

# General Austrian Forwarders' Terms and Conditions

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## **I. General**

### **Section 1**

The freight forwarder ("forwarder") will execute his commercial activities with the due care and diligence of a prudent businessman, safeguarding the interests of the principal.

### **Section 2**

- a. The General Austrian Forwarders' Terms and Conditions apply to all activities performed by the forwarder in the course of commercial transactions with businessmen and companies under Section 1 Para. 2 of the Consumer Protection Act, irrespective of whether it concerns forwarding, freight, warehousing, commission or any other business related to or connected with the forwarding industry.
- b. The General Austrian Forwarders' Terms and Conditions do not apply
  1. if the forwarder is acting solely as vicarious agent of a transport company in accordance with special conditions, or as surface transport entrepreneur on the basis of a surface transport contract of the Austrian Federal Railways;
  2. to the transportation of removal goods using a removal van (trailer, swap-body, container, lift-van), as well as warehousing of removal goods; transportation of removal goods for principals in the sense of Para. (a) above, either domestic or to and from foreign countries, is subject to the General Austrian Forwarders' Terms and Conditions, provided that the forwarding activities are covered under Section 407 of the Austrian Commercial Code.
- a. The General Austrian Forwarders' Terms and Conditions take precedence over local and municipal commercial practice. Mandatory provisions limit the effective scope of the General Austrian Forwarders' Terms and Conditions accordingly. In the case of ocean and inland waterway transportation, deviating arrangements may be concluded in compliance with special shipping terms and conditions of the forwarder.
- b. Furthermore, the terms and conditions stipulated by third parties involved in the execution apply.

### **Section 3**

The rights of the principal may only be assigned to third parties, and claims against the forwarder in the name or for the account of third parties (cf. Section 67 of the Insurance Contract Act) may only be asserted to the extent that such rights or claims against the forwarder are based on these terms and conditions.

### **Section 4**

All quotations made by the forwarder are only valid subject to prompt acceptance for immediate execution of the order concerned, unless stipulated otherwise in the quotation, and only to the extent that the quotation is referenced in the confirmation of the order.

## **II. Unacceptable Goods**

### **Section 5**

- a. Unless expressly agreed upon in writing, all goods that could be detrimental to individuals, animals, goods or other objects, or that are liable to rapid spoiling or decay, will not be accepted.
- b. If these goods are handed to the forwarder without special notification or identification, the principal will be liable for any resulting damages, even if he was not responsible for the damage.
- c. To the extent justified by such circumstances, the forwarder may sell the goods either publicly or privately, without resort to legal process. If possible, the principal should be notified of any such intended sale. In cases of imminent danger, the forwarder may also destroy such goods, even if prior notification to the principal has not been made.

## **III. Orders, Communication, Instructions and forwarder's Discretion**

### **Section 6**

The forwarder assumes no liability for the compliance with orders placed either verbally, by telephone or telegraph, or by any other form of notification, which have not been confirmed in writing by either party, including compliance with any communication made to drivers or accompanying personnel. All goods and documents of any type whatsoever will be released to the forwarder's employees at the sole risk of the principal, unless expressly or implicitly otherwise agreed in advance with the forwarder or one of his authorized employees.

### **Section 7**

- a. All orders placed with the forwarder must contain marking, number, type and content of the consignments, as well as any other information necessary for the proper execution of the orders. The principal will be liable for any consequences of incorrect or incomplete information (even if he was not responsible for the release), unless the forwarder had prior knowledge of the incorrectness or incompleteness of the information. The forwarder is only be obliged to review and supplement such information without being requested to do so if this accords with general business practice. Furthermore, the principal will be liable for any damage caused by the forwarder or third parties due to the absence of weight specifications on freight with a minimum gross weight of 1,000 kg.
- b. The forwarder is obliged to weigh the goods only upon special written request to do so.
- c. A receipt issued by the forwarder will, in case of doubt, not include a guarantee as to the type, content, value, weight or packaging of the goods.
- d. The goods receipt will not include confirmation of quantity, if this is not usual in the forwarding industry (such as bulk goods, lorry-loads, and the like).

## **Section 8**

Should manufacturers or dealers of specific products release a consignment without statement of contents to the forwarder for dispatch, it will be assumed in case of doubt that the consignment contains the products of the dispatcher. The terms and conditions set out in Section 7 remain unaffected.

## **Section 9**

The principal will notify the forwarder without delay of his address and any change of address. Otherwise, the last address known to the forwarder will apply.

## **Section 10**

- a. Unless specifically requested in writing, the forwarder is not obliged to send notifications by registered mail, or to insure documents of any type whatsoever prior to dispatch.
- b. The forwarder is not obliged to verify the authenticity of either the signatures on any communication or other documents concerning the goods, or the authority of the signing officer, unless otherwise agreed upon with the principal in writing, or unless the lack of authenticity or authorization is obvious.
- c. The forwarder is entitled, but not obliged, to consider a notification (advice) sent by him to be sufficient evidence of dispatch. He is entitled, but not obliged, to verify the authorization of any party presenting documents to him.

## **Section 11**

- a. Any instructions made with respect to the goods will be decisive for the forwarder pending the principal's revocation of it.
- b. An instruction to hold goods at the disposal of third parties cannot be revoked once the forwarder has received these instructions.

## **Section 12**

An instruction by the principal to carry out an order on account of a third party will not affect the principal's obligation towards the forwarder.

## **Section 13**

In case of insufficient or impractical instructions, the forwarder is entitled to act at his own discretion in the interest of the principal, and in particular to choose the type, route or means of transportation.

## **Section 14**

The forwarder may dispatch the goods together with those of other consignors in consolidated shipments or on a general bill of lading, unless he has been expressly ordered in writing to proceed otherwise. The acceptance of a package cargo bill of lading will not be deemed to be a contrary order.

## **Section 15**

If the forwarder accepts the goods together with a bill of lading or any other freight document (waybill/consignment note) given to him by the principal, the forwarder is entitled to convey the goods with a new bill of lading bearing his trade name and the name of the principal, unless the latter has stipulated otherwise.

## **IV. Inspection, Maintenance and Packing of Goods**

### **Section 16**

- a. In the absence of a written agreement, the forwarder is only be obliged to inspect, maintain and rectify any damage to the goods and their packaging within the scope of general business practices. Section 388 Para. 1 of the Austrian Commercial Code remains unaffected.
- b. In the absence of instructions to the contrary, the forwarder is entitled to make all declarations required by the Austrian Federal Railways concerning lacking or deficient packaging.

