

§ 1. Preface, Scope

The following terms and conditions apply to all offers, deliveries and services arising from a purchase contract, contract for work or service and other contractual agreements including such based on future business transactions and continuing obligations. The effectiveness of any general terms and conditions of the customer is expressly excluded.

§ 2. Offers, Order confirmation

(1) Unless otherwise expressly agreed, offers are to be considered as non-binding. The customer shall be bound by a placed order for three weeks. An order shall be considered as accepted if it is confirmed in writing by InfraStor GmbH or if we started the delivery within this period.

(2) The conclusion of contract is subject to a reservation of correct and punctual deliveries by our own suppliers. This regulation refers only to the case that InfraStor GmbH is not responsible for the non-delivery, especially in case of a conclusion of a congruent hedging transaction with our supplier. As a basic principle, we do not assume any procurement risk in case of a conclusion of a purchase contract with our supplier. InfraStor GmbH shall inform the customer immediately about the non-availability of the service. The consideration shall be refunded without delay.

(3) Provided that the goods or services of the contract do not undergo a modification which is unreasonable for the customer, models, designs or equipment shall remain subject to alterations and modifications. InfraStor GmbH will refrain from making modifications, but we cannot prevent the respective manufacturers from making such modifications.

(4) Any estimates of costs for maintenance and installation are without obligation. In the event that during the fulfilment of the order the estimated costs might increase by more than 15%, we will stop working or performing the service immediately and inform the customer of the respective increase. At the same time InfraStor GmbH will provide the customer with an estimation of the now expected necessary expenses. As a result, the customer is entitled to decide whether the fulfilment of the order is stopped or continued. If the fulfilment of the order is stopped, the customer shall pay all the services and deliveries performed by then and shall receive in return all contractual results completed by then.

§ 3. Prices

(1) The agreed prices pursuant to the time of the conclusion of the contract are effective. If there is no price agreement, the respective current price lists for the services of InfraStor GmbH are valid. We are bound to adhere to the agreed prices for a period of two months. In case the delivery shall take place later than two months after the contract conclusion, we are entitled to charge the prices valid at the time of delivery.

(2) All prices are without packaging from the sales office in Aschaffenburg. Delivery and transport costs will be charged separately.

(3) All indicated prices are plus the applicable value added tax (VAT).

(4) Debugging time shall be considered as working time and will be invoiced to the customer as such. In this context our respective list of current prices for services is valid.

§ 4. Delivery

(1) Delivery dates are only binding if expressly confirmed as binding by InfraStor GmbH in written form.

(2) Any binding delivery time agreed upon shall not begin before the day the order is confirmed, however, not before the provision of all the documents and information that are relevant for the fulfilment of the order by the customer. InfraStor GmbH meets the delivery deadline, if the goods have left our warehouse or if we have indicated the customer our commitment to perform the services before the expiration of the delivery time.

(3) In the event that we exceed a binding delivery deadline and a further delay is not reasonable for the customer, he is entitled to insist on his further rights after the beginning of the delay, a warning and a suitable extension of the deadline of a minimum period of three weeks. In this case a claim for damages on the part of the customer is excluded, unless the delay is based on intentional or grossly negligent behavior of InfraStor GmbH or one of our legal representatives or vicarious agents. This regulation also applies to the violation of obligations with regard to the contract negotiations.

(4) In case of force majeure, e.g. mobilization, war, riot, natural disaster, etc., we are entitled to delay delivery for the duration of the impediment plus a following reasonable start-up period or to withdraw from the contract, if the performance is or becomes actually or economically impossible. However, in

all these cases the customer is not entitled to withdraw from the contract if he is responsible for the impediments.

(5) In case the customer asks for another product version or performance before the delivery and we accept such alteration, the duration of the delivery time shall be interrupted and the delivery period shall restart.

(6) If the customer does not provide all the necessary documents and statements in due time or does not meet other obligations of his responsibility, our delivery period will be extended appropriately. This regulation shall apply correspondingly to a period of time for installation. However, such a period shall start at the earliest when the products of the customer which shall be provided or installed are free of defects or rather are duly installed and the customer has duly met other installation requirements which he is obliged to fulfil at own costs.

(7) In the event that the customer is in default of acceptance, we are entitled to refuse the fulfilment of the contractual agreements and to demand compensation after the expiry of an adequate additional time determined by InfraStor GmbH. Instead of that, we are also entitled to use the goods for a different purpose and to supply the customer within a newly determined and suitable period of time. The amount of the compensatory damages shall be at least 25% of the agreed license price (product price). In this context it shall be left to the customer to prove that any damage was either not caused or caused to a significantly smaller extent. InfraStor GmbH is reserved the right to furnish proof of higher damages.

§ 5. Payments

(1) Payments have to be made to InfraStor GmbH or to persons legally authorized in writing to represent InfraStor GmbH. Invoices are payable according to the indicated date or if the date is missing, the payment is due without deduction within 8 days of the invoice date free to our payments office. The payments shall be deemed effected at the place where the amount is at our disposal. Checks and bills of exchange shall only be accepted on account of performance and shall be deemed valid payment only after cashing. The customer is obliged to pay all discount charges and costs. Payments may only be made in the agreed currency.

(2) Spare parts and repairs will be delivered or carried out at cash payment or cash on delivery (COD) payment.

(3) Partial deliveries as well as additional components which are delivered retrospectively shall be invoiced separately. These general terms and conditions shall apply with regard to these transactions.

(4) In the event of arrears on part of the customer, we are entitled, notwithstanding any other legal rights, to charge interest for default in the respective legal amount, which is 8% p.a. above the respective base rate of the European Monetary Union, however, at least 10,5% plus the respective statutory VAT. The interest payments are due without delay.

