

## **Non-binding Recommendation**

for

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

#### **Article 1 Scope**

- (1) These General Terms and Conditions (hereinafter referred to as “**General Terms**”) shall apply to any and all types of legal relationship (hereinafter referred to as “**Assignment**”) between [*name of the ship broker*] (hereinafter referred to as the “**Ship Broker**”, independent of the legal nature of the Assignment), a member company of the German Ship Brokers’ Association (*Zentralverband Deutscher Schiffsmakler e.V.*) and any other contractual partner which calls upon the services of the Ship Broker (hereinafter referred to as the “**Client**”), regardless of whether the Assignment of the Ship Broker is non-recurring or continuous.
- (2) These General Terms shall apply specifically, but without limitation, to the Assignment of a Ship Broker as (1) liner agent (including the right to enter into bills of lading in the name, and/or for the account, of the Client), as (2) port or canal agent and as (3) sale & purchase broker or chartering broker.

#### **Article 2 Characteristics of Services**

- (1) In all cases, the Ship Broker shall act on behalf, and for the account, of the Client unless otherwise agreed in writing.
- (2) The Ship Broker is entitled and authorized to take any and all measures which appear to him to be necessary in order to meet the obligations of the Assignment, including, without limitation, to entering into market standard contracts with third parties in the name, and for the account of the Client.
- (3) Unless otherwise agreed in writing, any and all offers submitted by the Ship Broker shall not be binding until the Assignment has become finalized.
- (4) In his function as sale and purchase broker or chartering broker, the Ship Broker shall have the authority to conclude contracts on behalf of the Client unless the Client has explicitly excluded same.
- (5) The Ship Broker is exempted from the restrictions of Article 181 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*).
- (6) The Ship Broker is authorized, but not obligated, to collect sums due to the Client from third parties and to accept payments from third parties for the Client. The Ship Broker has the right to pay out to the Client any foreign-currency amounts

he has collected for the Client in Euros at the exchange rate valid on the date of payment.

- (7) The Ship Broker is under no obligation to provide financial guarantees or contracts of surety to third parties for the Client or to make any payments for which the Client has not provided sufficient cover to the Ship Broker in advance, or for which the Client has not provided collateral which the Ship Broker, in his fair judgment, considers to be sufficient.

### **Article 3 Remuneration, Compensation for Expenses**

- (1) The Ship Broker shall receive as remuneration for his services an amount to be agreed upon between the Parties unless otherwise mandatorily provided for in collective agreements or statutory regulations.
- (2) For any and all financial guarantees, sureties or disbursements of the Ship Broker, the Ship Broker shall be entitled to additionally receive a commission fee of at least 2.5% of the nominal value of the security provided.
- (3) All costs incurred in connection with bank transfers made by, to or for the Client shall be borne by the Client.
- (4) In addition to his entitlement to remuneration and a commission, the Ship Broker shall be entitled to demand from the Client the reimbursement of any and all expenses which he has reasonably incurred during the performance of the Assignment.
- (5) The Ship Broker has the right to demand that a reasonable advance be paid for the expenses set forth in Clause 4.
- (6) In the event that a specific currency has not been agreed regarding the Ship Broker's remuneration, the Ship Broker can, at his option, demand payment in the currency of the transaction upon which his remuneration (e.g. commission) is based, or in euros at the exchange rate valid on date of the invoice to the Client. The Ship Broker can demand compensation for expenses, at his option, in the currency in which these were incurred or in euros at the exchange rate valid on the date of the invoice to the Client. Commission claims based on the provision of security shall be deemed to have arisen in the currency of the relevant security.
- (7) The Ship Broker's claims for payment shall be deemed due upon the receipt of the Ship Broker's invoice by the Client. Receipt through electronic channels is sufficient in this context.
- (8) Any payment claims of the Ship Broker which are not settled by the Client within 21 days of the invoice date shall be subject to interest from the date of the invoice at a rate of 9 percentage points above the base rate valid at the time.