## **V. Time Periods and Deadlines**

### **Section 17**

No guarantee will be granted for loading times or a specific sequence of goods handling to be transported in the same manner unless specifically agreed. In the absence of such an agreement, goods marked as trade or fair goods will not receive preferential handling.

## **VI. Force Majeure**

### **Section 18**

Circumstances (including strikes and lock-outs) for which the forwarder is not responsible, but which prevent him in whole or in part from fulfilling his obligations, will release him from his obligations in connection with the orders affected by such circumstances, as long as such circumstances continue. In such cases the forwarder will be entitled but not obliged (even if a fixed date for acceptance of the goods has been agreed) to withdraw from the contract, even if the order has already been partially carried out. In such cases the principal is entitled to the same rights, provided that he cannot be reasonably expected to execute the contract. Should the forwarder or the principal withdraw from the contract in accordance with the provisions set out above, the forwarder must be recompensed for all resulting costs.

### **Section 19**

Within the scope of his duty to be diligent, the forwarder must check whether legal or official impediments exist concerning forwarding, and must inform the principal accordingly.

## **VII. Forwarder's Services, Remuneration and Expenses**

### **Section 20**

Offers by the forwarder and agreements with him regarding price and services always refer to his own services or those of third parties, and to goods of normal size, weight and characteristics. The following presumptions are made: Normal unfettered transport, unimpeded access and the possibility of immediate on-shipment. Furthermore it is assumed that freight rates, exchange rates and tariffs upon which the quotation was based remain valid. The forwarder may charge the usual supplements and surcharges, provided that he has drawn the principal's attention to them. The note "plus the usual ancillary charges" is sufficient for this purpose.

### **Section 21**

Should an order be withdrawn, the forwarder is entitled at his own discretion to demand either payment of the agreed remuneration (minus expenditures not incurred), or of a reasonable commission fee.

### **Section 22**

Should a consignee refuse acceptance of a consignment dispatched to him, the forwarder is entitled to reasonable remuneration for the return transport of such a consignment. Should the forwarder incur expenses due to delayed acceptance of delivery, such expenses will be borne by the principal.

### **Section 23**

The commission will also be collected if a C.O.D. or other collection order has been withdrawn retroactively, or if payment for an order has not been received.

### **Section 24**

If the forwarder has arranged for the shipment of goods to a foreign country up to the recipient's door at a fixed percentage of the invoice value (including customs charges), the principal is obliged to declare the total invoice value irrespective of any cash discounts granted (including customs, freight and packing charges).

### **Section 25**

The instruction for shipment to a destination in another country includes instructions for customs clearance, if this is necessary for arranging the transport to the place of destination.

- a. The forwarder is entitled to an extra fee for customs clearance, over and above the actual costs incurred.
- b. The instruction to forward bonded goods or to deliver them free house, authorizes the forwarder at the same time to effect customs clearance at his own discretion (Section 13) and to advance the applicable customs and excise duties and fees.
- c. Should the principal give the forwarder instructions concerning the handling of customs formalities, these must be strictly complied with. Should the handling of customs formalities according to the principal's instructions not be possible, the forwarder must inform him accordingly without delay.

### **Section 26**

The order to receive incoming goods authorizes (but does not oblige) the forwarder to pre-pay all charges imposed on the goods concerning freight, collection fees, customs duties and expenses incurred.

### **Section 27**

The forwarder is entitled at his own discretion to demand payment from foreign consignees and principals either in the currency of their country or that of Austria, under observance of existing foreign currency regulations.

### **Section 28**

If the forwarder owes foreign currency amounts, or if he advances sums in foreign currencies, he can demand (unless stipulated otherwise by provisions under public law) at his discretion either payment in foreign or Austrian currency. If he demands payment in Austrian currency, the current exchange applicable on the day the order was commissioned will be used, unless he can prove to have paid a higher rate of exchange rate.

### **Section 29**

All the forwarder's invoices must be paid promptly. Payments will be deemed in arrears by no later than a period of five days following their due date, with no reminders or other requirements (unless delay in payment according to law has already occurred at an earlier date). In case of default the forwarder is be entitled to charge local interest and expenses. Any further claims under law remain unaffected.

### **Section 30**

- a. At the request of the forwarder, the principal will immediately indemnify him against any claims concerning freight, contributions and settlements of average, customs duties, taxes and other levies made against the forwarder, especially in his capacity of authorized agent or owner of third-party goods. Otherwise the forwarder is entitled to take all measures he deems appropriate for his security or indemnification, even including (if justified by the facts and circumstances) the destruction of the goods themselves.

- b. The principal must inform the forwarder in an appropriate manner about all public law obligations arising from the possession of the goods. e.g. regarding customs regulations or trademark obligations.

### **Section 31**

Seizure of goods or any other legal action taken by public authorities does not affect the forwarder's rights concerning the principal. The principal remains the forwarder's contractual partner and is liable to the forwarder for any resulting consequences, even if he was not responsible for them. Any claims of the forwarder concerning the State or any other third party whatsoever remain unaffected.

### **Section 32**

Claims arising out of the forwarding contract and other related claims may only be set off against counter claims, if these are undisputed.

## **VIII. Delivery**

### **Section 33**

- a. Delivery of goods with discharging effect takes place when the goods are handed over to any adult person belonging to and present at the business or household premises of the recipient.
- b. In the absence of an agreement, the forwarder will place the goods in or on the conveyance (e.g. truck, loading ramp) in front of or, if possible, on the consignee's property for the latter's acceptance.
- c. The consignee may request that the goods are unloaded in a courtyard, onto ramps, into rooms, onto shelves and the like at his own risk and expense. This does not apply for goods weighing more than 50 kg apiece, or for goods which, due to their bulk, cannot be carried by one person alone.

### **Section 34**

- a. Upon acceptance of the goods, the consignee is obliged to immediately pay all costs concerning to the goods, including C.O.D. charges. Should payment not be effected, the driver and accompanying personnel are entitled to re-appropriate the goods.
- b. If payment of the costs upon delivery (including C.O.D. charges) is omitted inadvertently or not effected for any other reasons whatsoever, the consignee is obliged (should he fail to pay the required amount despite a reminder) to return the goods immediately and unconditionally to the forwarder, or if he is unable to do so, to pay damages to the forwarder. Assertion of counterclaims, rights of retention or disposition of the goods are not allowed.