§ 6. Reservation of title

(1) The property of all the goods delivered by InfraStor GmbH shall not pass to the customer until full payment of the purchase price was made and all claims arising out of or in connection with the business relationship have been met (extended retention of ownership). The customer shall be entitled to dispose of the goods which are subject to the retention of ownership, in whichever way, only in the ordinary course of business. Under no circumstances the goods may be transferred to third parties for security reasons within regular business transactions.

(2) In the case of a sale of the goods in the context of the ordinary course of business, the paid purchase price shall replace the good. The customer hereby assigns to InfraStor GmbH all claims resulting from any sale. The customer has the right to collect these claims provided that he fulfills his payment obligations towards InfraStor GmbH. In consideration of the extended retention of ownership (anticipatory assignment of the respective purchase price claim) the assignment to third parties, in particular to a bank, shall be deemed contrary to the contract and illegitimate. We are entitled to examine the sales documents of the customer at any time and to inform his purchaser about the respective assignment.

(3) If the outstanding payment of the customer is deposited in a current account, the customer hereby assigns his claim from the current account towards his purchaser to InfraStor GmbH. The assignment shall be made in the amount InfraStor GmbH had invoiced to the customer for the resold reserved goods.

(4) In the event that the goods are seized at the customer's place, InfraStor GmbH shall be notified immediately by sending a copy of the compulsory execution protocol and an affirmation in lieu of an oath, that the seized goods are the goods delivered by InfraStor GmbH and are subject to retention of ownership.

(5) Should the value of the securities, according to the above mentioned sections of this § 6, exceed the amount of our hereby secured outstanding claim after deduction of the hedging costs by more than 20% in a foreseeable time, the customer is entitled to demand the release of securities in the amount of the exceeding. The current net list price of InfraStor GmbH at the time when the release is demanded shall be binding for the assessment of the value of the securities of the reserved goods. With regard to assigned claims the net invoice amount minus a security margin of 30% shall be taken as a basis. In case of claims where the purchaser of the customer is already in delay of payment or facts became known which indicate a default in payment the security margin shall be 50%. With regard to securities based on co-ownership as a result of combination, mixing or processing the net list price of the goods delivered by InfraStor GmbH minus a security margin of 30% is relevant.

(6) Items delivered for test and presentation purposes shall remain in the ownership of InfraStor GmbH. The customer is not allowed to use these items for any other purpose than for test and presentation purposes, unless otherwise agreed with InfraStor GmbH.

§ 7. Delay, Impossibility, Rescission

(1) We will compensate the customer for all resulting damages in case of delay regarding the provision of an item and if in connection with this delay gross negligence or intent is attributable to InfraStor GmbH. In the event of simple negligence claims of the customer are excluded.

(2) Both parties have the right to withdraw from the contract in case of non-delivery on the part of the supplier.

(3) InfraStor GmbH is entitled to withdraw from the contract for the following reasons:

- If the fact arises, contrary to the existing assumption before the conclusion of the contract, that the customer is not creditworthy. It can be easily presumed that the customer is unworthy of credit in case of bill or check protest, stoppage of payments or a failed attempt of compulsory execution at the customer's place. It is not necessary that this refers to relationships between InfraStor GmbH and the customer.
- If it should turn out that the customer has submitted incorrect information concerning his creditworthiness and if such information is of great significance for the conclusion of the contract.
- If the goods that are subject to our retention of ownership are sold by means other than the ordinary course of business of the customer, in particular by means of security transferring or pledging. Exceptions to this regulation shall only be valid insofar as InfraStor GmbH has approved the sale in written form.
- Furthermore, InfraStor GmbH is entitled to withdraw from the contract, if after the contract conclusion circumstances which are essential for the performance of the contract developed without any possibility of interference on our part in a way which makes it impossible or unacceptable for us to perform the service (e.g. in case of non-delivery of our supplier outside of our control or if delivery can only take place under extremely difficult conditions).
- Finally, we are also entitled to cancel the contract, if the customer considerably offends against his contractual duties, especially if he is accused of the infringement of the duty to exercise due care with regard to the handling of the delivered goods which are subject to retention of ownership.
- Moreover, the right of withdrawal of InfraStor GmbH as well as the right of withdrawal of the customer shall be subject to the legal provisions.

§ 8. Specific provisions for contracts for work and services, maintenance and repairs

Maintenance work or repairs performed by InfraStor GmbH shall exclusively be subject to the provisions of these general terms and conditions:

(1) Should the type of order require an acceptance, the following applies: Unless otherwise agreed, the acceptance of the services listed in the order by the customer shall take place on our premises. We will inform the customer, at our option, by telephone, email or in writing that we have the ordered service ready for acceptance at our place. If the customer does not collect and accept the ordered object within one week after the receipt of our notification or rather of our invoice, he is in default of acceptance.

- Acceptance test: The customer will carry out the acceptance test and check the conformity with the technical specifications immediately upon receipt of our notification of readiness for acceptance.

Acceptance declaration: If our performed service corresponds to the technical specifications as well as to any requests for modification and additional services expressly agreed between the contracting partners, the customer shall declare the acceptance in writing without delay.

- Notional acceptance: In case the customer does not declare acceptance within six weeks after the completion of the installation on the part of InfraStor GmbH and apart from this did therefore not report any substantial defects in the meantime, the service shall be considered as accepted. Acceptance

shall also be deemed declared if the customer uses the goods or services without indicating that the use is considerably reduced.

- Remedy of defects: Any defects which should occur during the examination by the customer shall be noted down in the acceptance report. InfraStor GmbH ensures that these defects will be remedied in a suitable period of time and after that we will present the object again for acceptance. The further acceptance shall be subject to these general terms and conditions.

(2) Our maintenance work and repairs are services. Prices are based on the respective valid price list for services. Traveling expenses, material costs, etc. will be charged extra according to our respective price lists.

(3) Should the customer demand a cost estimate, we will check the object and present a cost estimate with regard to this examination. The customer has to bear the costs of this examination. If expressly agreed in advance, the examination costs will be charged on a time and material basis and only be offset in the context of a possible repair or maintenance order.

