

## **INTERNATIONAL CONDITIONS OF LOADING AND TRANSPORTATION (ICLT) 2010 Version**

### **§ 1 Definitions**

1. “Contract of Carriage” means any contract, of any kind, whereby a carrier undertakes against payment of freight to carry goods by inland waterway.
2. “Carrier” refers to any person by whom or in whose name a contract of carriage has been concluded with a shipper.
3. “Sub-carrier” refers to any carrier who actually performs part or all of the carriage independently.
4. “Shipper” refers to any person by whom or in whose name a contract of carriage has been concluded with a carrier.
5. “Consignee” refers to any person entitled to take delivery of the goods.
6. “Parties interested in cargo” refer to the shipper and the consignee.
7. “Transport document” means a document that evidences a contract of carriage and the taking over or loading of goods by a carrier, made out in the form of a bill of lading or consignment note or of any other document used in trade.
8. “Goods” do not include either towed or pushed vessels or the luggage or vehicles of passengers; where the goods are consolidated in a container, on a pallet or in or on a similar article of transport or where they are packed, the term “goods” includes such article of transport or packaging if supplied by the shipper.
9. “In writing” includes, unless otherwise agreed between the parties concerned, the transmission of information by electronic, optical or similar means of communication, including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI), provided the information is accessible so as to be usable for subsequent reference.
10. “Dangerous goods” refer to goods which pursuant to ADN/ADNR and/or other nationally and internationally valid and enforceable conditions are described and/or designated as dangerous substances, as well as all goods which due to their properties or condition could pose a threat to the environment, to persons, to the vessel and/or to other goods being carried on the vessel.
11. “CMNI”: the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway.

### **§ 2 Legal Foundation**

1. All carriage on inland waterways performed by the carrier is subject to the following conditions.

2. These conditions are likewise declared an integrated element of the bill of lading or consignment note.

### § 3 Consignment Note and Bill of Lading

1. The carrier is only obliged to issue a transport document and/or a consignment note and/or a bill of lading if this was agreed on concluding the contract of carriage.

Consignment notes are not securities. They can be neither transferred nor pledged. In such cases, the carrier is authorized to deliver the goods to the consignee named in the consignment note.

Bills of lading are securities made out to a certain name or order. The goods are only handed over when the correctly transferred original bill of lading is returned to the carrier or his representative. One original bill of lading is issued together with several copies. In exceptional cases where several original bills of lading have been issued, the return of just one original to the carrier or his representative renders the others null and void.

In cases where the bill of lading has been made out to order, the carrier may insist on a registration address being given.

2. The carrier is entitled to include in the transport document reservations concerning:
  - a) The dimensions, number or weight of the goods if he has grounds to suspect that the particulars supplied by the shipper are inaccurate or if he had no reasonable means of checking such particulars, especially because the goods have not been counted, measured or weighed in his presence or because, without explicit agreement, the dimensions or weights have been determined by draught measurement;
  - b) Identification marks which are not clearly and durably affixed to the goods themselves or, if the goods are packed, to the receptacles or packagings;
  - c) The apparent condition of the goods.
3. Should the clause "Nature, quantity, dimension or weight unknown" or a mark with the same meaning be entered in the transport document, the information concerning the goods given in the transport document shall not be binding on the carrier unless it is proven that he was or must have been cognizant of the nature, quantity, dimensions or weight of the goods.
4. If the carrier fails to note the apparent condition of the goods or does not enter reservations in that respect, he is deemed to have noted in the transport document that the goods were in apparent good condition.
5. If, in accordance with the particulars set out in the transport document, the goods are placed in a container or in holds of the vessel and sealed by a person other than the carrier, his servants or agents, and if neither the container nor the seals are damaged or broken when they reach the port of discharge or the place of delivery, it shall be presumed that the loss or damage to the goods did not occur during carriage.