## **IX. Insurance of Goods**

### **(Transportation, Fire Insurance, etc.)**

#### **Section 35**

- a. The forwarder is not obliged to insure the goods unless an express written order (including the value to be insured and risks to be covered) has been concluded. In case of not unclear or unfeasible insurance cover, the forwarder is entitled to determine the type and scope of such insurance at his own discretion. Insurance policies will not enter into force until the forwarder, in the ordinary course of business, has been able to take out such policies.
- b. The forwarder is not entitled to consider the mere statement of value as an order to take out an insurance policy.
- c. The acceptance of an insurance policy certificate by the forwarder does not mean that he assumes the obligations concerning the insured party. However, the forwarder must take all reasonable measures to ensure the maintenance and support of all insurance claims.

#### **Section 36**

In the absence of a written agreement to the contrary, the forwarder is only obliged to have insurance coverage in accordance with the usual terms and conditions relevant to his place of performance, but not including breakage risk. The forwarder will always be considered to have fulfilled his mandatory obligation to take out insurance, if coverage under an open-cargo policy has been provided.

#### **Section 37**

- a. Should coverage be provided under an insurance policy, the principal is only entitled to such compensation as the forwarder has received from the insurer subject to the terms and conditions of such a policy.
- b. The forwarder has fulfilled his obligations upon assigning his claims against the insurer to the principal at the latter's request. The forwarder is only obliged to pursue claims on the basis of special written agreements and at the principal's risk and expense.
- c. The forwarder is not liable for damages covered under an insurance policy concluded by him in the name of the principal.
- d. Should the principal take out the insurance himself, any claims against the forwarder for damages concerning the risks covered under such insurance will be excluded (i.e. they cannot be assigned to the insurer).

#### **Section 38**

The forwarder is entitled to special remuneration for obtaining insurance, collecting damages, compensation and other efforts involved in the handling of insurance cases and sea damage.

## **X. Forwarder's Risk and Cartage (Haulage) Insurance Policies**

### **Section 39**

- a. The forwarder will conclude, unless expressly forbidden by the principal in writing, a policy with the insurer of his choice and at the principal's expense, covering all damage, which could be caused by the principal in the course of the order's execution by the forwarder. Such an insurance policy must at least meet the requirements of the Forwarder's Risk and Cartage Insurance Policy ("Speditions- und Rollfuhrversicherungsschein", "SVS/RVS"), particularly concerning the scope of the policy's coverage. The forwarder will make a record of premiums paid for each individual transport agreement under every order, and remit them in full to the insurer concerned in the form of expenditures incurred by the principal exclusively for payment of the forwarding insurance. The forwarder undertakes to report to the principal, at the latter's request, the name of the company from whom he has taken out the forwarding insurance.
- b. To the extent provided for in the Forwarder's Risk Insurance Policy ("Speditionsversicherungsschein", "SVS"), all damage, which could be caused by those persons entitled to claim coverage at the time when the event causing the damage occurred, will also be insured.
- c. It is most strongly emphasized that, according to Section 5 Para. 1 of the Forwarder's Risk Insurance Policy, all damage covered by transport or warehousing insurance, or otherwise usually covered under such insurance, is excluded from the scope of the forwarder's insurance. On the other hand, the principal will be insured against so-called cartage damage in accordance with the Cartage Insurance Policy unless he has explicitly refused such additional insurance in writing.
- d. If the principal provides forwarding insurance himself, any claims for damages against the forwarder concerning risks covered by such an insurance policy will be excluded and may not be transferred to the forwarder's insurer.

### **Section 40**

The principal, as well as all those persons in whose interest or for whose account he acts, will be subject to all terms and conditions of the Forwarder's Risk and Cartage Insurance Policies. In particular, the principal must ensure that all damage is reported promptly (Section 10 of the Forwarder's Risk Policy).

### **Section 41**

- a. If the forwarder has provided coverage under the Forwarder's Risk Policy in compliance with an explicit or assumed order (Section 39), he will be released from liability for any damage covered under such a policy. This also applies in

particular if the insured sum falls short of the actual value or damage claim due to lacking or insufficient statement of value by the principal.

- b. In case of dispute, the competent court will exclusively resolve the issue of whether damage is covered by the Forwarder's Risk Policy.
- c. Should the forwarder not have concluded a Forwarder's Risk Policy in accordance with Section 39, he may not invoke the General Austrian Forwarders' Terms and Conditions concerning the principal.
- d. Paras. (a) through (c) apply analogously to the insurance covered under the Cartage Risk Policy.

## **Section 42**

The second and third sentences of Section 35 Para. (a), apply analogously to the Forwarder's Risk and Cartage Insurance Policies.

## **XI. Warehousing**

### **Section 43**

- a. Warehousing will be carried out at the warehouse keeper's discretion, either in his own warehouse or that of a third party (private or public). Should the warehouse keeper store goods in a third party's warehouse, he has to inform the depositor in writing of the location of the warehouse and the name of its keeper or, in case of a warehouse warrant, to mark these on the warrant. This provision does not apply in cases of warehousing abroad or warehousing connected with the transportation of the goods.
- b. If the warehouse keeper has stored the goods in a third party's warehouse, the relationship between the principal and himself according to Section 2 Para. (c) will be subject to the same terms and conditions, which apply to the relationship between the warehouse keeper and the third party concerned. If requested to do so, the warehouse keeper must supply the principal with details of such terms and conditions. However, the terms and conditions of the third-party warehouse keeper will not apply to the relationship between the principal and the warehouse keeper, to the extent that they include a right of lien exceeding the scope of the lien set out in Section 50 of these terms and conditions.
- c. The warehouse keeper is only liable for the security and surveillance of the warehouse to the extent that he himself is the proprietor and the security and surveillance of the warehouse is deemed reasonable and usual under consideration of all circumstances concerning the warehouse location. The warehouse keeper is deemed to have fulfilled his surveillance duty, provided that he has applied due and proper diligence upon recruiting and hiring security personnel.
- d. The depositor is entitled to inspect the warehouse or have it inspected. Objections or complaints about the storage of the goods or the choice of warehouse must be made without delay. If he does not exercise the right of inspection, he waves all rights to objections against the storage and warehousing, as long as the choice and type of storage complies with the due and proper diligence of a prudent warehouse keeper.