#### **Article 4 Offsetting, Right of Retention, Lien**

- (1) The Ship Broker is entitled to satisfy his claims at any time from their due date onwards by offsetting these against counterclaims of the Client.
- (2) The Ship Broker is also entitled to satisfy due and payable claims against the Client, or companies in which the Client directly or indirectly holds a majority share, or against companies which directly or indirectly hold a majority share in the Client, doing so from amounts collected by him for the Client (e.g. freight charges). In addition, the Ship Broker has a right of retention.
- (3) Notwithstanding any rights of retention or lien to which the Ship Broker is entitled on other legal grounds, the parties hereby agree that, in relation to all claims of the Ship Broker against the Client, the Ship Broker shall have a contractual lien on any and all assets of the Client which are in, or come into, the possession of the Ship Broker, independent of the legal basis for same and independent of the date upon which such claims have arisen.
- (4) At his option, the Ship Broker has, after the due date, the right to enforce the lien by selling the pledged property by way of private sale or public auction if the Client has not made payment in full, or provided other security to the satisfaction of the Ship Broker, within 30 days of the receipt of a written reminder setting a final date for payment of at least 20 days under notification of the subsequent enforcement of the lien.

#### **Article 5 Liability of the Ship Broker**

- (1) The Ship Broker shall perform his services with the diligence of a prudent businessman and shall carefully choose the individuals with whom he entrusts the performance of his obligations.
- (2) Claims for damages, or reimbursement of expenses, of the Client against the Ship Broker, his official bodies, his employees or other vicarious agents are excluded unless they arise due to an act committed by the Ship Broker, his official bodies, employees or vicarious agents, which act constitutes
  - a. an intentional or grossly negligent breach of duty;
  - b. a culpable breach of duty resulting in an injury to life, body or health;
  - c. non-fulfillment of a guaranteed characteristic; or
  - d. the culpable violation of a fundamental contractual obligation. Fundamental contractual obligations (cardinal obligations) are deemed those obligations the proper performance of which is indispensable in enabling the relevant contract entered into on the basis of these General

Terms to be performed and upon the compliance with which the Client customarily relies.

- (3) The damages for the violation of a fundamental contractual obligation (cardinal obligation) on the part of the Ship Broker (Article 5 Clause 2 Sub-clause d.) is limited to such damage as is foreseeable and may typically occur in such contracts. This shall not apply in the event that the Ship Broker is liable for an intentional or grossly negligent breach of duty (Article 5 Clause 2 Sub-clause a.), for injury to life, body or health (Article 5 Clause 2 Sub-clause b.), or for a characteristic which the Ship Broker has guaranteed (Article 5 Clause 2 Sub-clause c.). Damage is deemed foreseeable if it is the type of damage which can normally be expected to occur given the breach of the standard obligation.
- (4) The risk of incomplete, incorrect or delayed communication of information between Client and Ship Broker, specifically including, without limitation, the use of postal or electronic channels, shall be borne by the Client. This shall not apply in the event of liability arising as set forth in Clause 2 Sub-clauses a. to d. above.
- (5) The provisions of the foregoing Clauses 1 through 4 shall not reverse the burden of proof to the detriment of the Client.

#### **Article 6 Special Liability for Forwarding Services**

- (1) If the Ship Broker provides forwarding services in conjunction with his Assignment, his liability in this respect shall be governed by the German Freight Forwarders' Standard Terms and Conditions 2017 (*Allgemeine Deutsche Spediteurbedingungen, ADSp 2017*) of the German Freight Forwarders and Logistics Association (Deutscher Speditons- und Logistikverband, DSLV). In deviation from the provisions of the German Commercial Code (*Handelsgesetzbuch, HGB*), Clause 23 of the ADSp 2017 limits, inter alia, statutory liability for the loss of or damage to goods which are in the care of a forwarder for multimodal transport that includes maritime transport to 2 units of account per kg of the goods. Furthermore, Clause 23 ADSp 2017 limits liability for loss of or damage to goods to Euros 1,25 million per case of damage and Euros 2,5 million per event, or respectively to 2 units of account per kg, whichever sum is the greater.
- (2) A unit of account within the meaning of this Article 6 is the special drawing right (SDR) of the International Monetary Fund.
- (3) The Ship Broker will provide the Client with the text of the ADSp 2017 without delay and at no cost for the Client upon request.

