

STANDARD CONDITIONS FOR LOGISTICS SERVICES

1. APPLICABILITY

- 1.1 All Services provided by the Service Provider shall be subject to these Conditions except where such Services are covered by a Hamburg Süd Bill of Lading in which case the terms and conditions applicable to the latter shall prevail.
- 1.2 These Conditions shall prevail over and shall apply to the exclusion of any terms and conditions in any purchase order or other correspondence or documents issued in respect of the provision of the Services.

2. DEFINITIONS

“Charges” means all expenses and money obligations of whatever nature payable by the Customer to the Service Provider.

“Conditions” means the terms and conditions contained within this document.

“Customer” includes any Person at whose request the Service Provider provides services, the consignee or receiver of the Goods, and the servants and agents and principals of any of these, all of whom shall be jointly and severally liable to the Service Provider for the payment of all Charges, and for the performance of the obligations of any of them under these Conditions.

“Equipment” means any equipment lent, leased, sold or otherwise supplied by the Service Provider to the Customer for the purposes of the Services.

“Goods” means any cargo as well as containers, pallets or similar articles of transport or packaging not supplied by the Service Provider;

“Hamburg Süd Bill of Lading” means a Bill of Lading issued by or on behalf of Hamburg Süd which identifies Hamburg Süd as carrier and which incorporates Hamburg Süd’s standard terms and conditions as found on www.hamburgsud-line.com.

“Person” means any person, whether a natural person, body corporate, partnership, limited liability partnership, unincorporated association, similar undertaking or otherwise.

“Service Provider” means Hamburg Südamerikanische Dampfschiffahrts - Gesellschaft A/S & Co. KG, Willy-Brandt-Straße 59 - 65, 20457 Hamburg, Germany, Commercial Register: Amtsgericht Hamburg HRA 59448.

“Services” means any services provided by the Service Provider to the Customer at the Customer’s request including but not limited to carriage, consolidation, storage, handling, packing or distribution of the Goods, whether gratuitous or not.

“Subcontractor” shall mean any carrier, haulier, transport operator, freight forwarder, security service provider, warehouse keeper or other person employed by or on behalf of the Service Provider, or whose services or equipment have been used to perform any of the Services or any part thereof.

“Vessel” means any vessel, container ship, barge, lighter or other means of conveyance by water used.

Where the context requires, words denoting the singular include the plural and vice versa;

3. CHARGES

- 3.1 Charges shall be deemed earned on acceptance of any Services by the Service Provider and shall be paid by Customer in full, without any offset, counterclaim or deduction, Goods and /or Vessel or other conveyance lost or not lost, and shall be non-returnable in any event.
- 3.2 Customer shall remain responsible for all Charges, which shall be paid to the Service Provider within the terms and in the currency shown on the invoice.
- 3.3 In case of non-payment of Charges or any other amount(s) due under this contract, the Service Provider is entitled to pursue the relevant amount(s) against Customer or Goods and Customer shall also be liable for

interest on any overdue amount(s) as well as Service Provider's reasonable attorney's fees and expenses incurred in collecting any amount(s) due.

- 3.4 In arranging for any services with respect to Goods, Service Provider shall be considered Customer's agent for all purposes. Charges and any payment of Charges to parties other than Service Provider shall not, in any event, be considered payment to Service Provider.
- 3.5 Charges for cold treatment are for administration only and do not impose any responsibility on the Service Provider for completion or success of cold treatment as per the applicable regulations.
- 3.6 Notwithstanding any agreement by the Service Provider to collect freight, duties, taxes, Charges or any other sums of whatever nature from the consignee or any other person, the Customer shall remain liable to pay such sums to the Service Provider.