### **Section 44**

- a. The depositor can only access the warehouse if accompanied by the warehouse keeper or an employee duly authorized by him.
- b. Access to the warehouse may only be granted during the warehouse keeper's normal business hours, and only if the work can be conducted during daylight.

#### **Section 45**

- a. Should the depositor handle the goods in any way whatsoever (e.g. taking samples), he will return them to the warehouse keeper in a manner appropriate under the circumstances and complying with customary business practice, and, if necessary, inspect and record the quantity, weight and state of the goods together with the warehouse keeper. Otherwise, the warehouse keeper is released from any liability for damages, which are subsequently discovered.
- b. The warehouse keeper reserves the right of handling the stored goods by his own employees in the manner requested by the depositor.

#### **Section 46**

- a. The depositor is liable for all damage to the warehouse keeper, other depositors or the property owner, caused by his employees or agents upon entering or driving into the warehouse or warehouse property, unless he, his employees or agents are not responsible for the damage. Agents of the depositor include also third parties visiting the warehouse or the warehouse property on the depositor's authority.
- b. The warehouse keeper may not assign the rights to third parties, which he is entitled according to Para. (a), provided that such rights exceed the scope stipulated by law.

#### **Section 47**

- a. Unless otherwise agreed in writing, the warehouse keeper is entitled to terminate the warehouse contract by giving one month's advance notice by means of registered letter to the address last known to him.
- b. Termination without advance notice is allowed in particular if the goods concerned constitute a hazard to other goods stored.
- c. If the warehouse keeper has reasonable doubt that the security of his claim is covered by the value of the goods, he is entitled to set a reasonable time limit for the depositor to either secure the claims of the warehouse keeper or to make alternative provisions for the storage of the goods. If the depositor does not comply with this, the warehouse keeper is entitled to terminate the contract without further notice.

#### **Section 48**

- a. As soon as the goods have been duly and properly stored, either a warehouse warrant or a warehouse warrant made out to a named person is to be issued upon request. In case of doubt, the certificate issued by the warehouse keeper will be considered to be merely a warehouse warrant.

- b. The warehouse warrant constitutes merely a certificate of goods received by the warehouse keeper, who is not obliged to release the goods to any party presenting the warrant.
- c. The warehouse keeper is entitled, but not obliged, to check the identity of the party presenting the warrant. Accordingly, the warehouse keeper may release the goods immediately to any party presenting him with the receipt.
- d. Any assignment or pledging of the depositor's rights arising from the warehouse contract is not binding on the warehouse keeper until the depositor has informed him about it in writing. In such a case only the person who has been assigned or pledged the depositor's rights concerning the warehouse keeper, is entitled to deal with the stored goods.
- e. If a warehouse warrant to a named person has been issued, the warehouse keeper is only authorized to release the goods against presentation of the warrant, and not against a delivery note, delivery order or the like. In case of assignment, the goods may only be released to the holder of a warehousing warrant whose authority can be traced back on the basis of the assignments listed in uninterrupted sequence on such a receipt.
- f. The warehouse keeper is not obliged to verify
  - 1. the authenticity of the signatures appearing on the declarations of assignment;
  - 2. the authenticity of the signatures appearing on the delivery order or the like;
  - 3. the authority of the signatories under Clauses (1) and (2) above, unless otherwise agreed with the principal, or if a lack of authenticity or authority is obvious.
- a. Any assignment or pledging of the depositor's rights arising from the warehousing contract will not be binding on the warehouse keeper, unless confirmed on the warehouse receipt in writing and, in the case of a pledging, also reported to the warehouse keeper.
- b. In accordance with the terms and conditions set out above, the warehouse keeper may only dispute the depositor's authorized legal successor on the basis of the validity of the issuance of the warehousing warrant, or objections concerning the warrant itself, or with other objections to which the warehouse keeper is directly entitled concerning the legal successor concerned. The warehouse keeper's right of lien or retention as stipulated by law remains unaffected.

### **Section 49**

The provisions of this section also apply to temporary storage of goods, e.g. for purposes of shipment (unless stipulated otherwise in Section 43).

## **XII. Right of Lien**

### **Section 50**

- a. The forwarder has a right of lien and retention on all goods or other valuables in his possession to cover any accounts receivable, whether due or not due, to which he is entitled concerning the principal on the basis of his activities as set out in Section 2 Para. (a). To the extent that such right of lien or retention, in the sense of the preceding sentence, is used to secure accounts receivable

- not secured under legally stipulated rights of lien or retention, only those goods and valuables belonging to the principal will be covered.
- b. To the extent that the right of lien or retention as set out in Para. (a) above should exceed the legally stipulated rights of lien or retention, it covers, in the case of orders placed by one forwarder with another, only those goods and other valuables, which belong to the principal forwarder or which the commissioned forwarder possesses or is entitled to possess in the name of the principal forwarder (e.g. removal van, blankets).
  - c. The forwarder may exercise his lien for claims arising out of other contracts with the principal only if they are undisputed or if the financial situation of the debtor puts the claims of the forwarder at risk.
  - d. In connection with an order, the forwarder is not entitled to keep the goods at a third party's disposal or to release them to a third party, or to exercise his right of lien or retention with respect to accounts receivable from a third party, which are not connected with the goods concerned, to the extent that and as long as the exercise of such right could be in contradiction to the instructions and the legitimate interests of the original principal.
  - e. The provisions set out above do not affect any of the forwarder's further legal rights of lien or retention.
  - f. If a threat of forced sale arises, the debtor will be granted a period of one week to settle the matter. The debtor must be notified of any sale of the goods.
  - g. For sales under lien or upon resale of goods without recourse to legal process, the forwarder may charge in any case a sales commission on the gross proceeds in an amount conforming to local rates.

### **XIII. Forwarder's Liability**

#### **Section 51**

- a. As a rule, the forwarder is only liable for all his activities (Section 2 Para. [a]) to the extent that he is at fault. The forwarder carries the burden of proof. However, if no damage to the goods was externally recognizable, or if it cannot be reasonably expected of the forwarder under the circumstances to have clarified the cause of such damage, the principal must prove that the forwarder was responsible for the damage.
- b. Furthermore, the forwarder's liability is limited or not applicable, subject to the provisions set out above and below, except in the case of intent or gross negligence.
- c. The principal is free to arrange for liability coverage with the forwarder beyond the scope of these terms and conditions against special compensation, apart from the insurance mentioned above (Sections 35 and Section 39). Such an agreement must be in writing.