#### **§ 4 Point of loading, loading and stowage, deck weight**

1. The shipper shall designate the point of loading. If the vessel cannot dock at the point of loading for reasons beyond the carrier's control, if the vessel can only dock at extra expense, or if the vessel has to leave its berth for any of these reasons, the carrier may request another loading point and loading process. The costs and extra expenses thus incurred by the vessel and loading process shall be borne by the parties interested in cargo, who shall be held jointly and severally liable. This shall not affect any demurrage claims. Should the shipper fail to fulfil his obligation to designate a suitable point of loading, the carrier may rescind the contract of carriage and demand payment of full freight and the reimbursement of additional expenses including demurrage.
2. The shipper is obliged to ensure that the vessel can reach the designated port of loading safely, lie there safely and depart from there safely.
3. The carrier is obliged to ensure that the vessel is docked at the point of loading and is made ready for loading.
4. The shipper shall undertake to load the goods on board the vessel and to stow, trim and secure the goods so that they can be transported safely. The carrier is entitled to issue instructions to guarantee the seaworthiness of the vessel and to prevent damage. The shipper is obliged to follow these instructions.
5. In accordance with the usage of inland navigation the carrier is entitled to load all or part of the goods on the ship's deck or on an open vessel.
6. The shipper shall be liable for any damage to the vessel inflicted during loading insofar unless the damage was the carrier's fault.

#### **§ 5 Description and handover of goods**

1. On placing the order, and under no circumstances later than the beginning of loading, the shipper shall supply all information required for carriage, provide exact descriptions of the goods and their packaging, nature, condition and quality in the usual manner, and hand over all necessary accompanying papers, in particular those required as per port, customs, health and other regulations.
2. When transporting dangerous goods (§ 1 clause 10), the shipper is obliged to indicate the nature of the hazard and the preventive measures to be taken clearly and in writing in each instance on placing the order. These written instructions and other documents required as per the applicable regulations must be handed over to the carrier and his representatives together with the goods. Standard commercial descriptions of these substances or other documents are insufficient.
3. The shipper shall guarantee the correctness of the goods description pursuant to par. 2 and par. 3 and of the information concerning marks, numbers, quantities, weights and/or volumes pursuant to par. 1 at the time of handover. He shall be liable for all direct and indirect loss,

damage and other disadvantages resulting from any errors in this information and for all costs thus incurred. In the case of dangerous goods, the carrier may discharge, land, return or in urgent cases even destroy the goods at the expense of the parties interested in cargo without himself becoming liable for compensation.

4. The carrier is not obliged but nevertheless entitled to check whether the information provided is complete and correct.
5. Should the vessel be detained or prevented from entering or leaving a port due to missing, inaccurate or incorrect information or accompanying documents or due to the disregard of any regulations by the parties interested in cargo, or should the goods be confiscated, the fallible parties interested in cargo shall be liable to the carrier for all resulting delays, damages, costs, fines, disadvantages and for demurrage.
6. Should the carrier have to submit declarations and/or issue, handle or sign documents relating to the cargo for authorities, customs, public officials, rail administration offices and/or public or private companies, he shall act solely on behalf and at the risk and expense of the parties interested in cargo. In this context, he shall only be held liable in cases of gross negligence, even in the event of omission, loss or non-delivery. Should third parties be contracted, e.g. cross-border carriers, he shall only be liable for the selection thereof.

## **§ 6 Choice of Vehicle and Transport Route, Transhipment and Lightening Rights**

1. Carriage shall be performed using the vehicles designated by the carrier. The carrier may contract other carriers to perform carriage.
2. The carrier is not obliged to load goods in a specific order or to transport them along a specific route or on a specific vessel. The goods shall be transported within the time limit which could reasonably be required of a diligent carrier, taking into account the circumstances of the voyage and unhindered navigation.
3. The carrier is entitled to lighten, discharge or transfer part or all of the goods to another vessel and/or to store them in warehouses or on land should circumstances appear to render this necessary or being in the interest of the vessel or goods. The parties interested in cargo shall be jointly and severally liable to the carrier for the extra costs thus incurred, insofar as the measures taken did not become necessary due to any culpability on the carrier's part.
4. The lightening, discharge or transhipment of goods to other vessels or to warehouses along with the storage thereof shall be effected on behalf, on account and at the risk of the parties interested in cargo.
5. In the cases described in par. 3 and 4, the parties interested in cargo shall be responsible for maintaining continuous insurance cover.