§ 9. Warranty

(1) InfraStor GmbH guarantees as follows:

12 months for newly manufactured goods. The warranty for used goods is excluded. The warranty period starts with the passing of risk to the customer. Entrepreneurs are obliged to check the delivered goods immediately for defects and to report obvious defects to us in writing within a period of two weeks as of receipt of the goods; the assertion of the warranty claim shall otherwise be excluded. The punctual dispatch of the notification of defects is sufficient for compliance with the time limit. The entrepreneur is solely responsible for providing evidence that his claim is justified, especially with respect to the defect itself, the specific time of the identification of the defect and the timeliness of the notice of defect. We only accept notices of defect if they are submitted in written form. Defect notices which are asserted towards sales representatives, carriers or other third parties shall not be deemed complaints in due form and time. In the event of a replacement delivery as a result of a justified notice of defect the provisions concerning the delivery time shall apply correspondingly. InfraStor GmbH will be granted a suitable time period of a minimum of three weeks for a remedy of defects by rectification. The existence of such an identified and duly notified defect shall justify the following rights on the part of the customer:

In case of deficiency the customer is initially entitled to demand subsequent performance. At our option, subsequent performance is carried out by remedy of defects or delivery of a new product. We decide at own discretion if the defects will be remedied or if a new product will be delivered.

(2) Furthermore, in case of a failed attempt of rectification, we are entitled to carry out a further rectification also within a reasonable time period. The customer may only withdraw from the contract or reduce the purchase price, if the second rectification measure also fails. In the case that we deliver software, we are entitled to carry out three attempts of rectification per defect.

(3) The customer may claim damages or compensation for futile expenses only if InfraStor GmbH grossly negligent or intentionally infringes its obligation to deliver goods free of defects. The customer is obliged to prove the existence and the extent of the damage incurred. The same shall apply to the futile expenses.

(4) The burden of proof concerning the defect lies with the customer.

(5) The warranty of defects does not apply to damages which after the passing of risk result from incorrect or careless handling, excessive use, inappropriate operating resources and chemical, electrochemical, electrical and atmospheric influences.

(6) Claims for damages on the part of the customer based on a defect shall become time-barred after one year from the delivery date of the goods. In case of gross negligence or intent on the part of InfraStor GmbH as well as if impairment of body, health or life of the customer is attributable to InfraStor GmbH, this rule does not apply.

(7) The warranty is not applicable concerning such defects which result from the installation of unauthorized attachments by the customer or the work of unauthorized persons or the modification or extension of the subject of the contract by the customer himself; unless he provides evidence that the defect is not caused by such alterations and extensions. If the defect reported by the customer cannot be identified after the examination, the customer shall bear the costs of examination, provided that he is a merchant.

(8) In the case that claims arising from the infringement of German property rights by delivered or licensed items according to these regulations are asserted, InfraStor GmbH will reimburse the customer all costs and damages imposed, provided that we are informed immediately and in writing about such claims, we receive all the required information of the customer, the customer fulfills his general obligations of cooperation as well as if we can decide definitely whether the claim is to be rejected or reconciled and if we are at fault with regard to the infringement of the property rights. If it

has been legally established that a further use of the contractual goods infringes German property rights of third parties or we see that there is a risk of an appeal to the court resulting from an infringement of property rights, we are entitled to, to the extent that the breach does not lapse, at own costs and choice either grant the customer the right to a further use of the contractual goods or to exchange them or to change them in the way that the infringement is excluded or to reimburse the customer the value of the good by taking it back and deducting of a compensation for loss of use up to this time. InfraStor GmbH is liable for damages arising from defective goods only if the defect is caused at least by a gross negligent infringement on the part of us, our legal representative or vicarious agent. The aforementioned restriction is expressly not valid, if due to a culpable infringement on the part of us, our legal representative or vicarious agent, a liability for damages resulting from the impairment of life, body or health can be substantiated. In the case that we gave a guarantee for a special characteristic of the goods for a fixed time, the aforementioned terms concerning the obligation of examination and notification of defects as well as the number of attempts of subsequent performance shall not apply.

§ 10 Third party warranties

Warranties are defined as performance commitments of the manufacturer directed to the customer. Therefore, they do not justify any kind of obligation on the part of InfraStor GmbH.

§ 11 Liability for damages caused by fault

- (1) The liability for compensation of InfraStor GmbH, regardless of legal grounds, in particular arising from impossibility, default, defective or incorrect deliveries, breach of contract, infringement of duties during contract negotiations and tort, insofar as it is at fault in all cases, shall be restricted in accordance with § 11.
- (2) In case of simple negligence on part of its corporate bodies, legal representatives, employees or other vicarious agents, InfraStor GmbH is not liable insofar as the obligation to deliver on time and to install the goods that are free of essential defects as well as obligations with regard to consultancy services, protection and care which ensure that the customer can use the goods pursuant to the contractual agreements or which serve to protect life and limb of the personnel of the customer or to protect his property from substantial damage, are concerned.
- (3) If InfraStor GmbH is liable for compensation in principle according to §11 section 2, this liability is limited to damages which, at the time of the conclusion of the contract, InfraStor GmbH anticipated as a possible consequence of a breach of contract or which InfraStor GmbH must have anticipated by applying due care. Furthermore, indirect and consequential damages resulting from defects of the delivered goods can only be compensated if such damages can be typically expected when using the goods in conformity with its intended purpose.
- (4) In the event of liability for simple negligence, the liability for material damages of InfraStor GmbH and further financial loss resulting from this shall be limited to the amount of € 1 million per claim, even if the damage is based on breach of essential contractual duties.
- (5) The aforementioned exclusions and limitations of liability shall apply to the same extent in favor of the corporate bodies, legal representatives, employees and vicarious agents of InfraStor GmbH.
- (6) If InfraStor GmbH provides technical information or consultancy services and if such information or service is not part of the owed scope of performance pursuant to the contractual agreements, this provision of information or service shall be deemed being free of charge and excluded from any liability.
- (7) The restrictions stated in § 11 shall not apply to the liability of InfraStor GmbH on account of deliberate actions, for guaranteed characteristics, on account of injury of life, body or health or according to the Product Liability Law.
- (8) Obligations of cooperation of the customer:
Contributory negligence shall be attributed to the customer, e.g. in the event of inadequate performance of cooperation (e.g. also in the case of insufficient notifications of defects, organizational errors or insufficient data backup). InfraStor GmbH is only liable for data recovery if the customer has taken the usual and appropriate data backup precautions, ensuring that the data and programs are available in a machine-readable format and can be recovered with minimum effort. The customer is particularly obliged to save data before performing the above-mentioned jobs (each service task or maintenance work) and to check and document the success of this data backup. If the customer has not performed these tasks, he must inform the employee of InfraStor GmbH before the beginning of the respective jobs. The customer bears the costs, if our employees shall perform the data backup and check the success. Costs are charged according to the respective valid price list of InfraStor GmbH.

