



General Transport Conditions of H&S Container Line GmbH (HSCL) for transport with containers

§ 1 General information

- (1) The transports assumed by HSCL for loaded and empty containers and comparable vessels and all transport business associated with these transports are based on the following terms and conditions.
- (2) Consignor, shipper, recipient, cargo owner, as well as all persons who assert claims based on the transport contract or issued transport documents, submit themselves to these terms and conditions.

These terms and conditions apply both to contractual as well as to non-contractual claims.

- (3) Insofar as the General Transport Conditions do not contain any regulation the following shall apply:
 - a) for inland waterway transports the loading and transport conditions of HSCL (**IVTB**), in addition the "German Inland Waterways Act (BinSchG)" in the version of 30.06.1998 as well as the laws, regulations, decrees, commercial and habitual practices applicable for the respective inland waterway route
 - b) for transports by rail and road the statutory provisions which are binding for the respective transport carriers
 - c) for freight forwarding services the "General German Freight Forwarder Conditions (ADSp)", the respective applicable version

In case the afore-mentioned terms and conditions, laws and other provisions do not contain any regulation and violate mandatory law, the provisions of the HGB [Commercial Code] relating to the carriage of goods shall apply and for cross-border transports the provisions of the CMNI.

- (4) Insofar as the law governing carriage of goods by sea according to § 4 50 HGB applies, the conditions of the bills of lading issued for the respective transport shall apply.
- (5) HSCL is authorized to commission other entrepreneurs, either in whole or in part, to execute the contract and to agree their customary business terms with the companies commissioned thereby. These business terms shall then also apply in the contract concluded by HSCL with the consignor.
- (6) Agreements between the parties involved in the cargo and third parties which oppose these terms and conditions shall not be acknowledged.

(7) Amendments to these terms and conditions must be made in writing.

§ 2 Scope of service

- (1) When carrying out the transport HSCL assumes the obligation, according to these terms and conditions, to convey the containers and comparable vessels with the due care and attention of an ordinary freight forwarder.
- (2) The containers shall be conveyed by ship and/or by lorry and/or by rail. HSCL shall determine both the type of conveyance as well as the order and the route for the conveyance of the containers.
- (3) HSCL is entitled to tranship the goods to other ships, to lighten, unload or convey the goods using other transport means and to place the goods in warehouses or on land either in whole or in part without the prior notification of the parties involved in the cargo.
- (4) Upon request of HSCL the parties involved in the cargo are obliged to load and unload the containers either themselves or have this carried out by third parties.

§ 3 Pre-requisites for the conveyance

The conveyance according to the respective placed order presumes normal conveyance circumstances. Normal conveyance circumstances also include constant tariffs and constant transshipment rates as well as equal foreign exchange circumstances besides the operating ability of the means of conveyance and transshipment systems.

Serious changes in the conveyance circumstances, which only occur after an order has been accepted and for which HSCL is not responsible, entitle HSCL either to cancel the contract or to correspondingly increase the agreed remuneration. The cancellation must be declared immediately after knowledge of the change in the conveyance circumstances.

In case of force majeure, strike, lock-out and other official orders, which prevent a normal execution of the transport, HSCL shall be exempted from the obligation to execute the contract.

§ 4 Payment of carriage charges, ban on offsetting and assignment

The invoices of HSCL are due and payable within two weeks after receipt without deduction.

In the event of default, interest shall be charged in the amount of 8 % above the base lending rate of the European Central Bank.

The offsetting or the retention against receivables of HSCL is excluded insofar as counterclaims are not undisputed or have been declared final and absolute.

The parties involved in the cargo are not entitled to assign claims from the freight contract against HSCL, its vicarious agents or unskilled workers to third parties – with the exception of transport insurers – without the written consent of HSCL.