## **§ 7 Point of Discharge, Discharging**

1. The parties interested in cargo shall designate a suitable point of discharge. The conditions governing changes to and the safety of the loading point given in § 4 par. 1 and par. 2 also

apply to changes to and the safety of the discharge point.

2. The parties interested in cargo shall undertake to issue instructions concerning discharge and customs formalities to the carrier before the ship reaches the port of discharge; otherwise, the carrier shall be entitled to take all measures which appear to him to be necessary in the name, on behalf, on account and at the risk of the parties interested in cargo .
3. In the cases of optional batches, the carrier or shipper must receive written notification of the port of destination at least twelve hours before the vessel arrives at the first optional port. The shipper and consignee shall be jointly and severally liable to the carrier for any extra costs incurred if no punctual notification of the port of destination is received.
4. The vessel's readiness for discharge may be reported to the port of discharge at any time.
5. The parties interested in cargo are obliged to discharge the goods from the vessel.
6. The parties interested in cargo shall be jointly and severally liable for any damage to the vessel inflicted while discharging the goods. The parties interested in cargo shall not be held liable if the damage is the carrier's fault.
7. All residues of the cargo must be discharged from the vessel. Should this obligation not be fulfilled at the point of discharge, the carrier shall be entitled after due request to remove all residues of the cargo or have them removed at the expense of the parties interested in cargo.

## **§ 8 Loading and Discharge Times, Demurrage**

1. Unless otherwise agreed, the regulations concerning loading and discharge times shall apply at the ports of loading and discharge.
2. Should the loading and discharge times agreed or applicable at the points of loading and discharge not be adhered to, the carrier shall be entitled to claim for demurrage and loss of profit.

Other compensation claims remain unaffected.

## **§ 9 Termination of the Contract of Carriage, Loading Delays**

1. The shipper has the right to terminate the contract of carriage before the goods are loaded onto the vessel or placed at the carrier's disposal.
2. Should no goods have been loaded onto the vessel or placed at the carrier's disposal by the end of the time within which the shipper should have loaded the goods onto the vessel or placed them at the carrier's disposal, for whatever reason, the carrier shall be entitled to terminate the contract of carriage without the necessity of issuing a reminder.
3. Should only part of the goods have been loaded onto the vessel or placed at the carrier's disposal by the end of the time stipulated in clause 2, for whatever reason, the carrier shall be entitled to terminate the contract or start the voyage without the necessity of issuing a

reminder. In the event of termination, the shipper shall be obliged to discharge the goods already loaded at the carrier's request; if the voyage has already commenced and the vessel cannot depart without re-stowing the goods already stowed, the shipper shall be obliged to re-stow the goods.

4. The terminations mentioned in clauses 2 and 3 must be declared orally, in writing or using any other form of message for which receipt can be clearly verified. The contract shall end at the time the notice to terminate is received, but not before the goods have been discharged.
5. Should the shipper pay all carriage costs before the end of the time specified on clause 2, the carrier shall be obliged to start the voyage with part of the goods as agreed at the shipper's request. The carrier shall be entitled to accept other goods in lieu of the missing goods without being obliged to offset the carriage costs received for the transportation of these goods against the carriage to be paid by the shipper. Should the vessel be unable to depart without re-stowing the additional cargo and the goods already stowed, she shipper shall undertake to re-stow the goods at the carrier's request.
6. This paragraph does not apply to time charters.