4. LIABILITY

- 4.1 Except as otherwise provided herein, the Service Provider's responsibility for Goods lost or damaged whilst under the custody, control or care of the Service Provider or those Subcontractors employed by the Service Provider to perform the Services shall be governed by German law.
- 4.2 If it is established that the loss of or damage to Goods arose from or in relation to the carriage of Goods by sea, the Service Provider shall have no liability whatsoever for any costs or expenses unless the Services are covered by a Hamburg Süd Bill of Lading in which case the terms and conditions applicable to the bill of lading shall prevail over these Conditions.
- 4.3 Except under special arrangements agreed in writing by the Service Provider, the Service Provider gives no warranties or undertakings with regard to collection or delivery dates or times and is under no liability whatsoever for any direct, indirect or consequential loss or damage caused by delay, unless such delay was caused by the Service Provider, his servants or agents with the intention to cause damage, or recklessly or with knowledge that such damage would probably result. If the Service Provider nevertheless shall be held legally liable for any loss or damage caused by delay, such liability shall in no event exceed three times the amount paid for the Services.
- 4.4 Except as otherwise provided herein, under no circumstances shall the Service Provider be liable for any indirect or consequential loss or damage or for any loss of profit or business from any cause whatsoever, unless such loss or damage was caused by the Service Provider, his servants or agents with the intention to cause damage, or recklessly or with knowledge that such damage would probably result.
- 4.5 The liberties, rights, defenses, immunities, exemptions, limitations of and exonerations from liability of whatsoever nature, provided by these Conditions, or under statute, shall apply in any action or proceeding against the Service Provider whether founded in contract, tort, bailment or otherwise.
- 4.6 The Service Provider shall have no liability whatsoever arising out of or in connection with the acts of any person (not employed or instructed by the Service Provider) who unlawfully, by the use of force or threats of any kind, damages or exercises control over the Goods, over any Subcontractors and/or any servants or agent of the Service Provider or over any means of transportation, storage or method of handling of the Goods.
- 4.7 Service Provider shall have no liability whatsoever in respect to any duty or other tax, including, but not limited to, sales tax or value added tax or similar tax or levy imposed upon the Goods or imposed by reason of the carriage or loss thereof, by any government, governmental or quasi-governmental organisation.

5. LIMITATIONS OF LIABILITY

- 5.1 **IN NO EVENT SHALL THE SERVICE PROVIDER'S LIABILITY UNDER OR IN CONNECTION WITH THE SERVICES PROVIDED UNDER THESE CONDITIONS EXCEED 2 SPECIAL DRAWING RIGHTS (SDR) PER KILO OF THE GROSS WEIGHT OF THE GOODS LOST OR DAMAGED, UNLESS SUCH LOSS OR DAMAGE WAS CAUSED BY THE SERVICE PROVIDER, HIS SERVANTS OR AGENTS WITH THE INTENTION TO CAUSE DAMAGE, OR RECKLESSLY OR WITH KNOWLEDGE THAT SUCH DAMAGE WOULD PROBABLY RESULT..**

- 5.2 The limitations of liability provided herein apply unless nature and value of the Goods have been declared by the Customer at the time of requesting the Services and written acceptance to declare the value of the Goods in any service documentation is obtained from the Service Provider prior to Services and extra charges paid if required. In no event shall the limitation amount exceed the declared value and nothing herein shall be construed as a waiver of limitation.
- 5.3 According to Article 25 (2) CMNI it is agreed that the Service Provider in its position as carrier or actual carrier is not liable for damages and losses arising from:
- 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 Service Provider complied with the obligations set out for the crew in Article 3 (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, where it is not possible to prove that the fire or explosion resulted from a fault of the Service Provider or the actual carrier or their servants or agents or a defect of the vessel,
 - c) the 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.

6. HINDRANCES

If at any time the Service Provider's performance (whether commenced or not) is or is likely to be affected by any hindrance, risk of any kind (including the conditions of the Goods), danger, delay, difficulty or disadvantage of any kind and however arising, including but not limited to Acts of God, disruption in labor, war, epidemics, pandemics, civil commotion, political unrest, piracy, act of terrorism, and threat thereof, not arising from any fault or neglect of the Service Provider and which cannot be avoided by the exercise of reasonable endeavour, the Service Provider may abandon the carriage of the Goods under the respective contract and, where reasonably possible, make the Goods or any part of them available to the Customer at a place which the Service Provider may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Service Provider in respect of such Goods shall cease. In any event, the Service Provider shall be entitled to the agreed remuneration under the contract and the Customer shall pay any additional costs resulting from the above-mentioned circumstances.