§ 5 Duties of the parties involved in the cargo

- (1) The consignor must observe the loading regulations applicable for his cargo or customary precautionary measures when stowing the goods within the container. He must also ensure that the containers are accepted by the unloading point/point of receipt in the order determined by HSCL.
- (2) When placing the order in any case before commencement of loading the used transport means, the consignor must provide all information necessary for the conveyance, in particular exactly describe the container according to type and number, weight and contents as well as condition in the customary manner. All necessary accompanying documents in particular based on statutory provisions, port, customs, health or other regulations are to be presented when the container is handed over to HSCL or its authorized agents.
- (3) Flammable, combustible, toxic, caustic, radiating, radioactive goods, goods which can pose a risk for the environment and similar hazardous goods are to be designated as such according to the relevant regulations in particular according to the hazard category. The consignor undertakes to inform HSCL in writing when placing the order and for each individual part about the type of hazard and the precautionary measures which have to be taken. When taking over the containers HSCL or its authorized agents must be presented the substance datasheets ADR/ADNR (European convention on the international transport of hazardous goods by road and by inland waterway) or other documents according to the respective applicable regulations. Customary designations of such substances are not sufficient.
- (4) The consignor guarantees the accuracy of the description of the goods according to the afore-mentioned provisions. He shall be liable for all direct and indirect losses, damages and other disadvantages resulting from inaccuracies as well as for all thus incurred costs.
- (5) The parties involved in the cargo are obliged and liable as joint and several debtors to indemnify HSCL from all obligations for damages which are caused through faulty stowing of the containers or through faulty stowing within the containers in case the stowing and loading is undertaken by one of the parties involved in the cargo or an entrepreneur or other assistants commissioned thereby. The same shall apply to losses, damages, disadvantages and costs which are incurred through faulty and unsuitable containers provided by the parties involved in the cargo.

§ 6 Measures in case of special hazards

- (1) In the event that the consignor breaches his duties according to § 4, even without this being his fault, the goods can be unloaded, destroyed or rendered

harmless at all times as required by the circumstances without compensation having to be paid. The claim for the stipulated freight shall continue to exist.

- (2) Goods which become an actual risk for human life, objects or the environment can, as required by the circumstances, be unloaded, destroyed or rendered harmless at the costs of the parties involved in the cargo.
- (3) In the event that hazardous goods and waste or goods and waste which are harmful for the environment can neither be further conveyed nor unloaded or delivered based on official regulations or a refusal of the recipient the parties involved in the cargo must reimburse all thus incurred costs and expenses with liability as joint and several debtors, in particular the costs for a necessary dumping, destruction, return transport to the port of departure or another nearer location where the goods and waste can be unloaded and delivered.
- (4) Incidentally, the liability of the consignor is determined according to § 414 HGB.

§ 7 Liability of HSCL

HSCL shall be liable for damages which were incurred through the loss or damage of containers, comparable vessels and/or their contents from the time when they were taken over until delivery or through the exceeding of the delivery period insofar as HSCL does not provide proof of exoneration, which is possible according to the statutory provisions applicable to the respective transport route.

§ 8

- (1) HSCL is exempted from the liability according to § 6 insofar as the loss, the damage or the delay is due to one of the circumstances or risks mentioned below:
 - a) Acts or omissions of the consignor, recipient or persons entitled to disposal;
 - b) Missing or defects to packaging or marking if the goods are exposed to losses or damages as a result of their natural condition with missing or defective packaging or marking;
 - c) Handling, loading, stowing, transshipment and unloading of the containers by the parties involved in the cargo or a third party commissioned thereby;
 - d) Natural condition of the goods according to which they are exposed to whole or partial loss or damage, in particular through breakage, rust, internal spoilage, drying out, leakage, normal loss (of tonnage or weight) or through vermin or rodents;
 - e) Goods in sealed containers in case the seals were not damaged at the time of delivery;

- f) Insufficient suitability of the goods for the transport in containers or from insufficient suitability or defect condition of the container used for the conveyance;
- g) Fire or explosion on board the ship insofar as it is not proven that the fire or the explosion were caused through the fault of HSCL, the executing freight forwarder or their employees or authorized agents or through a defect to the ship;
- h) Defects to the means of transport which could not be discovered before commencement of the journey despite showing the required care and attention ;
- i) Force majeure, accident, third party fault, mobilization, military exercises and undertakings, war, sabotage, riot, civil unrest, strike, lock-out, interruption or inhibition of the work to be carried out within the framework of the transport irrespective of reason and extent, blockade, requisitions, confiscation of the transport means or the cargo, quarantine restrictions, official and state measures and interventions of all kinds;
- j) Natural and elementary events, shallow water in transport below Cologne with a Cologne water depth gauge of 1.60 m and less; in transport with locations above Cologne and locations on the Mosel, Saar, on the Main and on the Neckar with a Kauber depth gauge of 0.80 m and less;
- k) Act or omission of the captain, pilots or other persons in the service of the ship or a pushing boat or tug in the nautical piloting or the compilation of a pushing or towing unit, presuming that HSCL applied the necessary care and attention before and when commencing the journey to ensure that the ship is in a condition capable of loading with regard to the goods which are to be conveyed, is seaworthy, is equipped and manned according to the applicable provisions and has the required national and international conditions for the conveyance of the goods concerned;
- l) Assistance given or attempted by the ship and crew, salvage or rescue of life or property, including the thus caused deviation from the route.