#### **§ 10 Obstacles Precluding Delivery, Deposition and Distress Sale**

1. Should the designated consignee refuse to accept the goods or to pay the receivables secured by the goods, or should any other obstacle precluding delivery arise or the consignee fail to get in touch, the carrier shall inform the shipper and request his instructions. Should circumstances render this inadvisable, should the shipper fail to issue instructions or can the carrying out of the instructions not be reasonably requested of the carrier, the carrier shall be entitled to deposit the goods in a public or private warehouse, discharge them into lighters, put them ashore or hand them over to a forwarder on behalf and at the risk and expense of the parties interested in cargo.
2. If the agreed discharge time or, in default of such an agreement, the regulations governing discharge time in force at the port of discharge are not adhered to, the carrier shall be entitled to discharge the goods himself or have them discharged, to deposit them pursuant to clause 1 or to hand them over at the risk and expense of the parties interested in cargo notwithstanding the demurrage claims incurred. The carrier reserves the right to assert other compensation claims arising as a result of unpunctual discharge.
3. The deposition of goods, discharge of goods into lighters, discharge of goods ashore or the handover of goods to a forwarder shall be deemed to constitute correct delivery. The carrier reserves the right to retain or pledge the goods.
4. If the goods are not accepted within two months of deposition, the carrier shall be entitled to sell the goods at his own discretion, sell them publicly or auction them without giving prior notice or threat or obtaining approval from the authorities or court. If the goods are subject to rapid decay or to maintenance or considerable storage costs, or if the value thereof as assessed by the carrier fails to cover the associated costs, the carrier shall be entitled to sell them immediately or auction them without observing the two-month deadline.

## § 11 Freight

1. In default of a special agreement, freight shall be calculated ex free stowed inland waterway vessel (port of loading) to free arrival inland waterway vessel (port of discharge). It shall be calculated at no less than the gross weights, quantities or dimensions of the goods entered in the ship's papers. Should other papers cite higher weights or quantities, or should higher weights or quantities be determined during weight checks or tests, these shall be definitive for the freight calculations. Freight must be paid on delivery of the goods.
2. The costs of loading, stowage, securing and discharge together with all other costs, outlay and expenditure shall be reimbursed in addition to the freight insofar as they are not expressly included in the agreed freight or handover rate.
3. The freight agreement presupposes open and unimpeded navigation. All extra costs and expenditure incurred above and beyond those to be expected on an ordinary voyage shall be borne by the parties interested in cargo unless they are due to the fault of the carrier.
4. The freight rates are based on the operating costs, exchange rates, fees and public charges in force at the time the contract of carriage was concluded. Any exceptional increases, especially in fuel costs, crew wages and public charges made while the contract of carriage is being fulfilled shall entitle the carrier to adjust the freight rate in line with the change in conditions or, in the event of batches not yet being loaded, to withdraw from the contract.
5. The shipper shall be liable to the carrier for freight, dead freight, freight surcharges, costs, outlay, fees and other receivables secured on the goods as well as for demurrage and loss of profit. Delivering the goods without payment or refraining from exercising an existing pledge shall not exempt the shipper from liability. The consignee shall assume joint and several liability by requesting delivery of the goods or having them at his disposal in any other way. Should a bill of lading be marked "freight prepaid" or similar, the consignee shall not be liable for freight.

## § 12 Full Freight, Dead Freight

1. The carrier shall be entitled to full freight even if
  - a) only part of the cargo is delivered;
  - b) the shipper or consignee request discharge of the goods at the port of loading or any intermediate port;
  - c) continuation of the voyage is temporarily or permanently prevented for reasons beyond the carrier's control, or if the voyage is only made in part;
  - d) the goods have been destroyed, lost, confiscated, seized, damaged, reduced or otherwise rendered worthless.
2. The shipper and consignee may not withdraw from the contract after the voyage has commenced.

However, the carrier shall be obliged to discharge the goods at the port of loading or at any other port on the route, the parties interested in cargo being bound to pay full freight and other costs and extra expenditure associated with the discharge.

3. The carrier shall also be entitled to half of the freight if a) the shipper terminates the contract of carriage as per § 9 paragraph 1 or b) the carrier terminates the contract of carriage as per § 9 paragraph 2.
4. Along with payment of all or half of the freight, the carrier shall also be compensated for demurrage, damage suffered by the carrier as a result of the termination and for general average contributions.
5. The assertion of these claims does not depend on the shipper or consignee being culpable for the inadequate fulfilment of the contract or on the vessel scheduled for the transport being available and ready for loading. These claims shall also exist if the obstacle arose from one of the causes named in § 13 par. 1.