7. INSURANCE

- 7.1 No cargo insurance shall be arranged by the Service Provider to cover any Goods during the performance of the Services unless instructions given in writing by the Customer and accepted in writing by the Service Provider.
- 7.2 If the Customer requests a separate insurance for the Goods and the Service Provider agrees in writing to arrange such separate insurance this will lead to the formation of a separate contract of insurance between the Customer and insurance underwriters.

8. SUBCONTRACTING

- 8.1 The Service Provider shall be entitled to sub-contract on any terms the whole or any part of the Services whatsoever as well as any and all duties whatsoever undertaken by it in relation to the Goods or in performance of the Services.
- 8.2 Without prejudice to the foregoing, every liberty, exemption, limitation of and exoneration from liability, condition, right, defense and immunity contained herein or available to Service Provider including the right to enforce any law or jurisdiction provision contained herein shall also be available to and extend to every Subcontractor which shall be entitled to enforce same against the customer.

9. METHODS OF PERFORMANCE/LIBERTIES

- 9.1 Service Provider may at any time and without notice:

- a) Use any means of transport (water, land and/or air) or storage whatsoever to accomplish the total or any part of the Services;
- b) Proceed by any route or place, in its discretion, at any speed and in any order, and omit, proceed to or stay at any place whatsoever, whether scheduled or not;
- c) Open any Equipment to inspect the contents, and if it appears that any part thereof cannot safely or properly be carried, either at all or without incurring additional expense, Service Provider may terminate the Services and/or incur any reasonable additional expenses to continue the Services at Customer's risk and expense;
- d) Comply with any orders, directions or recommendations given by any government or authority; and/or
- e) Take any other steps or precautions as may appear reasonable to Service Provider under the circumstances.

9.2 The liberties set out in 9.1 above may be invoked for any purpose whatsoever. Notwithstanding, the Service Provider shall be entitled to full Charges and any additional freight, storage and all other expenses incurred by or on behalf of Service Provider, all of which shall be due and owing from Customer, and Service Provider shall have a lien on the Goods for same.

10. DELIVERY

10.1 Delivery of the Goods shall occur:

- a) When the Service Provider and the Customer have appointed a time and place for delivery, at the time and place so appointed;
- b) When no time or place has been appointed, at the Customer's address within the local business hours; or
- c) When the Customer is to collect the Goods or is to arrange the collection of the Goods, upon the Goods being made available to the Customer or agents or servants of the Customer for such collection.

10.2 When the Goods are to be collected by or on behalf of the Customer, Service Provider shall be entitled to issue a notice to the Customer requiring the collection of the Goods or issuance of instructions for delivery under these Conditions within a reasonable time (as stipulated in the notice) after receipt of that notice.

10.3 If the Customer fails to take delivery or collect the Goods or the Customer fails to issue instructions upon expiry of the time stated in the notice in accordance with Clause 10.2 above, Service Provider may take any reasonable measure at Customer's sole risk and expense, including devanning, selling, disposing, or storing the Goods. Such measures shall constitute due delivery hereunder and all liability whatsoever of the Service Provider in respect of the Goods shall cease.

11. NOTICE OF CLAIM AND TIME TO SUE

11.1 Unless notice of loss or damage to the Goods, specifying the general nature of such loss or damage, is given in writing to the Service Provider by the Customer when the Goods are handed over to him, such handing over is *prima facie* evidence of the delivery of the Goods in good order and condition. Where such loss or damage is not apparent, the same *prima facie* effect shall apply if notice in writing is not given within 3 consecutive days after the day when the Goods were handed over to the Customer.

