

## GENERAL CONDITIONS FOR FORWARDING SERVICES

### 1. SUBJECT MATTER

The Service Provider is the Customer's exclusive freight forwarder, for the organization of the following services:

Cargo reception; unloading of the barges or other transport means; loading of the sea vessel; storage of cargo in a safe location free from any negative influences, such as but not limited to splash, dirt, theft etc; dispatch of cargo; lashing securing and dunnaging of cargo; tallying and verification of cargo condition, including issuing of protest letters to the liable parties involved, such as but not limited to the captain of the barge or the driver of the other transport means in case of shortage or in case the cargo condition is not as described in the barge bill of lading or other transport document, all as the case may be and require; as well as all other services incidental or ancillary thereto, all as per the specific order, in the interest of the Customer and the Cargo Owner (hereinafter referred to as the Owner) and upon the terms conditions set forth hereinafter.

### 2. VALIDITY

These conditions shall be in force and effect from the "version date" indicated at the top of this page and until amended or replaced by the Service Provider and at his discretion. Such new version shall enter into force on the date of its forecasting on the Service Provider's website, which shall be the new "version date".

### 3. GENERAL PROVISIONS

#### 3.1.

The Service Provider shall perform its obligations in accordance with the written order received from the Customer.

The order shall include all data and information necessary to provide the requested services.

To be binding upon the Service Provider, the order and any alterations or amendments thereto must be signed by persons empowered to represent the Customer in the relationships with third parties.

After receipt of the order, the contracting parties may mutually establish the concrete conditions for carrying out the operations stipulated in the schedule of services received from the Service Provider.

In the absence of an order, the Service Provider is under no obligation to provide any services.

The Customer cannot demand the supply of services only on the basis of an agreement and cannot subsequently claim that the Service Provider failed to perform the services only on the basis of an agreement.

#### 3.2.

All services and activities are provided by the Service Provider as forwarding agents only.

Without prejudice to the generality of this clause,

- a) the charging by the Service Provider of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Service Provider is acting as a forwarding agent or a principal in respect of such service or services;
- b) the supplying by the Service Provider of their own or leased equipment shall not in itself determine or be evidence that the Service Provider is acting as a forwarding agent or a principal in respect of any carriage, handling or storage of Goods;
- c) the Service Provider acts as a forwarding agent where the Service Provider procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Service Provider, and the Customer or Owner of the Goods;
- d) the Service Provider acts as a forwarding agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services;
- e) Quotations are given on the basis of immediate acceptance and are subject to the right of withdrawal or revision. If any changes occur in the rates of freight, insurance premiums or other charges applicable to the goods, quotations and charges shall be subject to revision accordingly with or without notice.

To the extent that the Service Provider acts as a forwarding agent, the Service Provider does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationship are established between the Customer and such third parties.

The Service Provider shall not be liable for the acts and omissions of such third parties referred to in the preceding sentence.

The Service Provider when acting as a forwarding agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.

Except to the extent caused by the Service Provider's negligence, the Customer shall defend, indemnify and hold harmless the Service Provider in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements.

Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

#### **4. PRICE AND PAYMENT**

The Customer undertakes to pay the Service Provider the agreed price for the performance of the services upon receipt of the relevant invoice, sent by telefax or e-mail and by regular mail. All invoices shall be in Euros.

Subject to separate agreements, all invoices shall be payable and due cash upon receipt.

Payments shall be made by payment order / bank transfer. An amount is deemed to be paid when the Service Provider's bank account is credited for that amount.

The Customer will cover bank charges related to the payment of invoices issued by the Service Provider and any other expenses related to the payment.

The Customer is not entitled to deduct from the amounts payable to the Service Provider any amount owed by the Service Provider to it.

The Customer is in default at the expiry of the due date of the invoice, without a written notification being required to this effect. The Service Provider shall in the event be entitled to damages, late payment interests and termination of the agreement by a statement of termination, communicated to the Customer.