§ 12. Subcontractors

We are entitled to bind also subcontractors for the performance of contractual services. In this case the warranty lies with us.

§ 13. Settlement / Retention

The customer may only offset claims which are undisputed or established as final and absolute. In case of a justified notice of defects, it is only permitted to exercise a right of retention in an appropriate and reasonable relation between defect and purchase price. Provided that the transaction is a commercial act among merchants, the customer can only retain payments if the notification of defects is accepted by InfraStor GmbH or the claim is established by law.

§ 14. Prohibition of assignment

The customer's rights arising out of the business transactions with InfraStor GmbH may not be transferred without the prior written consent of InfraStor GmbH.

§ 15. Data protection

Order processing is carried out by means of automated data processing. The customer hereby expressly consents to the processing of the data which becomes known to us in the context of contractual relations and which is required for the order processing. The data collected will only be saved to the extent necessary for the performance of the services according to the contract. Furthermore, the customer agrees to the use of the data received in connection with the mutual business relation for business purposes also within our corporate group in accordance with the Data Protection Act.

§ 16. Copyrights

If the subject of our service consists of the provision of software, the following regulations apply:

- (1) All rights to the agreed goods or services, whether copyrights, industrial property rights or similar rights, shall exclusively remain with us or our suppliers. If no other agreement has been made, only the simple, non-exclusive right of use shall be granted to the customer.
- (2) If third party software is the subject of provision, the rights of use determined by the manufacturer are valid. The customer is obliged to obtain information about and to comply with these rights.
- (3) The rights described above apply to own sketches, designs, originals, films, printing templates, presentation CDs, other data media, etc.
- (4) We will release the customer from all third party claims, which are asserted due to a possible infringement of property rights by delivered or licensed services, according to these regulations, and we will reimburse the customer all costs and damages imposed, provided that we are informed immediately and in writing about such claims, we receive all the required information of the customer, the customer fulfills his general obligations of cooperation as well as if we can decide definitely whether the claim is to be rejected or reconciled.
- (5) On all complete or partial copies of the contractual goods or services the customer shall affix or leave the copyright notice and all additional information on industrial property rights as determined in the original software version.

§ 17. Non-disclosure

- (1) The customer is obliged to treat all information with regard to the provided software and the corresponding documents as confidential and to ensure that the knowledge and use of such information by third parties is prevented. If employees of the customer work with the software and the corresponding documents, they are obliged to maintain confidentiality of such information, provided that this is not already prescribed by the regulations of their employment contract. The same shall apply with regard to suppliers of the customer. The customer undertakes not to use the disclosed information for own purposes, in particular not to submit applications for property rights with the aim to obtain industrial property rights.
- (2) The customer's obligation to maintain confidentiality and not to use the disclosed information is excluded, if such information is proven to have been known to the customer before being disclosed or has been known to the public before being disclosed or has been generally accessible or if such information becomes known or generally accessible after being disclosed without any contribution or

fault of the customer or if such information essentially corresponds to information which has been disclosed and made accessible to the customer at any time in a legally permitted manner by an authorized third party. Subject to the above described restrictions, this confidentiality obligation shall also remain indefinitely valid for the time after the termination of the contract.

(3) The contracting parties are obliged to destroy the documents they received of the other party immediately after the termination of the contract and to inform the other party without delay about this document destruction in writing, as these documents are still confidential at this time. In this context InfraStor GmbH is entitled to demand an affirmation in lieu of an oath of the customer.

§ 24. Miscellaneous

(1) If one or more of the previous provisions should be or should become invalid or should there be a loophole, the remaining provisions shall not be affected. In such a case, the contracting parties are obliged to replace invalid provisions by those valid provisions which achieve essentially the desired economic objectives of the invalid provisions. This also applies with regard to the filling of any contractual loopholes.

(2) Agreements or amendments that deviate from the previous provisions shall only be valid if an additional agreement to the concluded contract is made by both parties in writing with reference to the provisions amended. This mandatory written form also applies to the alteration of the mandatory written form.

(3) The exclusive place of jurisdiction for all disputes arising from this contractual relationship as well as regarding its effectiveness shall be, at our option, the head office of InfraStor GmbH or the head office of the customer, provided that the customer is a full merchant, a legal entity subject to public law or a special fund subject to public law or the customer is based abroad.

In addition, the following identical general terms and conditions apply to the IT logistics services of InfraStor GmbH:

German Freight Forwarders' Standard Terms and Conditions - ADSp -

(The following text is a translation of the German language original. In case of disputes the German language original of the ADSp is applicable.)