### **§ 13 Lapse of Acceptance and Transport Obligations**

1. Regardless of whether the goods have already been accepted or loaded and whether or not the voyage has already commenced, the carrier's obligation to accept and transport the goods on any waterway shall immediately lapse should the following events or circumstances occur or exist, whether in general or only affecting the specific vessel transporting the goods:
  - a) force majeure, war, civil war, mobilisation, military undertakings, riots, sabotage, strikes, lockouts, blockades, civil unrest;
  - b) official measures and interventions, import, export or transit restrictions or prohibitions, seizures or requisitions, insofar as the carrier is not culpable for these circumstances;
  - c) any kind of barrier to navigation, shipping accidents, disruptions or shutdowns in locks, canals, ports or other shipping facilities, traffic disruptions, traffic obstructions in sea ports or closure of navigation, insofar as the carrier is not culpable for these circumstances;
  - d) natural phenomena, high water, floods, ice and ice hazards.
2. For the entire duration of any such event and for max. 14 days thereafter, the carrier shall be entitled to claim compensation for loss of use plus additional expenses for all delays in shipping turnaround. He may also choose one of the following options:
  - a) either to perform the transport and to levy a freight surcharge for the whole of the route agreed, and to encumber the goods with the expenses incurred over and above those incurred when the contract is fulfilled in the usual manner, in which case the shipper and consignee shall be jointly and severally liable for the extra expenses;
  - b) or to withdraw from the contract entirely, to invoice dead freight as per § 12 and to discharge the goods already loaded or have them discharged at a place which appears to him to be suitable on behalf of and at the risk and expense of the shipper and consignee,

and to store them or have them transported further by other means. All extra costs, freight and outlay incurred by discharge in intermediate ports, storage or further transportation shall be borne by the parties interested in cargo .

The carrier shall also have the right to take the action described above even if he omits to inform the shipper and consignee that such an event has occurred.

3. Should the commencement of the voyage be permanently prevented by accident or a circumstance beyond the carrier's control according to these Conditions of Loading and Transportation, the contract of carriage shall expire without any obligation of one party to indemnify the other one. The shipper shall bear the costs of discharge of goods which are already loaded.

In particular, it shall be regarded as permanent prevention,

- a) if the vessel used to perform the carriage should get lost or damaged to such an extent that the voyage cannot be commenced without a complete renovation of the vessel. Namely, such one which makes necessary a complete discharge shall be considered as renovation on this note;
  - b) if the goods to be carried should get lost, provided that they were described not only concerning nature and type, but specifically in the contract of carriage or were already loaded or accepted by the carrier yet.
4. Should the continuation of the voyage after its start be permanently prevented by accident or a circumstance beyond the carrier's control according to these Conditions of Loading and Transportation, the contract of carriage shall expire. The shipper shall bear the costs of discharge and the freight for the part of the voyage which has been made already (distance freight).
  5. The shipper and consignee shall be jointly and severally liable to the carrier for all additional day freight, freight surcharges, loss of use and other additional expenses.

#### **§ 14 Carrier's Right of Retention and Lien**

1. The carrier shall have a right of retention and lien on the goods for all receivables arising from the contract of carriage and for undisputed receivables from other carriage, forwarding or storage contracts concluded with the shipper. The right of retention and lien shall also extend to the accompanying documents,
2. The right of retention and lien shall exist for as long as the carrier has the goods in his possession, in particular for as long as he has them at his disposal by means of bill of lading or warehouse bond.
3. When exercising his right of retention or lien, the carrier shall be entitled to discharge goods on behalf of and at the risk and expense of the shipper and consignee and to store them at a suitable place or to demand security for his claims.

4. Third parties laying claim to the goods by means of the bill of lading or consignment note shall acknowledge the carrier's right of retention or lien on receipt of the bill of lading or consignment note or on these papers being placed at their disposal only on the grounds of the receivables associated with the contract of carriage.
5. Sale of the goods on account of the right of retention or lien is admissible after one week.
6. The carrier may in any case request payment of sales commission at the standard local rate on the gross earnings from any sale made on account of the right of retention or lien.