Prices will be renegotiated annually or as otherwise agreed to between parties.

The price will furthermore automatically be adjusted in case where:

- the price of fuel increases by 5% from the price agreed.
- the rates of contractors or suppliers increases by 2% from their current prices.

Such price increase will be communicated by the Service Provider and will be effective only for the future performance of services.

## 5. RIGHTS AND OBLIGATIONS OF THE CONTRACTING PARTIES

### 5.1. Service Provider

The Service Provider undertakes to:

- a) arrange for the provision of the services requested by the Customer as per their written order, in compliance with the Customer's handling conditions and instructions and in accordance with standard industry practices.
- b) invoice the price for the provided services as agreed.
- c) If applicable: communicate to the Customer, every month-end, the trading stock for verification and confirmation purposes.
- d) If applicable: provide to the Customer within one (1) working day after completing of reloading of the Product from barges on sea vessels copies of shipping documents, tally and survey's reports, photos of the discharged from barges and loaded on sea vessels the Product.

The Service Provider shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts, on any terms whatsoever, on behalf of itself or the Customer and without notice to the Customer:

- a) for the carriage of Goods by any route, means or person,
- b) for the carriage of Goods of any description whether containerized or not on or under the deck of any vessel,
- c) for the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time,
- d) for the carriage or storage of Goods in containers or with other goods of whatever nature,
- e) for the performance of its own obligations,

and to do such acts as in the opinion of the Service Provider may be necessary or incidental to the performance of the Service Provider's obligations.

The Service Provider shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of the Service Provider there is good reason to do so in the Customer's interest and it shall not thereby incur any additional liability.

The Service Provider may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Service Provider in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

**Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, the Service Provider accepts no responsibility for departure or arrival dates of Goods, whether or not any such delay is caused by the negligence of the Service Provider and/or its servants or agents.**

## **5.2. Customer**

**The Customer warrants that he is either the Owner or the authorized agent of the Owner of the Goods and that he is authorized to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods.**

**The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.**

**The Customer warrants that the description and particulars of the Goods are complete and accurate.**

**The Customer warrants that the Goods are properly packed, marked, labeled and stowed in a manner appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods except where the Service Provider has accepted instructions in respect of such services.**

**The customer warrants that he shall observe all foreign trade regulations and shall not maintain any connections to persons or organizations against whom restrictive measures have been imposed either in the fight against terrorism or in the form of other foreign trade-related sanctions.**

**The Customer shall give sufficient and executable Instructions and further undertakes to:**

- a) describe the consignments (batches of goods) in writing no less than two (2) business days before the operations;**
- b) send the documents and the firm operation order no less than two (2) business days before arrival of the batches of goods into the custody of the Service Provider;**
- c) send the firm loading order and detailed instructions no less than two (2) business days before the dispatch of goods;**
- d) pay the price of the provided services as agreed with the Service Provider.**
- e) If applicable: check and confirm the trading stock sent by the Service Provider every month-end.**

**Verified Gross Mass – applicable only for Customers acting as shippers.**

**The Customer shall at all times comply with SOLAS CHAPTER VI, and particularly with the Verified Gross Mass (hereinafter referred to as "VGM") requirements for packed containers. The Customer shall provide to the Service Provider or shall procure that its forwarding agent provides to the Service Provider the VGM of each packed container that is intended to be shipped on board a seagoing vessel.**

**The VGM must be indicated in Kilogram's and must be designated as "VGM".**

**The VGM must be provided in such time as the seagoing carrier's shall instruction, which shall be communicated in due time by the Service Provider.**

**The VGM must be communicated in writing, either in hard copy or electronically. The name of the person lawfully representing the Customer must be mentioned.**

**Packed Containers that do not have a VGM or that exceed their maximum gross mass, shall not be loaded on board the seagoing vessel.**

The VGM must be obtained by using weighing equipment that meets the applicable accuracy standards and requirements in the State in which the equipment is being used, which is the State where the container is packed and sealed.