### **Article 7 Time Bar**

All claims against the Ship Broker, his official bodies, his employees and his other vicarious agents shall, independent of legal grounds, become time-barred upon expiry of one year from the relevant statutory beginning of the period of limitation unless any of the cases of liability as set forth in Article 5 Clause 2 Sub-clauses a. to d. has arisen.

### **Article 8 Embargos and Sanctions**

- (1) The Client warrants that the transaction which is being performed in connection with the Assignment of the Ship Broker does not violate statutory rules or regulations, particularly including, without limitation, any economic, trade or financial sanctions with which the Ship Broker must comply (hereinafter collectively referred to as "Prohibitive Legislation").
- (2) The Ship Broker shall not be under obligation to perform any Assignments which violate the Prohibitive Legislation or in relation to which the Ship Broker has reason to suspect that a violation may occur. In the event of a refusal, the Ship Broker shall be entitled, notwithstanding the partial or non-performance of the Assignment, to claim from the Client the reimbursement of any and all expenses which he has incurred in connection with the Assignment.

### **Article 9 Dangerous Goods**

The Client shall inform the Ship Broker immediately and without delay in writing if the Assignment involves any items or goods which require special handling in regard to their receipt, loading, discharge, storage, transport or delivery, or for which notification or a permit is required. This shall specifically include, without limitation, dangerous goods as defined under the International Maritime Code for Dangerous Goods (IMDG Code).

### **Article 10 Confidentiality**

The Ship Broker is required to treat as confidential only such information and data of the Client which the Client has specifically identified as confidential in writing.

### **Article 11 Written Form**

Any amendments or supplements to these General Conditions or to the contract of which these General Conditions are an integral part must be made in writing in order to be valid. This shall also apply to the nullification of or any amendments to the requirement of the written form.

## **Article 12 Place of Jurisdiction, Applicable Law, Disputes with Consumers**

- (1) Any and all disputes between the Ship Broker and the Client arising from or in connection with an Assignment shall be decided exclusively by the state court competent at the location of the Ship Broker's place of business as entered in the Register of Companies.

To the extent that Art. 31 of the CMR or Art 46 § 1 of the CIM is applicable, the place of jurisdiction set out in the foregoing sentence shall not be exclusive, but additional. As far as Art. 39 of the CMR, Art. 33 of the Montreal Convention or Art. 28 of the Warsaw Convention are applicable, the first sentence of this Clause shall not apply. Further, the first sentence of this Clause shall not apply if a different place of jurisdiction is provided for in mandatory statutory law.

- (2) As an alternative to the place of jurisdiction agreed in Clause 1, the Ship Broker is free, based on his own discretion in the individual case, to bring an action at the state court within the general jurisdiction of the Client.
- (3) The Assignment of the Ship Broker shall be governed exclusively by German law, notwithstanding that the respective services may have been performed or are to be performed abroad in part or in their entirety.
- (4) The Ship Broker does not commit nor is he obliged to participate in Alternative Dispute Resolution (ADR) to resolve disputes with consumers before an ADR entity in accordance with the Act on alternative dispute resolution for consumer disputes (*Verbraucherstreitbeilegungsgesetz*).

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**These General Terms and Conditions are available to all members of the German Ship Brokers' Association free of charge in German and English.**

Please note that no liability claims can be derived towards ZVDS e.V. for the content of this manual, despite careful development and examination of this document!