#### **§ 15 Carrier Liability as per CMNI**

1. Those transports to be effected by the carrier which are subject to CMNI shall be governed by the CMNI liability regulations.
2. The carrier or actual carrier shall not be liable for damage caused by
  - a) an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the carrier complied with the obligations set out for the crew in Article 3 par. 3, CMNI unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result;
  - b) fire or an explosion on board the vessel, if it cannot be proved that the fire or explosion resulted from a fault of the carrier or the actual carrier or their servants or agents or a defect of the vessel;
  - c) defects existing prior to the voyage of his vessel or of a rented or chartered vessel if he can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.

#### **§ 16 Carrier Liability Outside the Scope of CMNI**

1. If the CMNI is not applicable, the liability regulations of the national legislation applicable as per § 27 of these conditions shall apply.
2. The carrier shall not be held liable
  - a) insofar as the goods to be transported have not yet been loaded/stowed on board the vessel;
  - b) for damages of any kind arising during the loading or discharge of the goods;
  - c) for damage of any kind arising after discharge;
  - d) for any consequential damages, including damages due to delay, regardless of the cause thereof.

3. Moreover, the carrier shall not be liable for damage caused by any of the following circumstances or hazards:
- a) actions or omissions on the part of the shipper, consignee or the person entitled to dispose of the goods
  - b) handling, loading, stowage or discharge of the goods;
  - c) carriage of the goods on deck or in open vessels, where such carriage has been agreed with the shipper or is in accordance with the practice of the particular trade, or if it is required by the regulations in force;
  - d) nature of the goods which exposes them to total or partial loss or damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage (in volume or weight), or the action of vermin or rodents;
  - e) the effects of heat, cold or melting, ignition or corrosion of the goods;
  - f) fire or explosion;
  - g) lack of or defective condition of packaging in the case of goods which, by their nature, are exposed to loss or damage when not packed or when the packaging is defective;
  - h) insufficiency or inadequacy of marks identifying the goods;
  - i) rescue or salvage operations or attempted rescue or salvage operations on inland waterways;
  - j) carriage of live animals, unless the carrier has not taken the measures or observed the instructions agreed upon in the contract of carriage.
  - k) errors in navigating or handling the vessel, including errors caused by the arrangement of group of tugs or pushers;
  - l) behaviour of any mandatory pilot;
  - m) delays or tardiness.

Should any damage arise which depending on the circumstances of the case could arise from any of the circumstances or hazards described above, it shall be assumed that the damage arose from this circumstance or hazard and that a careful carrier would not have been able to prevent the damage

4. Insofar as the applicable national law contains exclusions of liability additional to those contained in paragraphs 2 and 3, the carrier may also draw on these additional exclusions of liability.

## § 17 Scope of Liability

1. Insofar as the CMNI is not applicable, the compensation to be paid by the carrier in the event of loss or damage to the goods, damage caused by delay or pecuniary loss shall be determined by the international or national legislation applicable to the contract of carriage, insofar as no alternative arrangements have been made as part of a legally admissible right of disposition.
2. Insofar as national law does not stipulate lower limitations of liability, **the compensation to be paid by the carrier for loss or damage to goods shall be limited to two accounting units per kg.** The accounting unit per kg is the special drawing right determined by the International Monetary Fund. Should the delivery deadline be exceeded, the carrier's liability shall be limited to triple the freight.
3. Subject to alternative trading practice, no liability is accepted for deficits, short weight or short dimensions not more than 2% below the total weight or dimensions of the batch concerned.
4. If bulk products of the same type are stowed together in the same vessel or hold, the individual load owners, shippers and consignees shall divide any short weight, damage, average, excess weight or excess dimensions among themselves proportionally.
5. The conditions governing the exclusion, limitation and definition of the carrier's liability shall apply to all contractual and extra-contractual claims regardless of the legal grounds.
6. All exclusions and limitations of liability in the carrier's favour stipulated in these conditions and in the applicable statutes shall likewise apply to his employees and all other assistants.
7. Should the carrier's liability be excluded or limited on the basis of these conditions, the shipper shall also undertake to exempt him from third-party claims.