#### **Section 52**

- a. Should damage have been caused to a third party, i.e. a freight carrier, warehouse keeper, shipping company, interim or sub-forwarder, insurer, a railway or freight collection point, banks or other enterprises involved in the execution of the order, the forwarder will assign any of his claims concerning

the third party to the principal at the latter's request, unless the forwarder, on the basis of a special agreement, pursues the claim on the account and risk of the principal. The third parties mentioned above will not be considered to be vicarious agents of the forwarder.

- b. Any further obligation or liability of the forwarder only exists if he is in culpable violation of his obligations as set out in Section 408 Para. 1 of the Austrian Commercial Code.
- c. The forwarder is also liable subject to these terms and conditions in cases concerning Sections 412 and 413 of the Austrian Commercial Code.

### **Section 53**

The forwarder's liability ends as soon as the goods have been made available for acceptance by the consignee (Section 33 Para. [b]) and have been accepted by him.

### **Section 54**

- a. To the extent that the forwarder is actually liable, his liability is limited to:
  1. Euro 7.267,28 for each damage claim resulting from misappropriation or embezzlement by the forwarder's employees. This does not include legal agents, holder of a statutory authority, whose actions are not subject to limited liability. A case of damage in the sense of this provision is defined as any damage caused by an employee of the forwarder through misappropriation or embezzlement, irrespective of whether other employees of the forwarder are involved in the damage concerned, and whether the damage affects one sole principal or several independent principals of the forwarder. The forwarder is obliged upon request to inform his principal whether he has covered this liability risk and, if so, with which insurance company.
  2. Euro 1,09 per kg of gross weight of each damaged or lost package, however not to exceed Euro 1.090,09 per damage claim.
  3. Euro 2.180,18 maximum liability per damage claim other than that set out in Clause 1.
- a. Should the stated value of the goods be lower than that set out in Para. (a) above, the stated value forms the basis for assessment.
- b. Should the relevant value in the sense of Para. (b) above be higher than the common market value or, in its absence, higher than that common value, which is applicable to goods of the same type and character at the time and place of their release to the forwarder, said common market value or other common value supersedes the stated value.
- c. In case of discrepant values, the lower value applies in each case.

### **Section 55**

In case of material damage to goods having an independent value (e.g. machine parts), or damage to any of several objects belonging together (e.g. household furniture), any eventual decrease in value of the rest of the object, or the remaining objects or parts, will not be taken into consideration.

### **Section 56**

- a. In the case of goods worth more than Euro 29,06 per kg of gross weight, and with respect to money, documents and official stamps and coupons, the forwarder is only liable for damage of whatever kind, if he has received a written statement of value from the principal in sufficient time for him to have been able to conclusively decide about the acceptance or rejection of the order, as well as precautionary measures to be taken with respect to the acceptance, custody and dispatch of the goods.
- b. A statement of value given to drivers and accompanying personnel has no legal effect unless it has been received by the forwarder or one of his commercial employees authorized to do so, or unless otherwise agreed.
- c. Para. (a) above is applicable if the principal can prove that damage has been caused by circumstances other than the omission of a statement of value, or that it would also have been incurred if a statement of value had in fact been made.
- d. The provisions of the other Sections remain unaffected, in so far as they limit liability or render it inapplicable beyond the scope of the provisions of this Section.

### **Section 57**

The forwarder will not be liable for:

- a. (1) damage (including in particular damage caused by theft) to unpacked or inadequately packed goods, unless a special written agreement concerning such liability has been concluded in advance;
  - b. (2) goods which are deemed to be unpacked or inadequately packed in accordance with applicable terms and conditions of conveyance; such goods will also be deemed unpacked or inadequately packed by the forwarder;
- (3) externally recognizable damage to packaging appearing at once or at a later time; the forwarder may remedy such damage at the principal's expense, but does not assume any liability extending beyond the liability set out in the preceding paragraphs.
- c. damage caused by outdoor storage, if such storage was agreed upon, or if another type of storage was inappropriate according to normal business operations or under the circumstances prevailing at the time;
  - d. damage caused by theft in the sense of Sections 127 of the Austrian Penal Code, or through blackmail or robbery in the sense of Sections 144 and 142 of the Austrian Penal Code;
  - e. the direct or indirect consequences of any other occurrence, which cannot be attributed to the forwarder (e.g. acts of God, weather conditions, defective equipment or cables, impact of other goods, damage caused by animals or natural change in the goods themselves);
  - f. damage and loss caused during inland waterway shipping (including pre-carriage and on-carriage transportation via land vehicles, as well as preliminary, interim and on-carrying storage) which is covered under transport or warehouse insurance, or which could have been covered by transport or warehouse insurance policies of the usual kind, or which can be covered applying the usual principles of diligent business practice above and beyond the scope of transport or warehouse policies of the usual sort, unless any duly



concluded insurance policy is rendered ineffective due to improper action on the part of the forwarder.

### **Section 58**

- a. If damage could have arisen as a result of one of the risks defined in Section 57, it will be assumed that it actually arose in this way. In such cases, the forwarder will only be liable to the extent that it can be proved that he caused the damage.
- b. The provisions of the other Sections remain unaffected, provided that they limit liability or render it inapplicable beyond the scope of the provisions of Sections 57 and 58 Para. (a).

### **Section 59**

The forwarder will be exempted from any liability if he is able to prove that he delivered the goods in the same external condition in which he had received them. The forwarder's obligations as set out in Section 388 of the Austrian Commercial Code remain unaffected.

### **Section 60**

- a. All damage, even if not externally recognizable, must be reported to the forwarder in writing without delay. If the goods have been delivered by a forwarding agent, the forwarder delivering the goods must be in possession of the damage report by no later than the sixth day following that of delivery.
- b. In cases of non-compliance with this provision, damage will be deemed to have occurred subsequent to their delivery.
- c. Should the forwarder receive a damage report at a time when it is no longer possible for him to safeguard rights against third parties, the forwarder will not be responsible for the consequences.

### **Section 61**

In all cases, in which the damage amount to be paid or voluntarily offered by the forwarder covers the full value of the goods, he will only be obliged to effect payment subject to back-to-back transfer of the goods, and against assignment of all claims to which the principal or payee is entitled concerning third parties with respect to the goods.