Preface

The terms and conditions are recommended for use, starting January 1st, 2003, by the Federal Association of German Industry, the Federal Association of German Wholesalers and Exporters, the Federal Association of German Freight Forwarders and Logistics Operators, the Association of German Chambers of Industry and Commerce, and the German Association of Retailers. This recommendation is not obligatory. Contract parties can formulate different agreements.

1. Interest of the principal and due care

The freight forwarder shall act in the interest of his principal and fulfil his duties with due care.

2. Area of application

2.1 The ADSp apply to all contracts for the transportation of goods, irrespective of whether they concern freight forwarding, carriage, warehousing or other services common to the forwarding trade; these also include logistical services commonly provided by freight forwarders in connection with the carriage or storage of goods.

2.2 In the case of forwarding services regulated by §§ 453 to 466 of the German Commercial Law (HGB), the freight forwarder is only responsible for arranging the necessary contracts required for the performance of these services, unless other legal provisions take precedence.

2.3 The ADSp are not applicable for contracts that deal exclusively with

- packaging,
- the carriage of removal goods or their storage,
- crane lifting, assembly jobs or heavy lift and high volume transports, except for normal trans-shipment services of the freight forwarder,
- the carriage and storage of goods to be towed or salvaged.

- 2.4 The ADSp are not applicable for transport contracts with consumers. Consumers are natural persons concluding the contract for reasons other than commercial or in pursuit of their professional activities.
- 2.5 If trade customs or legal provisions differ from the ADSp, the ADSp take precedence unless these legal provisions are mandatory. For contracts of carriage by air, sea, inland waterways or for multimodal transports different contractual arrangements may be made in accordance with the terms of carriage devised for these transports.
- 2.6 The freight forwarder is authorized to agree to normal standard terms and conditions of third parties.
- 2.7 In the relationship between a principal freight forwarder and an intermediate freight forwarder, the ADSp are deemed to be the general terms and conditions of the intermediate freight forwarder.

3. Instructions, transmission errors, contents, special type of goods

- 3.1 Forwarding instructions, other instructions, statements and communications are valid even if given informally. Subsequent modifications must be specifically identifiable as being amendments.

The burden of proof for the correct and complete transmission lies with the party referring to it.

- 3.2 If statements must be made in writing, they are deemed to having been made in writing when using electronic data communication or any other machine readable form provided that the originator of the message is identifiable.
- 3.3 The principal must inform the freight forwarder, at the time of giving the instructions, that the transport contract concerns:
- dangerous goods
 - live animals and plants
 - perishables
 - valuable goods and goods with an inherent risk of theft
- 3.4 The principal must specify in his instructions addresses, marks, numbers, quantity, nature and contents of the packages as well as the properties of the goods, as required by section 3.3, the goods value for insurance purposes and any other information relevant for the proper execution of the forwarding instructions.
- 3.5 In the case of dangerous goods, the principal must inform the freight forwarder in writing - at the time of giving the instructions - of the exact nature of the hazard and, if appropriate, about precautionary measures. In the case of dangerous goods subject to the law for the carriage of dangerous goods or other goods, the carriage of which is subject to specific regulations regarding dangerous goods, their handling or their disposal, the principal has to make all the necessary declarations required for the proper execution of the forwarding instruction, especially the classification in accordance with the regulations for dangerous goods.
- 3.6 The principal must inform the freight forwarder about particularly valuable goods or goods with an inherent risk of theft (e.g. cash, precious metals, jewelry, clocks and watches, precious stones, works of art, antiquities, bank or credit cards, valid telephone cards or other means of payment, bonds, shares and similar, foreign

currencies, documents, spirits, tobacco, entertainment electronics, telecommunications devices and accessories) and goods with an actual value of € 50 per kg or more well in advance to allow the freight forwarder to decide about acceptance of the goods and to take measures for a safe and secure execution of the forwarding job.

3.7 If a forwarding instruction does not comply with the terms stated in sections 3.3 to 3.6, the freight forwarder has the option to

- refuse acceptance of the goods,
- return goods already accepted or to make them available for collection,
- ship, transport or store them without the need to notify the principal and to charge an extra, appropriate fee, if the safe and secure execution of the instruction causes extra costs.

3.8 The freight forwarder is not obliged to check or supplement the statements made regarding sections 3.3 to 3.6.

3.9 The freight forwarder is not obliged to check the authenticity of signatures on any messages or documents relating to goods, nor to check the authority of the signatories, unless there exist reasonable doubts concerning the authenticity or authority.

4. Packaging, provision of loading and packaging aids, weighing and checking

4.1 Unless specifically stated, the forwarding instruction does not cover

4.1.1 the packaging of the goods,

4.1.2 the weighing, checking, measures to preserve or enhance the goods and its packaging, unless this is customary for this kind of transaction,

4.1.3 the provision or exchange of pallets or other loading or packaging aids. If they are not swapped one-for-one, they are only picked up as part of a new forwarding instruction. This does not apply if the exchange is intentionally not carried out by the freight forwarder.

4.2 The services mentioned in section 4.1 are charged separately.

5. Customs clearance

5.1 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.

5.2 The freight forwarder is entitled to charge an extra fee for the customs clearance above the actual costs incurred.

5.3 The instruction to forward bonded goods or to deliver them free house, authorizes the freight forwarder to effect the customs clearance and to advance customs and excise duties and fees.

6. Packaging and marking obligation of the principal

6.1 The packages have to be clearly and durably marked by the principal to facilitate their proper handling, e.g. addresses, marks, numbers, symbols for handling and properties; old marks must be removed or made illegible.