## § 18 Shipper's Liability for Carrier Damage

The shipper is obliged to compensate the carrier for damage caused by the material provided by the shipper or through the transport of his consignment. The shipper shall not be obliged to pay compensation if the carrier is culpable for the damage. Should both the shipper and the carrier be culpable for the damage, both parties shall bear the liability proportionately.

## § 19 Insurance

The carrier is not obliged to insure the goods against specific hazards and risks unless he has been expressly requested to do so in writing.

## § 20 General Average

The currently valid version of IVR's general average regulations (published under [www.ivr.nl](http://www.ivr.nl)) shall apply in cases of general average. The text is available on request.

The parties interested in cargo shall be obliged to pay contributions and/or advancements immediately, notwithstanding and irrespective of any right to reclamation of the payable amounts

which may be stipulated in the contract of carriage. They shall be jointly and severally liable to the carrier for all general average contributions charged due to any average adjustment on their goods. The carrier is entitled to request the reversal of these amounts along with the submission of a quotation. Any right of retention on general average contributions is herewith excluded.

Any right to reclamation of general average contributions already paid is excluded in cases where CMNI is applicable and the general average was caused by nautical culpability as per Article 25 par. 2a CMNI, by fire or explosion or by a defect in the vessel which was not recognisable when the voyage commenced. The right to reclaim general average contributions in the cases mentioned above shall not be waived where specific responsibility exists in cases of nautical culpability, or if the carrier is culpable in cases of fire, explosion or defects in the vessel when the voyage commences.

### **§ 21 Offsetting / Prohibition of Assignment**

The shipper and consignee are not entitled to offset receivables due to the carrier against receivables disputed by the carrier, irrespective of the legal grounds, and/or to assert any right to retention of receivables due to the carrier.

The shipper and consignee are not entitled to cede claims associated with the contract of carriage due to the carrier, his auxiliaries or vicarious agents as per § 2 par. 2 to third parties without the carrier's written agreement – with the exception of transport insurers.

### **§ 22 Temporal Limitation**

All claims against the carrier or sub-carrier, their auxiliaries and vicarious agents shall be time-barred one year after the day on which the goods were delivered or should have been delivered to the consignee. The day on which the limitation period commences is not included in the period.

### **§ 23 Liability Regulations in the Carrier's Favour**

The carrier may claim all exclusions or limitations of liability, shortened deadlines or waivers of recourse agreed between the shipper and consignee for himself.

### **§ 24 Legal Venue**

The legal venue for all disputes arising from or in connection with the contract of carriage is the carrier's headquarter. This legal venue is exclusive for all lawsuits filed against the carrier. The carrier is entitled to resort to another court which is declared by statutory legislation to be competent.

### **§ 25 Severability Clause**

Should any of the conditions above be ineffective, this shall exert no influence on the validity of the other conditions.

In such cases, the parties shall undertake to replace the ineffective condition with an effective condition serving the commercial purpose of the invalid condition as closely as possible.

## **§ 26 Exceptions to the Application of Specific National Legislation**

Should the contract of carriage be subject to German legislation, the conditions given below shall not apply or shall only apply subject to the reservations mentioned:

§ 12 par. 1 is subject to the proviso that the constellations described are not the carrier's responsibility. Pursuant to par. 2, the contract may be rescinded under the conditions mentioned in this paragraph.

The carrier's rights described in § 13 par. 2 are subject to the proviso that he is not responsible for the events described in paragraph 1.

The limitations of liability as set out in § 13 clause. 3 letter k do not apply.

## **§ 27 Applicable Law**

The contract is subject to the law chosen by the parties. If the parties have not stipulated any contractual legislation, the law of the country in which the carrier is domiciled shall apply, including the locally relevant and applicable international agreements, in particular the CMNI.

The conditions given above were drawn up in collaboration with the committee on inland shipping legislation of the VBW (European Inland Shipping and Waterways Association) and the Legal Committee of IVR.

*International Conditions of Loading and Transport (ICLT) 2010 Version, <http://www.vbw-ev.de/downloads.php>, 29.05.2013*