The Customer is strongly recommended to inform themselves thoroughly about his obligations. Further information can be found [here](#); country specific information can be found [here](#).

If the Service Provider is to obtain the VGM and transmit it to the seagoing carrier, it shall do so on written instructions of the Customer only and on behalf and for the risk of the Customer.

If the Service Provider is to be mentioned as shipper on the transport document covering the sea voyage of a packed container, the Customer shall give written instructions and shall fully indemnify the Service Provider and keep it harmless for all costs and consequences.

## 6. LIABILITIES

### 6.1. The Service Provider

#### 6.1.1.

Except insofar as otherwise provided by these General Conditions, the Service Provider shall not be liable for any loss or damage whatsoever arising from:

- i) the act or omission of the Customer or Owner or any person acting on their behalf,
- ii) compliance with the instructions given to the Service Provider by the Customer, Owner or any other person entitled to give them,
- iii) insufficiency of the packing or labeling of the Goods except where such service has been provided by the Service Provider,
- iv) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
- v) inherent vice of the Goods,
- vi) riots, civil commotions, strikes, lockouts, stoppage or restraint of labor from whatsoever cause,
- vii) fire, flood or storm, or
- viii) any cause, which the Service Provider could not avoid, and the consequences whereof it could not prevent by the exercise of reasonable diligence.

#### 6.1.2.

Where under paragraph 6.1.1 the Service Provider is not under any liability for loss or damage caused by one or more of the causes, events or occurrences above, the Service Provider shall only be liable to the extent that the causes, events or occurrences for which he is liable under these Conditions have contributed to the loss or damage.

The burden of proof that the loss or damage was due to one or more of the causes, events or occurrences specified in paragraph 6.1.1 shall rest upon the Service Provider, save that when the Service Provider establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the causes, events or occurrences specified in (iii) to (vi) of paragraph 6.1.1, it shall be presumed that it was so caused. The Customer shall, however, be entitled to prove that the loss or damage was not in fact caused wholly or partly by one of the causes, events or occurrences listed in paragraph 6.1.1.

**The Service Provider shall not be liable for loss or damage to property other than the Goods themselves howsoever caused.**

**The Service Provider shall not be liable for economic loss in any form, such as indirect or consequential loss or damage, loss of profit, delay, deviation, howsoever caused.**

### **6.1.3. Amount of Compensation**

**Except insofar as otherwise provided by these General Conditions, the liability of the Service Provider, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following:**

- a) in respect of all claims other than those subject to the provisions of sub-clause (B) below, whichever is the least of
  - i) the value of, or**
  - ii) 2.00 (two) SDR per gross kilogram of the Goods lost, damaged, misdirected, mis-delivered or in respect of which a claim arises.****
- b) In respect of claims for delay where not excluded by the provisions of these General Conditions, the amount of the Service Provider's charges in respect of the Goods delayed.**

**Compensation shall be calculated by reference to the ex works invoice value of the Goods plus Carriage charges and insurance if paid.**

**If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.**

### **6.1.4.**

**A. The Service Provider shall be discharged of all liability unless:**

- i) notice of any claim is received in writing by the Service Provider or its agent within 14 days after the date specified in (B) below, except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as it was reasonably possible so to do, and**
- ii) suit is brought in the proper forum and written notice thereof received by the Service Provider within 9 months after the date specified in (B) below,**

**otherwise any claim shall be deemed to be waived and absolutely barred.**

**B. The dates referred to at (A) above are:**

- i) in the case of loss or damage to Goods, the date of delivery of the Goods,**
- ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,**
- iii) in any other case, the event giving rise to the claim.**

## **6.2. The Customer**

**The Customer is liable for all consequences and costs resulting from the transmission of documents, regulations, requests or information that are incomplete, incorrect or are sent late to The Service Provider, and for his actions, actions of his delegates or third party subcontractors, including but not limited to the VGM as set forth in section 5.2.**

**The Customer and Owner shall defend, indemnify and hold harmless the Service Provider against all liability, loss, damage, costs and expenses arising:**