11.2 The Service Provider shall, unless otherwise expressly agreed, be discharged of all liability under these Conditions, including any claims for indemnity or contribution, unless suit is brought within one year after the delivery of the Goods, or the date when the Goods should have been delivered, provided however that if a shorter period for commencement of suit applies under applicable law, any liability whatsoever of the Service Provider shall cease unless suit is brought within such shorter period.

12. GENERAL LIEN

The Service Provider shall have a lien on Goods and any Charges and documents relating thereto for all sums due under these Conditions or any other contract or undertaking to which Customer was party or otherwise involved,

which lien shall also extend to storage fees and the cost of recovering such sums, inclusive of attorney fees, and shall survive delivery. Such lien may be enforced by the Service Provider by public or private sale at expense of and without notice to Customer.

13. CUSTOMER'S RESPONSIBILITY

- 13.1 Customer warrants that in agreeing to the Conditions hereof, he is, or has the authority of, the person owning or entitled to the possession of the Goods. Customer further warrants that: (i) the particulars relating to the Goods furnished upon requesting the Services and any other particulars provided by or on behalf of Customer are adequate and correct, and (ii) it has complied with all statutes, ordinances, regulations and requirements of whatsoever nature relative to the Goods, or other packages, its/their documentation or in any other way relating thereto.
- 13.2 Customer acknowledges that carriage of bullion, precious metals or minerals, diamonds, precious or semi-precious stones or coinage, artworks, antiques, jewellery or rare or precious artefacts, documents of value including but not limited to currency notes, bonds, bearer documents, negotiable instruments, bank drafts, checks, or payment orders, is subject to particulars furnished upon requesting the Services and Service Provider's written approval prior to Services.
- 13.3 Customer warrants that all Goods are packed and labelled and/or marked in a method which is suitable and appropriate having regard to the nature of the Goods and the anticipated Services to be provided by the Service Provider.
- 13.4 When the Goods are supplied already loaded in a container, trailer or other transport unit, whether or not on pallets, Customer warrants that all Goods are properly loaded and stowed and appropriately secured therein and the container, trailer or other transport unit is in sound condition and suitable for the performance of the Services.
- 13.5 Customer warrants that the Goods do not include contraband, drugs or other illegal substances.
- 13.6 When an Equipment is supplied by Service Provider and has been stuffed by or on behalf of Customer, Service Provider shall not be liable for loss of or damage to the Goods caused by the unsuitability or defective condition of the Equipment, which would have been apparent upon reasonable inspection by Customer at or prior to time Equipment was stuffed. It is the Customer's obligation to set and/or check that the temperature controls on the Equipment are at the required carrying temperature and to properly set the ventilation / gas level (CO₂/O₂) settings.
- 13.7 In absence of a written request to the contrary, Service Provider is not under an obligation to provide an Equipment of any particular type or quality.
- 13.8 When any Equipment is owned or leased by Service Provider, Customer shall be liable, at tariff rates, for any delay beyond time allowed for the use of such Equipment, and for any loss, damage or expense incurred by Service Provider as a result of failure to return the Equipment to Service Provider in sound condition and state of cleanliness as when received, even if a condition caused by Goods does not then manifest itself and/or results in loss, damage or expense at a subsequent time. Payment therefor is due upon presentation of written cost estimates.
- 13.9 Customer ensures the sealing of all packed Equipment immediately after stuffing is completed and before placing them at Service Provider's disposal. Only high security seals must be used. All seals must meet the specifications for high security seals issued by the International Organization for Standardization under ISO/PAS 17712 and any subsequent amendment or new definition thereof.
- 13.10 Customer shall be liable for and shall indemnify, defend and hold Service Provider harmless against all claims, loss, liability, penalties, damage, delay, fines, attorney fees, costs, and/or expenses arising from any failure of Customer to comply with the above-mentioned obligations or otherwise provided in these Conditions or in any way related to the Goods or which results from the acts or omissions of Customer, its agents or servants or third parties for whom Customer, its agents or servants are responsible.