6.2 In addition, the principal is under obligation:

6.2.1 to mark all packages belonging to the same consignment in such a way that they are easily recognized as forming one consignment,

- 6.2.2 to prepare packages in such a way that they cannot be accessed without leaving visible trace (adhesive tape, bands, etc. are only permissible when they are individually designed or otherwise difficult to imitate; foil wrapping must be thermally sealed);
- 6.2.3 in case of a consignment being part of a forwarder's consolidation, to group the individual packages or units of this consignment into larger units if their strap length (largest circumference plus longest side) is less than 1 meter;
- 6.2.4 to combine a consignment of hanging garments consisting of several individual units into wrapped units for easier handling;
- 6.2.5 to mark packing units with a gross weight of at least 1,000 kilograms with the weight specification as prescribed for heavy loads to be transported by ship.
- 6.3 Packages are single packages or units of packages, formed by the principal for the purpose of being carried according to the forwarding instruction, e.g. boxes, wire boxes, pallets, handling units, enclosed loading units such as covered wagons, wagons with tarpaulin covers, semi-trailers, swap bodies, containers or igloos.
- 6.4 If the packages do not comply with the terms mentioned in 6.1 and 6.2, section 3.7 shall apply.

7. Supervisory duties of the freight forwarder

- 7.1. At specific interfaces the freight forwarder is under the obligation to
 - 7.1.1 check packages regarding their quantity, identity and apparent good order and whether seals and fastenings are intact;
 - 7.1.2 document irregularities (e.g. in the accompanying document or by special notification).
- 7.2 An interface is any point at which the responsibility for the packages is passed on to another operator/agent or the handing over point at the end of each stage of the transportation process.

8. Receipt

- 8.1 Upon request by the principal, the freight forwarder shall issue a certificate of receipt.

With this certificate the freight forwarder confirms the quantity and type of packages, but not their contents, value or weight. In the case of bulk goods, full loads and such like the certificate of receipt does not state the gross weight or any other description of the quantity of the goods.

- 8.2 As proof of delivery the freight forwarder requests from the consignee a receipt of the packages as named in the forwarding instruction or other accompanying transport documents. Should the consignee refuse to sign for the receipt of the goods, the freight forwarder must request further instructions. If the goods have already been unloaded at the consignee, the freight forwarder is entitled to regain possession.

9. Instructions

- 9.1 An instruction remains valid for the freight forwarder until revoked by the principal.
- 9.2 In the case of insufficient or impractical instructions the freight forwarder may use his professional judgment.
- 9.3 An instruction to hold goods at the disposal of a third party can no longer be revoked after instructions from the third party have been received by the freight forwarder.

10. Freight payment, cash on delivery

- 10.1 The statement by the principal that the instruction is to be executed freight unpaid or that the costs are to be paid by the consignee or a third party does not affect his liability for payment of all charges.
- 10.2 The statement in section 10.1 does not concern cash on delivery instructions.

11. Deadlines

- 11.1 In the absence of specific agreements, neither loading or delivery deadlines are guaranteed, nor the sequence of the handling of goods of the same means of transport.
- 11.2 This does not affect the freight forwarder's statutory liability with regard to missing deadlines.

12. Obstacles

- 12.1 Obstacles beyond the freight forwarder's control relieve him, for their duration, from the duties that are affected by these obstacles.

In the case of such obstacles, the freight forwarder or the principal have the right to withdraw from the contract even if it has already been partially performed.

If the freight forwarder or the principal withdraws from the contract, the freight forwarder is entitled to reclaim the costs which he deemed to be necessary to be incurred or which incurred in the interest of the principal.

- 12.2 The freight forwarder is only obliged within the framework of his ordinary professional care to advise the principal of legal or official restrictions concerning the shipment (e.g. import/export restrictions). If, however, the freight forwarder, through public statements or in the course of negotiations, created the impression that he has expert knowledge of specific circumstances, he has to act appropriately to this knowledge and expertise.
- 12.3 Governmental and/or official acts beyond the freight forwarder's control do not affect the rights of the freight forwarder towards his principal; the principal is liable towards the freight forwarder for all claims arising out of such acts. Claims of the freight forwarder against the state or third parties are not affected.

13. Delivery

Delivery is deemed to have been affected when the goods are handed over to any person present on the premises of the consignee, unless there are apparent reasonable doubts about the authority of the respective person to receive goods on behalf of the consignee.

14. Right to information

- 14.1 The freight forwarder is obliged to provide the principal with all necessary information, to inform him, upon request, about the status of the transaction and to provide information about all transactions so far; however, he is only obliged to reveal the costs incurred if he acted in the name of the principal.
- 14.2 The freight forwarder is obliged to pass everything he receives/obtains for the purpose of the transaction to the principal while acting for him.

15. Warehousing

- 15.1 The choice of warehousing location (own or third party) lies with the freight forwarder.

In case of a third party warehouse the freight forwarder must notify the principal in writing and immediately of the warehouse company and its address, or, in case of a warehouse warrant, to mark these on the warrant.

- 15.2 The principal is at liberty to inspect the warehouse. Objections or complaints about the storage of the goods must be made immediately. If he does not exercise the right of inspection, he waives all rights to objections against the storage and warehousing, for as long as the choice and type of storage complies with the usual professional care of a freight forwarder.
- 15.3 Access to the warehouse is only granted to the principal during the normal working hours of the freight forwarder and in his company.
- 15.4 If the principal handles the goods (e.g. sample taking), the freight forwarder may demand that the number, the weight and the status of the goods are inspected together with the principal. If the principal does not agree to this, the freight forwarder is not liable for damage discovered later, unless the damage was clearly not caused by such handling of the goods.
- 15.5 The principal is liable for all damage caused by him or his staff or agents to the freight forwarder, other warehouse clients or third parties whilst on the premises of the warehouse, unless he, his staff or agents are not responsible for such damage.
- 15.6 In case of inventory discrepancies, the freight forwarder is entitled to balance shortages and surpluses of the same principal.
- 15.7 If the freight forwarder has reasonable doubt about the security of his claim upon the value of the goods, he is entitled to set a reasonable time limit for the principal to either secure the claims of the freight forwarder or to make alternative provisions for the storage of the goods. If the principal does not comply with this, the freight forwarder is entitled to terminate the contract without further notice.