### **Section 62**

Unless limited in its meaning by preceding clauses, damage as used in these terms and conditions is to be understood in the broadest sense of the term (cf. Section 1295 of the Austrian Civil Code), thus including in particular total or partial loss, diminution, decrease in value, breakage, damage through theft as well as consequential damages.

### **Section 63**

- a. Should the forwarder claim one of the liability restrictions or exemptions set out in these terms and conditions, no objection may be raised asserting a case of unlawful action.
- b. Should a third party directly or indirectly interested in the subject or execution of the order placed with the forwarder assert claims against the forwarder for reasons of allegedly committed unlawful action which, according to Para. (a), may not be asserted against the forwarder, the principal will indemnify the forwarder against any such claims without delay.

## **XIV. Statute of Limitations**

### **Section 64**

All claims asserted against the forwarder, irrespective of their legal basis and the degree of fault, are subject to the Statute of Limitations following the expiration of a period of six months. The limitation period begins upon the beneficiary's awareness of his claim, however, no later than upon delivery of the goods.

## **XV. Place of Performance, Jurisdiction and Applicable Law**

### **Section 65**

- a. The place of performance is where the forwarder receiving the order has his commercial head office.
- b. The place of jurisdiction for all matters of legal dispute arising from the contractual relationship or in connection therewith will be the place of performance where the forwarder receiving the order has his commercial head office. This jurisdiction will have exclusive competence in all matters concerning claims against the forwarder.
- c. Austrian law applies to all legal relations between the forwarder and the principal, and the latter's legal successors.

## **Forwarder's Risk Insurance Certificate**

### **Section 1**

#### **Insured Party**

The insurance is concluded on account of a third party. The owner of the goods is insured as principal or the party, who has an insured interest at the time when the circumstances led to the damage.

### **Section 2**

#### **General Third Party Liability Issues**

1. The insurers are liable for all damages suffered by the insured party under a transportation contract, for which the forwarder can be legally held responsible.
2. A transportation contract under this Forwarder's Risk Insurance Certificate is to be understood as:

Any forwarding, freight or warehouse contract within Austria, including any subsidiary contracts, even if these are independent contracts, such as collections, weighing, other quantity determination, packing, sampling, loading, unloading, customs, mediation of transport, fire and housebreaking insurance, but excluding any other insurance proposal of any kind (cf. Section 9).

### **Section 3**

#### **General Insurance Coverage**

1. The insurers will compensate any mandatory damage concerning the liability of the insured party under a transportation contract. They waive any objections that the forwarder could claim under the General Austrian Forwarders' Terms and Conditions or any other agreement, trade or transportation practice regulations concerning exclusion or limitation of mandatory liability.
2. The insurance also covers claims of the insured party not based on the transportation contracts, but on property, illegal behaviour or unjustified enrichment, as long as these claims are connected to a transportation contract concluded with the forwarder.
3. The insurance also covers claims resulting from failure to seek recourse, if it can be established that the insured party suffered damage.
4. Intentional damage caused by the forwarder, his legal agents, employees or vicarious agents, is also covered.
5. The insurer covers damage to goods and property damage (loss of earnings) as long as these claims are directly connected to a transportation contract concluded with the forwarder.

## **Section 4**

### **Particular Provisions**

The insurance also covers the following claims of the insured party against the forwarder:

1. Claims concerning the negligent choice of intermediate forwarder or warehouse keeper.
2. Claims concerning damage, including wilful damage (cf. Section 5 Para. 6), for which an intermediate forwarder, whether from Austria from Europe (including Turkey), can be legally held responsible; the insurer has to approve in advance any extension of the intermediate forwarder's liability outside of Europe.

## **Section 5**

### **Limitation of Liability**

The following claims are not covered by the insurance policy:

1. All damages covered by another insurance policy, in particular transportation, warehouse keeping (e.g. housebreaking, water and storm) or the Forwarder's Risk Insurance Certificate, unless such a properly concluded insurance policy is invalidated by default of the forwarder;
2. Damage to goods caused abroad by foreign intermediate forwarders or other companies in the execution of a transportation contract;
3. Damage to goods forwarded by sea or inland waterway;
4. All damages that basically fall within the responsibility of a long-distance traffic forwarder;
5. Claims between the insured party and the forwarder that are not common to the forwarding industry trade (e.g. penalties, guaranteed delivery deadlines), and all other claims based on agreements between the forwarder and the insured party, which are not based on activities covered by Section 2 Para. 2, or that exceed the mandatory third party liability of the forwarder;
6. All damages resulting from embezzlement or speculation;
7. Damage to goods during storage, if these damages resulted after being stored for 15 days (Sundays and holidays not included) under a warehousing contract;
8. Personal injury;
9. Damages caused by seizure;
10. Damages directly or indirectly caused by war, public disorder, looting, strikes or civil unrest;
11. Damages caused by nuclear energy and radioactivity.

## Section 6

### Insurance Proposal, Sum, Value and Notification

- a. Every transportation contract including warehousing covered by these provisions is insured.
- b. The following applies in general to transportation contracts:
  1. The principal is entitled to refuse insurance coverage. The refusal has to be communicated in writing to the authorized broker by the forwarder or the principal of the insured party. It can only be withdrawn by written notice, and, if need be, sent immediately to the authorized broker.
  2. Insurance value and sum
    - a. The insurance value is the selling price, or lacking that the common market value or market value that the goods have upon issuance of the transportation contract at the place of taking over the goods, including transportation and forwarding costs as well as customs fees and duties. If the principal or other insured party under Section 1 want to insure the transportation contract for more than Euro 1.453,46, then they have to advise the forwarder in writing immediately upon notification, but latest before completion of the contract.
    - b. The forwarder is entitled to estimate the value, even if he has not been asked to do so. In this case he should do it upon acceptance of the contract, but latest before completion, based on proper documentation.
    - c. If the forwarder has been given no instructions under Clause (a), or not asked to estimate under Clause (b) above, then every transport contract under Section 2 for the insured party under Section 1, is to be insured up to a maximum of Euro 1.453,46 (cf. Section 8 Para. 3).
    - d. If the forwarder mistakenly fails to notify the insurance contract, an insurance value exceeding Euro 1.453,46 under Para. (a), pay the premium or completely omits to insure the goods, then this should not be to the detriment of the insured party. In the case of failure to notify a value above Euro 1.453,46, then this is only valid if the principal or any other insured party under Section 1 has fulfilled Para. (a).
  3. The maximum insurance coverage for a single transportation contract is Euro 1.090.092,51. The insured party can not claim underinsurance for a contract exceeding this value, which has been valued at this sum.
  4. The forwarder is obliged to notify the insurers' authorized broker about all transportation contracts and pay the premiums at the end of every calendar month, but latest on the 10<sup>th</sup> day of the following month. The forwarder is obliged to notify the insurers' authorized broker about transportation contracts with a value above Euro 1.453,46 at the end of every calendar month, but latest on the 10<sup>th</sup> day of the following month, stating the insurance value, marking, contents and number of packages, on the corresponding specifications form.