14. DANGEROUS OR HAZARDOUS GOODS

- 14.1 No Goods which are or may become dangerous, hazardous, flammable, explosive, noxious or damaging (including radioactive material), or which are or may become liable to damage any person or property whatsoever, regardless of whether such Goods are listed in any international or national code, convention, listing or table, shall be tendered to Service Provider for the performance of Services without Service Provider's express consent in writing and without distinctly marking the Goods and the Equipment or other covering on the outside so as to indicate the nature and character of any such Goods and so as to comply with any applicable laws, regulations or requirements. If any such Goods are delivered to Service Provider without such written consent and marking, or if in the opinion of Service Provider the Goods are or are liable to become of a dangerous, hazardous, flammable, explosive, noxious or damaging nature, the same may at any time or place be unloaded, destroyed, disposed of, abandoned or rendered harmless without compensation to Customer.
- 14.2 Customer undertakes that such Goods are packed in a manner adequate to withstand the risk of any Services having regard to their nature and in compliance with all laws, regulations or requirements which may be applicable to the Goods or Services including IMDG Code, ADR, RID, and CFR.
- 14.3 Customer shall indemnify and defend Service Provider against all claims, loss, liability, damage, delay, fines, attorney fees, costs, and/or expenses arising from or related to the Services and/or such Goods and/or breach of any of the warranties and obligations provided herein whether or not Customer was aware of the nature of such Goods.

15. TEMPERATURE CONTROLLED GOODS

- 15.1 Equipment with temperature- or atmosphere-controlled apparatus will not be furnished unless expressly contracted for in writing at time of requesting the Services and, when furnished, may entail increased Charges. In absence of an express request, it shall be conclusively presumed that use of any other Equipment is appropriate for the Goods. Customer must provide Service Provider with desired set-temperature when delivering Goods to Service Provider.
- 15.2 Service Provider shall not be responsible for: (i) the functioning of temperature- or atmosphere-controlled containers not supplied by Service Provider or related companies or (ii) the consequences of the Goods, when placed in any Equipment or container, being at a higher temperature than that required prior to Services (hot stuffing), or (iii) the recording of temperatures in any form. Further, the Service Provider does not accept to comply with any governmental program or protocol with respect to the Goods.
- 15.3 Customer acknowledges that temperature- or atmosphere-controlled Equipment are not designed to freeze down Goods which have not been presented for stuffing at or below its designated carrying temperature or to monitor and control humidity levels, albeit a setting facility exists, in that humidity is influenced by many external factors and Service Provider does not guarantee the maintenance of any intended level of humidity inside any Equipment.
- 15.4 Customer acknowledges that Goods, which require refrigeration, ventilation or other specialized attention, were not verified by Service Provider, when received, as being at the carrying temperature, humidity level or other condition designated by Customer.

16. LAW AND JURISDICTION

Unless otherwise provided herein, any claim, dispute, suit or proceeding arising under or relating to these Conditions shall be governed by the laws of Germany and subject to the exclusive jurisdiction of the courts of the City of Hamburg, except that at Service Provider's sole option, it may commence proceedings against the Customer at any court or tribunal having jurisdiction.

17. MANDATORY LAW

These Conditions shall only take effect to the extent that they are not contrary to the mandatory provisions of international conventions or mandatory national law applicable to the Services.

18. NON-WAIVER AND SEVERABILITY

- 18.1 No servant or agent of Service Provider shall have the power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized or ratified in writing by an officer or director of Service Provider having actual authority to bind Service Provider to such waiver or variation.
- 18.2 Nothing herein shall operate to deprive Service Provider of any statutory protection or defense, immunity, exemption, limitation of or exoneration from liability contained in applicable laws.
- 18.3 The terms and conditions contained herein are separable, and if any part or term is held invalid, such holding shall not affect the validity or enforceability of any other part or term hereof.

Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG

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