16 supra., HLAG has entered into a special arrangement with the Customer then HLAG's maximum liability for such loss or damage shall not exceed a sum equal to twice the amount of HLAG's charges in respect to the relevant transaction.

### **18. No consequential damages**

HLAG shall not in any circumstances whatsoever be liable for indirect or consequential loss such as, but not limited to, loss of profits, loss of market or the consequences of delay or deviation howsoever caused.

### **19. Notice of claim**

Notice of any claim made pursuant to this agreement must be made in writing and notified to HLAG within 14 days of the date upon which the Customer became or should have become aware of the event or occurrence which give rise to the claim. Failure to make claim within 14 days shall be deemed to be a waiver of such claim and any such claim shall be absolutely barred.



## **20. Time bar**

Notwithstanding anything contained herein HLAG shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any service provided to the Customer or for which HLAG has undertaken to provide unless such suit or action is brought and written notice thereof given to HLAG within nine months from the date of the event or occurrence giving rise to the cause of action against HLAG.

## **21. Separability**

The terms herein shall be separable and if any provision hereof or any part of any provision, is invalid or unenforceable under local law then any such invalidity, prohibition or lack of enforceability shall not affect the validity or enforceability of any other provision or part thereof contained herein.

## **22. Jurisdiction and law**

These Conditions shall be subject to German Law and any dispute arising out of this agreement to which these conditions apply shall be subject to the exclusive jurisdiction of the Courts of Hamburg. In case HLAG intends to sue the Customer HLAG has also the option to file a suit at the Customer's place of business.