## **Section 7**

### **Insurers' Right of Inspection**

The insurers are entitled to check the notification of the forwarders by examining the company books and other documents, insofar as they concern the insurance. The insured parties have the same right.

## **Section 8**

### **Compensation for Damages**

1. If the insured party has sold the goods at the time of notification, then he receives at most the selling price, taking into account any resulting costs or savings (freight, customs, etc.).
2. Otherwise the insured party receives at most the common market value or market value of the goods at the place of delivery, upon issuance of the transportation contract, taking in to account any expenses or savings.
3. Under any circumstances the sum detailed in Section 6 Para. (b) Clause 2 Subclause (a) represents the maximum liability for damages. If property damage is involved, the maximum insurance coverage is increased by 50%.
4. The insurers are also liable to the insured parties for circumstances covered by Section 12 Para. 2, Section 15 and 16, in particular about termination of the insurance policy without notice for any transportation contracts up to the effectiveness of the termination.

## **Section 9**

### **Maximum Liability**

1. The insurers are liable to the extent of their participation (Section 19) for all damages arising and claimed under this contract up to a sum of Euro 1.090.092,51, even if a number of insured parties of the same forwarder have been affected by the damage concerned.
2. In the case of storage under a transportation contract, whether prior to, intermediate or afterwards, the maximum liability for fire damage caused by the forwarder is Euro 1.090.092,51.
3. The forwarder's liability for damages due to faulty mediation or complete omission to notify a transport, fire and housebreaking insurance is Euro 181.682,08 per damage claim.

## **Section 10**

### **Damage Claims, Obligations of the Insured Parties and of the Forwarder, Time of Limitation**

The insured party has to report any damage immediately in writing, but latest within a month of knowing about it, to the insurers' authorized broker or via the forwarder. The grace period is maintained if the notification has been sent in time. If the forwarder is

negligent in reporting the damage within the grace period the insurers are released from their duty to provide insurance coverage.

The insured party is obliged to prevent or minimize any damage, taking into account any instructions of the insurers. He is also obliged to give the insurers any information or documents requested. He is effectively obliged to do everything to help clarify the damage that will be and can be justly requested by the insurers. If he breaches these obligations in a gross negligent or wilful manner, then the insurers are released from their duty to provide insurance coverage.

The forwarder is obliged in the same manner to prevent or minimize any damage, taking into account any instructions of the insurers. He is also obliged to give the insurers any information or documents requested. He is effectively obliged to do everything to help clarify the damage that will be and can be justly requested by the insurers. If the forwarder, his legal representative, proxy or an independent manager of a branch office, breaches these obligations in a gross negligent or wilful manner, then the forwarder is liable to the insurers for full reimbursement of the resulting damages.

Payment of the damage claim is made to the insured party or his delegate.

If the damage is caused by defective loading under a transportation contract or defective storage of insured goods, the insurers will compensate the forwarder for any supplementary costs, including any telegram, telephone and postal fees, which were incurred or had to be incurred to avoid any further damage, if a mandatory claim could be made against him by the principal or any other insured party under Section 1 (see however Section 14). The forwarder is obliged to report the defective loading immediately to the authorized broker after he has known it, and to give all relevant information. If the case of gross negligent or intentional breach of these responsibilities, the insurers are released from their duty towards the forwarder. The claims of the principal remain unaffected.

## **Section 11**

### **Assignment and Devolution of Rights**

1. Once a damage claim has been made the insured party's rights under this contract cannot be assigned against the insurers to someone other than the forwarder.
2. Claims by other insured parties in the case of a mandatory devolution are excluded from this insurance contract.
3. The forwarder's rights can not be assigned to other persons than the insurers.

## **Section 12**

### **Right of Recourse of the Insurers**

1. The insurers waive their right of recourse against the forwarder, his employees or any intermediate forwarders, who have signed the Forwarder's Risk Insurance Policy.

2. However the insurer has the right of full recourse against anybody who caused a damage intentionally.

## **Section 13**

### **Premiums**

1. Premiums have to be paid for every transportation contract with any principal. If the transportation contract includes dispositions to a number of recipients, then each disposition is a contract subject to a premium, unless it concerns collection by the customer. In this case there is an insured transportation contract not subject to a premium.
2. The premium rates for each transportation contract (including insurance premium tax) are detailed in the premium schedule.
3. The respective premium will be charged for any temporary warehousing up to a period of 15 days (Sunday and holiday not included) directly connected to a forwarding and freight contract. In the case of any temporary warehousing made in connection with a warehousing contract for the same period, the premium will be charged from the beginning of the storage. The premium for warehousing contracts will be charged from the beginning of each month. If the warehousing contract includes further services, such as commissioning, packing, pricing or the like, then the premium is doubled from the beginning of storage.

## **Section 14**

### **Damage Contribution by the Forwarder**

1. The forwarder has to immediately reimburse the insurers' authorized broker 10% of any sum per damage claim paid by the insurers, but at least Euro 10,90, up to a maximum of Euro 181,68. The first forwarder is entitled to claim his risk contribution from the party who caused damage resulting in a claim satisfied by the insurers.
2. The contribution of the forwarder towards the damage increases from 10% to 20% if a legal representative, proxy or independent manager of a branch office has caused the damage intentionally or criminally, and if the forwarder has breached the supervision obligation of a prudent businessman. The maximum contribution in such a case is Euro 726,73. Section 12 Para. 2 remains unaffected.

## **Section 15**

### **Compensation of the Forwarder**

The forwarder is liable for full compensation towards the insurers in the following cases (with the exception of those covered by Section 10 Para. 3 and Section 12 Para. 2):

1. If he intentionally breached his notification responsibility under Section 6 Para. 2 Clause (b) (the burden of proof is on the insurers).