(2) If it is presented by HSCL that the losses or damages were able to be incurred from one or several of the circumstances described in the above paragraph under lit. a) to l) according to the circumstances of the case it is presumed that the damages were incurred as a result of these. The person entitled to the claim can prove that the damages were not incurred or not exclusively incurred from one of the circumstances or risks specified in paragraph (1), in which case the presumption for the benefit of HSCL shall cease to apply.

§ 9 Contributory causes

If another cause contributed to the incurred loss, damage or the delayed delivery besides the fault of HSCL or its assistants then HSCL shall only be liable to the extent that the damages are a result of this fault.

§ 10 Scope of liability

- (1) If HSCL is liable for the total loss of the container or its contents – subject to the liability limit according to Par. 4 – then the stock exchange or market price, insofar as neither exist, the general value is to be reimbursed which the container including contents had at the location and the time when the container was taken over.
- (2) In the event of damages to a container and its contents as a maximum the reduced value between the value determined according to Par. (1) and the sales value of the container including contents in the damaged condition is to be reimbursed, however no more than the compensation in the event of the total loss.
- (3) The amount which is saved for duties, in particular customs duties as a result of the loss or the damage to the container shall be deducted from the compensation according to Par. (1) and (2).
- (4) The liability of HSCL according to Par. (1) and (2) is limited in terms of amount as follows:
 - a) with regard to the transported container to a max. 1,500 units of account and with regard to its contents to 25,000 units of account
 - b) with regard to the goods per unit to 666.67 units of account for each package or other cargo unit
or
2 units of account for each kilogramme of the gross weight of the lost or damaged goods.

Unit of account is the special drawing right stipulated by the International Monetary Fund.

The liability is however limited in each case per container to 1,500 units of account and its contents to 25,000 units of account.

If a container or a similar conveyance appliance is used in order to summarise goods the packages or other cargo units, which are stated in the freight document as packaged in or on this conveyance appliance, are deemed as packages or cargo units. Otherwise the goods in or on such a conveyance appliance are deemed as sole cargo unit. In the cases in which the conveyance appliance has been lost or damaged itself, this appliance in itself, if it does not belong to HSCL and is otherwise provided thereby, is considered to be a special cargo unit.

- c) For each whole damaging event to Euro 2.5 million with the condition that this amount is to be divided between several parties involved in the

cargo, who are affected by the whole damaging event, as a ratio of the indemnity limit towards each other.

- d) In case the mandatory provisions of German law are applicable the compensation to be paid owing to loss or damage to the goods is limited to two units of account for each kilogramme of the gross weight. Unit of account is the special drawing right stipulated by the International Monetary Fund.

- (5) If and insofar as further liability restrictions are possible owing to the applicable law, these shall apply.

§ 11 Damages for delay

The liability of HSCL for delayed delivery is limited to the single amount of the carriage fees to be paid for the delayed goods.

The damages according to § 9 Par. 4 and Sentence 1 of this paragraph may however together not exceed the amount, which would be derived for the complete loss of the goods according to § 9 Par. 4, with regard to which the liability was incurred.

HSCL shall only be liable for a delay in delivery of the containers/goods if a conveyance or delivery deadline has been confirmed in writing by HSCL and the terms and conditions from the maritime freight contract belonging to the transport (e.g. Demurrage- und Detention-Charges) were disclosed to HSCL before conclusion of the contract and HSCL did not object to these.

§ 12 Claims of third parties

If claims are asserted against HSCL by a third party, which result from the freight contract, the parties involved in the cargo undertake to indemnify HSCL from these claims either in whole or in part insofar as HSCL is not liable or only assumed limited liability towards the parties involved in the cargo owing to these terms and conditions. The same shall apply if claims are asserted against an employee of HSCL or against another person, whose services HSCL used when satisfying the order placed with it, by a third party.

§ 13 Non-contractual claims

The provisions concerning exclusion, restriction and limit to the liability of HSCL cover non-contractual claims.

§ 14 Assertion of damages, lapse of claims for compensation

- (1) The acceptance of the goods by the recipient without reservation justifies the presumption that HSCL delivered the goods in the same condition and in the same quantity as they were handed over by it for conveyance.