16. Offers and Payment

- 16.1 Offers from the freight forwarder and agreements with him regarding price and services always refer to specified own services or those of third parties, and only to goods of normal size, weight and nature; they presume normal unfettered transport situations, unimpeded access, the possibility of immediate on-shipment and that freight rates, exchange rates and tariffs upon which the quotation was based remain valid, unless changes could be foreseen under the current circumstances. The note "plus the usual ancillary charges" entitles the freight forwarder to charge for supplements and surcharges.
- 16.2 All quotations made by the freight forwarder are valid only in case of immediate acceptance and immediate execution of the relevant task, unless otherwise specified in the quotation and when the instructions refer to the quotation.
- 16.3 In case of a cancellation of or withdrawal from the instruction, the freight forwarder is entitled to the claims in accordance with §§ 415, 417 of the German Commercial Law (HGB).
- 16.4 In case of a COD- or other collection instruction being withdrawn retrospectively or if the money is not paid, the forwarder is still entitled to his collection fee.
- 16.5 If the consignee refuses to accept a consignment destined for him or, if the delivery is impossible for reasons beyond the control of the freight forwarder, the freight forwarder is entitled to the cartage charges for the return of the consignment in the same amount of the delivery.

17. Disbursements of the freight forwarder, exemption from third party claims

- 17.1 The freight forwarder is entitled to reimbursement for outlays which he could reasonably consider appropriate.
- 17.2 The instruction to accept incoming consignments entitles the freight forwarder - but

does not oblige him - to advance freight, COD-sums, duties, taxes and other dues or charges in connection with such consignments.

- 17.3 On request, the principal has to relieve the freight forwarder immediately of demands regarding freight, average demands, customs duties, taxes or other dues directed against the freight forwarder as being agent for or possessor of the goods owned by third parties, if the freight forwarder is not responsible for such payments. The freight forwarder is entitled to take reasonable measures appropriate to protect himself. If the circumstances do not require immediate action, the freight forwarder must request instructions from his principal.
- 17.4 The principal must inform the freight forwarder in an appropriate way about all public/legal obligations, e.g. regarding customs regulations towards third parties or trademark obligations arising from the possession of the goods, unless it may reasonably be deduced from the quotation of the freight forwarder that he is aware of such obligations.

18. Invoices, foreign currencies

- 18.1 Freight forwarders' invoices are due immediately.
- 18.2 The freight forwarder can demand payment from his foreign principals or consignees either in local or German currency.
- 18.3 If the freight forwarder owes foreign currency amounts, or if he advances sums in foreign currencies, he can demand payment either in German or in foreign currency. If he demands payment in German currency, the current exchange rate will be used, unless it can be proven that a different rate of exchange must be used or was used.

19. Settlement

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

20. Lien and retention

- 20.1 The freight forwarder has a lien on all goods in his possession or other valuables in connection with any claim, whether due or not for any services for his principal in accordance with section 2.1. This lien does not exceed the general legal lien which applies.
- 20.2 The freight 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 freight forwarder at risk.
- 20.3 The time limit of one month as specified in § 1234 of the German Civil Code (BGB) is superseded in all cases by a time limit of two weeks.
- 20.4 If the principal is in arrears, the freight forwarder is entitled, after due notice, to sell such a portion of the principal's goods in his possession as is necessary, after appropriate consideration, to meet his claims.
- 20.5 The freight forwarder is entitled to charge the usual sales commission on the net proceeds of the sale when exercising his lien.

21. Insurance of the goods

- 21.1 The freight forwarder arranges for the insurance of the goods (e.g. transit or warehousing insurance) with an insurer of his choice if instructed to do so by the principal before the goods are handed over. If the freight forwarder cannot effect insurance cover, either due to the nature of the goods or for any other reason, he must inform the principal without delay.
- 21.2 The freight forwarder is entitled, but not obliged, to effect the insurance of the goods

if this is in the interest of the principal. The freight forwarder may assume that the insurance cover is in the interest of the principal, especially if

- the freight forwarder effected insurance cover for previous freight forwarding instructions,
- the principal declared the value of the goods in his freight forwarding instructions (section 3.4).

This assumption for the arrangement of insurance cover may not be made if

- the principal expressly forbids such insurance cover in writing,
- the principal is a freight forwarder, carrier or warehousing company.

21.3 The freight forwarder, after due consideration decides the type and scope of the insurance and arranges the cover at the usual market rates, unless the principal instructs the freight forwarder differently, specifying the insured sum and the risks to be covered, in writing.

21.4 If the freight forwarder himself is the insurance policy holder and if he acted for the account of the principal, he is obliged, if requested to do so, to provide information about this in accordance with 14.1. In such a case, the freight forwarder is obliged to invoice the premium for each freight forwarding instruction individually, to document it and to pay it to the insurer exclusively for this insurance cover.

21.5 The freight forwarder is entitled to a special fee, apart from his reimbursements, for arranging the insurance, handling claims and other administrative tasks in connection with claims and averages.

22. Liability of the freight forwarder, cession of claims

22.1 The freight forwarder bears liability for all his services (section 2.1) according to legal regulations. Unless specified otherwise, however, the following shall apply.

22.2 If the freight forwarder is only responsible for arranging the contracts required for the services requested, his responsibility is limited to the careful choice of such third party service providers.

22.3 In all cases where the freight forwarder is liable for loss of or damage to goods, his liability will be in accordance with §§ 429, 430 of the German Commercial Law.

22.4 If §§ 425 pp and 461, section 1 of the German Commercial Law are not applicable, the freight forwarder is liable for damage resulting from

- 22.4.1 - insufficient packaging or marking by the principal or third parties;
- 22.4.2 - agreed or customary outdoor storage;
- 22.4.3 - theft or robbery (§§ 243, 244, 249 German Penal Code);
- 22.4.4 - Acts of God, weather conditions, failure of appliances or wiring, influence of other goods, damage caused by animals, inherent vice;

Only, if there is evidence of the freight forwarder being at fault. If the damage could have arisen from one of the above circumstances, it shall be deemed to have arisen from it.