- i) from the nature of the goods unless caused by the Service Provider's negligence,**
- ii) out of the Service Provider acting in accordance with the Customer's or Owner's instructions, or**
- iii) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.**

**Except to the extent caused by the Service Provider's negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Service Provider in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by an Authority in respect of the Goods, Dangerous Goods and/or Container and for all liabilities, payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Service Provider in connection therewith.**

**Advice and information in whatever form it may be given is provided by the Service Provider for the Customer and/or Owner only and the Customer and/or Owner shall defend, indemnify and hold harmless the Service Provider for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. The Customer shall not pass such advice or information to any third party without the Service Provider's written agreement and the Customer and/or Owner shall indemnify the Service Provider against any loss suffered because of a breach of this condition.**

**The Customer undertakes that no claim be made against any servant, subcontractor or agent of the Service Provider which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, if any such claim should nevertheless be made, to indemnify and hold harmless the Service Provider against all consequences thereof.**

**Without prejudice to the foregoing, every such servant, subcontractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Service Provider, to the extent of those provisions, does so not only on his behalf but as agent and trustee for such servants, sub- contractors and agents.**

**The Customer shall defend, indemnify and hold harmless the Service Provider from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Service Provider under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Service Provider, its servants, subcontractors and agents.**

**In this clause, "subcontractors" includes direct and indirect subcontractors and their respective servants and agents.**

**The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Service Provider or any person or vessel caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.**

## **7. LIEN**

The Service Provider shall have a particular and general lien on all Goods and/or documents relating to Goods in its possession for all sums of whatsoever kind and nature due at any time from the Customer or Owner and on giving seven (7) calendar days notice in writing to the Customer, shall be entitled to sell or dispose of such Goods and/or documents at the expense of the Customer and without any liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Service Provider and the costs of sale or disposal the company shall be discharged of any liability whatsoever in respect of the Goods and/or documents. If on the sale of the Goods the proceeds fail to realize the amount due, the Service Provider shall be entitled to recover the difference from any of the parties included in the terms Customer or Owner.

In any event any lien shall:

- i) survive the delivery of the goods, and
- ii) extend to cover the cost of recovering any sums due

and for that purpose the Service Provider shall have the right to sell the Goods and documents by public auction or private treaty, without notice to the Customer or Owner and at the Customer's and/or Owner's expense and without any liability towards the Customer or Owner.

## 8. CORRESPONDENCE ADRESSE AND CONTACT PERSONS

International Logistics & Chartering GmbH (ILC GmbH)

Freisinger str. 6,

D-85307 Paunzhausen, Germany

tel: +49 8444 91 77 10

fax: +49 8444 91 77 13

Contact person:

Sergey Morev, e-mail: [sergey.morev@ilc-morev.de](mailto:sergey.morev@ilc-morev.de)

Tel: +49 171 622 40 09

## 9. TERMINATION OF AGREEMENT

Both the Customer and the Service Provider may terminate the agreement or any of the Services provided on the basis of the agreement at any time, by giving the other party 30 days' prior notice of termination. When such a notice is sent, both the Customer and the Service Provider shall immediately take any reasonably necessary steps to implement the termination of the Services, as per the instructions received. For the parcel partly or fully dispatched from the production mill before the date of sending the notice of termination of the agreement and not yet loaded on the board of the sea vessel – the services shall be performed as per the conditions of the agreement.

The termination of the agreement shall not affect any accrued liability of either party arising under the agreement.

The provisions of this chapter shall not exonerate from responsibility the party that caused the termination of the agreement due to its fault.



## 10. FORCE MAJEURE

Neither party shall be liable for any loss, damage, delay or default in the performance of its obligations caused by circumstances beyond their control, the occurrence of which they could not foresee and the consequences of which they could not avoid and without the fault or negligence of such party including, but not limited to, acts of God, extreme weather conditions, acts of public enemy, natural phenomena, blockades, revolutions, wars, nationalizations, confiscations, strikes, embargos, imperative legal provisions which come into force after the conclusion of the agreement between parties.

