

# FAIREXPRESS

**ADSp**

German Freight Forwarders Standard Terms and Conditions (ADSp)

January the 1th, 2003

German Freight Forwarders Standard Terms and Conditions

## Preface

The terms and conditions are recommended for use, starting January 1 st , 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 Industrie 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 sections 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 and their storage,
- crane lifting, assembly jobs or heavy lift and high volume transports, except

for normal transshipment 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 multi-modal transports different contractual arrangements may be made in accordance with the terms of carriage devised for these transports.
- 2.6 The freight forwarder is authorised 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, directives 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 have been made in writing when using electronic data communication or any other machine readable form for as long as 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 declaring 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 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, jewellery, 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 under section 4.1 are charged for 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 an extra fee for the customs clearance, over and above the actual costs incurred.

**5.3** The instruction to forward bonded goods or to deliver them free house, authorises 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 recognised as forming one consignment,

**6.2.2** to prepare packages in such a way that they may not 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 forwarders 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 metre;

- 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, wireboxes, 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 under 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 judgement.
- 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 the costs which he deemed to be necessary to be incurred or which were 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 about 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 about 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 their authority 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 while acting for him to the principal.

## **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 be 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 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 for 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.

## **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 in connection with such consignments.
- 17.3 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, when 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 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 from his foreign principals payment 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 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 section 1234 of the German commercial Law 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 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 when,

- the freight forwarder effected insurance cover for previous freight forwarding instructions
- the principal declared the value of the goods in his freight forwarding instructions (3.4).  
This assumption for the arrangement of insurance cover may not be made if

- the principal expressly forbids such insurance cover
- 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 is himself the insurance policy holder and if he acted for the account of the principal he is obliged, if requested to do so, he is obliged 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 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 claim 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 forwarders' insurance, the claim to be ceded is limited to that portion which exceeds that 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 EUR 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 multi-modal carriage - including sea transport - to 2 SDR per kg;
- 23.1.4 to EUR 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 EUR 100,000 per event. §§ 431 section 3 and 433 HGB (German Commercial Code) remain unaffected.
- 23.4 The liability of the freight forwarder, irrespective of the number of claims per event is limited to EUR 2 Millions 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 EUR 5 for each kg gross weight of the consignment,
- 24.1.2 to a maximum of € 5,000 per claim; if the claim 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. Section 24.1.1 is not 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 EUR 5,000 per claim.
- 24.4 Irrespective of the number of claims arising from an event, the liability of a freight forwarder is limited to EUR 2 Millions 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 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 as he received them.
- 25.2 The burden of proof that goods were damaged whilst being transported (Section 23.1.2) in the means of transport 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 Abs. 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 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, event and year are permitted; also contributions from the freight forwarder.

29.3 The freight forwarder may only refer to the *ADSp* towards his principal if he has arranged sufficient insurance cover at the time of the forwarding instructions are issued.

29.4 If requested by the principal, the freight forwarder has to provide proof of this liability insurance cover

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

30.1 The place of fulfilment for all parties to 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 the instruction is for all participants, so far as they are business people, 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.