22.5 If the freight forwarder has a claim against a third party for damage for which he is not liable, or if the freight forwarder has claims in excess of the sum for which he is liable, he must, on request, cede such claims to his principal, unless the freight forwarder, by special agreement, had undertaken to pursue such claims at the cost and risk of his principal.

The principal may also demand that the freight forwarder cedes all claims against third parties to him. § 437 of the German Commercial Law remains unaffected.

If the claims of the principal have been met by the freight forwarder or by the forwarder's insurance, the claim to be ceded is limited to that portion which exceeds the amount already paid by the freight forwarder or his insurance.

23. Limitation of liability

23.1 The liability of the freight forwarder for loss of or damage to goods, with the exception of warehousing on request, is limited

23.1.1 to € 5 per kilogram of gross weight of the consignment;

23.1.2 in case of damage occurring to goods whilst being carried, the damage is limited - contrary to section 23.1.1 - to the legally limited maximum amount specified for this type of carriage;

23.1.3 in case of a contract of multimodal carriage including sea transport - contrary to section 23.1.1 - to 2 SDR per kg;

23.1.4 to € 1 million or 2 SDR per kg per claim, whichever is the higher.

23.2 If only individual packages or parts of the consignment were damaged or lost, the maximum liability is calculated on the basis of the gross weight

- of the whole consignment if it is rendered valueless
- of that part of the consignment that is rendered valueless

23.3 The liability of the freight forwarder for damage other than to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, is limited to three times the amount payable for the loss of the goods, but not more than € 100,000 per event. §§ 431 section 3 and 433 of the German Commercial Law (HGB) remain unaffected.

23.4 The liability of the freight forwarder, irrespective of the number of claims per event is limited to € 2 million per event or 2 SDR per kg of lost or damaged goods, whichever is the greater; in the case of more than one claimant the freight forwarder's liability is proportionate to their individual claims.

23.5 The SDR is calculated in accordance with § 431 section 4 of the German Commercial Law.

24. Liability limitations in the case of warehousing upon instruction

24.1 The liability of the freight forwarder for loss of or damage to goods in the case of warehousing upon instruction is limited

24.1.1 to € 5 for each kg gross weight of the consignment,

24.1.2 to a maximum of € 5,000 per claim; if the damage of a principal is based upon the difference between the nominal and actual inventory (section 15.6), the liability is limited to € 25,000, irrespective of the number of events causing the inventory discrepancy. In both cases section 24.1.1 shall not be affected.

24.2 Section 23.2 applies accordingly.

24.3 In the case of warehousing upon instruction the liability of the freight forwarder for claims other than for damage to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, is limited to € 5,000 per claim.

24.4 Irrespective of the number of claims arising from an event, the liability of the freight forwarder is limited to € 2 million per event; in the case of more than one claimant the freight forwarder's liability is distributed amongst them in proportion to their individual claims.

25. Burden of proof

- 25.1 In case of damage, the principal must provide evidence that goods of a specified quantity and state were handed to the freight forwarder in apparent good order (§ 438 German Commercial Law). The freight forwarder must provide evidence that he delivered the goods in the same condition as he received them.
- 25.2 The burden of proof that goods were damaged whilst being transported by means of transport (section 23.1.2) lies with the party claiming such damage. If the place where the damage occurred is unknown, the freight forwarder must specify the sequence of transportation by documenting the interfaces (section 7) if requested by the principal or the consignee. It is to be assumed that the damage occurred during that stage of the transportation for which the freight forwarder cannot provide a clean receipt.
- 25.3 The freight forwarder is obliged to ascertain, through appropriate enquiries and obtaining evidence, where the damage occurred.

26. Non-contractual claims

The aforementioned releases from and limitations of liability apply also, in accordance with §§ 434, 436 of the German Commercial Law, to claims not arising out of freight forwarding contracts.

27. Specific responsibility

The aforementioned releases from and limitations of liability do not apply, if the damage was caused

- 27.1 by intent or gross negligence of the freight forwarder or his management staff or by violation of fundamental duties of the contract in which case damage claims shall be limited to foreseeable, typical damage;
- 27.2 by the freight forwarder in cases covered by §§ 425 pp, 461 section 1 of the German Commercial Law or by persons specified in §§ 428, 462 of the German Commercial Law acting intentionally or recklessly, knowing that damage to the goods would be probable.

28. Notification of a claim

Claims have to be made in accordance with § 438 of the German Commercial Law.

29. Freight forwarding insurance

- 29.1 The freight forwarder is obliged to cover, at going market conditions and rates, his transport-related liability according to ADSp and as legally required to cover standard liabilities with an insurer of his choice.
- 29.2 Agreements for maximum compensation per claim, damaging event and year as well as for contributions from the freight forwarder are permitted.
- 29.3 The freight forwarder may only refer to the ADSp towards his principal, if he has arranged sufficient liability insurance cover at the time the forwarding instructions are issued.
- 29.4 If requested by the principal, the freight forwarder has to provide proof of this liability insurance cover by presenting a confirmation of the insurer.

30. Place of fulfilment, place of jurisdiction, applicable law

- 30.1 The place of fulfilment for all parties of the contract is the location of that branch office of the freight forwarder at which the instructions are directed.

- 30.2 The place of jurisdiction for all disputes arising out of or in the context of the instruction is for all participants, provided that they are merchants, the location of that branch office of the freight forwarder at which the instructions are directed.
- 30.3 The legal relationship between the freight forwarder and the principal or his legal successors is governed by the law of the Federal Republic of Germany.

Aschaffenburg, 1st January 2014