Force majeure shall discharge the party affected from liability for non-fulfillment or inappropriate fulfillment of its contractual obligations, provided that such party has in good faith endeavored to remedy the consequences of such a situation.

The party claiming force majeure shall notify the other party in writing of the force majeure situation, within 3 business days after its occurrence, and afterwards shall send the other party a certificate or other document issued by a competent authority to certify the existence of the force majeure event.

The agreement shall be extended for a period of time equal to the duration of the force majeure situation or a period of time deemed reasonable considering the specified situation.

If the force majeure situation does not cease within 30 days of its occurrence, any party is entitled to unilaterally terminate the agreement upon 30 days prior notice.

Additionally, if at any time the performance of the Service Provider's obligations, in the opinion of the Service Provider or any person whose services the Service Provider makes use of, is or is likely to be affected by any:

- a) hindrance,
- b) risk,
- c) delay,
- d) difficulty, or
- e) disadvantage whatsoever

and which cannot be avoided by reasonable endeavors by the Service Provider or such other person, the Service Provider may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place which the Service Provider may deem safe and convenient,

## 11. NOTICES

Any notice sent by one party to the other shall be deemed validly given if sent to the contact persons at the addresses referred to in clause 8.

If sent by post, the notice shall be communicated by registered mail with proof of delivery and shall be deemed received by the recipient at the date mentioned by the recipient's post office on the confirmation.

If sent by telex, fax or electronic mail, the notice shall be deemed received on the first business day following the dispatch day.

Verbal notices shall not be taken into consideration by any of the parties if not confirmed through one of the modalities mentioned above.

## 12. APPLICABLE LAW AND DISPUTE RESOLUTION

The agreement between parties shall be governed and construed in accordance with the Laws of Germany. Any disputes, disagreements and claims arising out of or in connection with the agreement or in the violation, termination or invalidity thereof, shall be finally settled by way of arbitration governed in accordance with the Arbitration Rules of the Chamber of Industry and Commerce of Munich and Upper Bavaria (IHK München) without recourse to the ordinary courts of law.

The arbitral tribunal shall be composed by three arbitrators. The seat of arbitration shall be in München. The language of the arbitration (including documentation) shall be English.

### **13. ALLGEMEINE DEUTSCHE SPEDITEURBEDINGUNGEN 2003**

The Allgemeine Deutsche Spediteurbedingungen 2003 shall be applicable to the relationship with the Customer insofar as they are in conformity with these General Conditions. In case of conflict, these General Conditions shall supersede the Allgemeine Deutsche Spediteurbedingungen 2003.

### **14. FINAL CLAUSES**

The agreement between parties may not be modified or amended except in written form, signed by both parties.

The parties undertake to keep confidential all data, information and documents disclosed to them during the performance of the agreement.

If any of the provisions of these general conditions becomes void or voidable as a result of the law, this invalidity shall not affect the validity of the remaining provisions of these general conditions.

The parties shall replace the clause with provisions that are valid and binding upon them.

No failure or delay in exercising any right, duty or remedy under this Contract will constitute a waiver thereof. Without limiting the above, no waiver of any consequence of the breach of the Contract by either party shall be deemed a waiver of any consequence of a subsequent breach of such provision or any other provisions under this Contract.

The Customer shall not assign to a third party, either in part or in entirety, his rights and obligations arising from the agreement with the Service Provider, without the prior written consent of the Service Provider.

By placing an order or making use of the Service Provider's services the Customer agrees that:

- a) the conclusion of the agreement took into account all the risks associated with it, including the risks arising from the delay in execution, damage or destruction of goods, the consequences of transmission of incorrect documents or information
- b) he assumes the risks inherent in his professional activity and any other risks related to the agreement
- c) he expressly accepts the clauses regarding limitation of liability, tacit renewal, applicable law and termination for convenience.