2. If he is delayed by more than 2 weeks after receiving a reminder concerning an overdue premium. The reminder must be sent by registered letter.
3. If the forwarder does not or refuses to remedy a defect causing damages due to substantial defects in his operation, which the insurers justly requested him to do on the basis of a previous damage occurrence, and if they had given him a grace period to remedy the defect, stating the legal consequences resulting from expiry of the grace period.

## **Section 16**

### **Termination**

The insurers have the right to terminate the Forwarder's Risk Insurance Certificate after approval of the Trade Association of Forwarders. This approval is deemed effective if it is not refused in writing within 4 weeks after receipt of the written notification of the insurers.

#### 1. Termination without notice

The insurers can terminate a contract without notice under the following circumstances:

- a. In cases under Section 12 Para. 2 and Section 15;
- b. If the forwarder has delayed payment of a sum due after receiving a reminder for any sum due under Section 14, or sum specifically known to him, or any sum under final judgement of an ordinary court. The reminder must be sent by registered letter, stating the legal consequences resulting from expiry of the grace period;
- c. Under any other mandatory requirements, in particular concerning a material matter. Insofar as a right to termination is covered by these provisions, the contractual provision takes precedence over the law;
- d. The effectiveness of the termination without notice begins at the end of 5th day after the day, when the termination notice was handed over to the postal authorities.

#### 1. Particular right of termination

If the services of the insurer over a calendar year exceed the gross payments (minus insurance premium tax) made by the forwarder in the same period, the insurers are entitled to insist on specific reorganization measures by the forwarder during the following year. If no agreement is reached within a reasonable grace period, then the insurers are entitled to terminate the contract with a month's notice.

If the Trade Association of Forwarders and the insurers can not reach agreement, then an arbitration court will make the decision. Each party elects one arbitrator, who then elect the chairman. If the arbitrators can not agree on the chairman within 2 weeks, then he will be appointed on the suggestion of one of both parties by the President of the Federal Chamber of Trade and Industry, or if he is not available, by his deputy.

The termination has to be sent by registered mail to the forwarder and the Trade Association of Forwarders.

## **Section 17**

### **Terms of Insurance**

1. This contract is valid from 1 January 1989 to 31 December 1989. It is extended annually, unless terminated with 3 month's notice prior to the end of the calendar year. The termination has to be sent to the insurers' authorized broker.
2. If any amendments to this contract are made between the insurance companies participating in this insurance policy and the Trade Association of Forwarders, then these amendments take precedence over previous terms.

## **Section 18**

### **Jurisdiction**

1. The place of jurisdiction is Vienna for claims by the insurers against the forwarders concerning the payment of premiums or contributory damages under Section 14.
2. The leading insurer is authorized by the participating insurers to deal with all legal disputes, including their participation quotas as plaintiff or correspondent. The other insurers will recognize any court decision against the leading insurer as binding.

The authorized broker is entitled to assert the rights of the insurers under this contract in his own name.

## **Section 19**

### **Leadership Clause and Shareholder List**

All the following insurance companies participate with their respective quotas in the Forwarder's Risk Insurance Certificate, and to the exclusion of joint liability. The Wiener Allianz Versicherungs AG is responsible for management of the Forwarder's Risk Insurance Certificate.

### **Participation List**

Wiener Allianz Versicherungs AG (Leader) 14%

Anglo Elementar Versicherungs AG 11.6%

Erste Allgemeine Unfall- und Schadensversicherung Ges. 11.6%

Donau Allgemeine Versicherungs AG 9.3%

RAS-Österreich Adriatische Versicherungs AG 9.3%

Versicherungs Anstalt der österreichischen Bundesländer 9.3%

Winthethur Versicherungs AG 8.8%

Wiener Städtische Wechselseitige Versicherung 7%

Basler Versicherungs Gesellschaft 3.7%

Helvetia Schweizerische Feuerversicherung Ges. 3.7%

Nordstern Allegemeine Versicherungs AG 2.9%

Mannheimer Versicherungs Ges. 2%

Internationale Unfall- und Schadensversicherung AG 1.8%

Colonia Versicherungs AG 1%

Grazer Wechselseitige Versicherung 1%

100%

Substitute participant: Hannover International AG 1%

Annex 2 to Sections 39 to 42 of the General Austrian Forwarders' Terms  
and Conditions

## **Cartage Risk Certificate**

### **Concerning Damage to Goods from Cartage Agreements in Local and Short-Distance Traffic**

#### **Section 1**

##### **Scope of the Insurance and Instance Proposal**

1. On the basis of the following provisions the participating insurance companies named in the Forwarder's Risk Insurance Certificate are liable for damages caused to goods during local or short-distance traffic haulage within Austria, if the forwarder or his agent are held responsible, and a legal claim can be made against them. Damages to goods stored up to 15 days (Sundays and holidays not included) directly connected to a haulage contract, are also covered.
2. Every haulage contract is covered, unless the principal has specifically excluded insurance in writing.

The haulage contract covers incoming and outgoing traffic, goods being taken to a warehouse and the transshipment involved. Any haulage contract directly connected to a transportation contract is also insured.

#### **Section 2**

## **Limitation of Third Party Liability**

The following is not covered by the insurance:

3. All damages covered by transportation or warehousing contracts, unless a properly concluded insurance is invalidated by default of the forwarder;
4. Cases covered under Section 5 Para. 1 Clauses 5, 8, 9, 10 and 11 of the Forwarder's Risk Insurance Certificate under;

All other insurance cases covered by the Forwarder's Risk Insurance Certificate.

## **Section 3**

### **Insurance coverage and Notification**

5. Every Haulage contract under Section 1 is covered to the insured value. The provisions of Section 8 of the Cartage Risk Certificate apply analogously.

The forwarder is obliged to notify the insurers' authorized broker of all insurance cases concerning this insurance certificate at the end of every calendar month, but latest on the 10<sup>th</sup> day of the following month, on the corresponding form.

## **Section 4**

### **Premium**

The premium rates for each transportation contract (including insurance premium tax) are detailed in the premium schedule.

## **Section 5**

### **Reference to the Forwarder's Risk Insurance policy**

Unless otherwise stated, the provisions of the Forwarder's Risk Insurance Certificate apply.