- (2) HSCL and the recipient can demand that the condition and the quantity of the goods upon delivery are determined in the presence of both parties.
- (3) If the loss or the damages to the goods are clearly visible, insofar as the recipient and the freight forwarder did not jointly determine the condition of the goods, each reservation of the recipient must be declared in writing no later than upon delivery and with details of the general nature of the damages.
- (4) If the loss or the damages to the goods are not clearly visible, each reservation of the recipient must be declared in writing within seven consecutive calendar days after delivery whereby the general nature of the damages is to be given and the injured party must prove in this case that the damages were incurred while the goods were under the care of HSCL.
- (5) No compensation is to be paid for damages owing to delayed delivery unless the recipient can prove that he reported the delay to HSCL within 21 consecutive days after delivery and HSCL received the report.

§ 15 Loss of the right to liability restriction

HSCL or executing freight forwarder and the assistants acting on their behalf cannot refer to the liability exemptions and liability limits envisaged in the General Business Terms or agreed in the freight contract if it is proven that they personally caused the damages through an act or omission, which was committed with the intention of causing such damages or frivolously and with the awareness that such damages would probably be incurred.

§ 16 Statute of limitations

- (1) In the event of damages, partial loss or total loss of the cargo claims against HSCL shall become statute-barred with expiry of one year from the day upon which the goods were delivered or should have been delivered to the recipient. The day, upon which the deadline begins, shall not be taken into account when calculating the deadline.
- (2) No offsetting is permitted against claims which have expired, nor can these claims be asserted by way of a counter-claim.

§ 17 General average

- (1) The Rhine regulations IVR 1979 in the respective applicable version shall apply to general average.

- (2) The average adjustment for the general average shall be opened and processed at the location to be determined by HSCL by it or by a general average adjuster determined thereby. The total cargo located on board the ship participates in the general average.
- (3) The parties involved in the cargo shall be liable as joint debtors towards HSCL for all contributions to the general average relating to their goods owing to the average adjustment. HSCL is entitled to demand an indemnity for these amounts and a down payment for costs. If the general average indemnity or the requested down payment for costs is refused or not paid in time HSCL is entitled to exercise the right of lien to the containers and goods.
- (4) In all cases in which the liability of HSCL is excluded or restricted HSCL shall not be liable either in case of a risk owed by its assistant for the contributions to the general average to be paid by the parties involved in the cargo. These are neither entitled to refuse payment of the contributions relating to them nor offset these against asserted claims for damages or recourse. A right of retention to the general average contributions is expressly excluded.

§ 18 Insurance

- (1) Without an express written order HSCL is not obliged to insure the loaded and/or empty containers which it has taken over against dangers and risks. The order to cover by insurance must describe the insured value for container and goods as well as the dangers to be covered. The parties involved in the cargo shall be responsible for incorrect information. HSCL shall merely arrange for requested insurances as a mediator at the costs and risk of the customer with the exclusion of all own liability.
- (2) If HSCL has concluded insurance as per order the liability of HSCL is limited, under the reservation of the full liability exclusion and the liability restriction according to these terms and conditions, to the damages covered by the insurance and only up to the amount of the insurance payments. In case of under-insurance as a result of incorrect value declaration the liability is in any case restricted to the amount of the reduced insurance payments.

§ 19 Right of lien

HSCL is entitled to a right of lien and a right of retention to the goods or other values which are located within its power of disposal owing to all due and not due claims, to which it is entitled owing to all performances owing to the freight contract against the consignor or a certain party involved in the cargo. Insofar as the right of lien or right of retention would go beyond the statutory right of lien or retention, it only applies to those goods and values which belong to the consignor or the parties involved in the cargo who can be taken into consideration.

The deadline of one month determined in § 1234 BGB [Civil Code] shall be replaced by a deadline of one week in all cases.

HSCCL can in all cases charge a sales commission from the gross proceeds in the amount of the customary local rates for the lien sale or self-help sale.

§ 20 Place of jurisdiction/final provisions

- (1) Place of performance and place of jurisdiction for all disputes is Duisburg. HSCCL is however at liberty to take action against the parties involved in the cargo at the court of jurisdiction for him.
- (2) Should a regulation of the contractual statutes not have been determined between the contractual parties, the following shall apply:
 - a) for transports with begin and end in the same state sovereign territory the local applicable intrastate laws
 - b) for all other transports the law of the executing freight forwarder
- (3) Should one of the afore-mentioned conditions be invalid this shall have no effect on the validity of the other provisions.