

**Transport Conditions**  
**Reederei Jaegers Hamburg**  
**GmbH**  
**Registergericht Hamburg**  
**HRB 149447**

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## **Conditions of transport**

### **Article 1 – Definitions**

1. Transport agreement: each and every agreement, regardless how it is referred to, under which a carrier undertakes to transport goods on inland waters against payment;
2. Carrier: each and every party that or on whose behalf a transport agreement has been concluded with a shipper;
3. Subcarrier: each and every party that has been wholly or partially entrusted with the execution of the transport by the carrier. Subcarrier shall also be understood to be the party that – wholly or partially – actually carries out the transport.;
4. Shipper: each and every party that or on whose behalf a transport agreement has been concluded with a carrier;
5. Consignee: the person who is entitled to take delivery of the goods;
6. Transport Document: a document with which a transport agreement and the taking possession and the transshipping of the goods by a carrier is proved and that is drawn up in the shape of a bill of lading or another commercially accepted document;
7. Party that has an Interest in the Cargo: shipper and consignee;
8. Unless the parties concerned have agreed otherwise, in writing shall be understood to include the situation in which the information is transmitted using electronic, optical or similar means of communication, including, but not limited to, telegrams, faxes, electronic mail or electronic data exchange (EDI), provided the information remains available for consultation at a later point in time.
9. Goods: all and everything that is presented as cargo to be transported, with the exception of towed or pushed vessels.

## **Article 2 – Scope of Application**

The present General Terms and Conditions shall form part of all offers by and agreements with Reederei Jaegers GmbH, including in particular in respect of the transport of liquid cargo on the inland waters by Reederei Jaegers GmbH, hereinafter also to be referred to as: RJ.

## **Article 3 – Applicable Law**

To the extent the present General Terms and Conditions do not contain any special clauses, the CMNI Convention shall apply, for international transport. In addition to the present General Terms and Conditions and the CMNI Convention, German law shall apply. On transport within Germany, German law shall apply.

## **Article 4 – Description and Taking Delivery of the Goods**

1. The shipper shall be under the obligation to provide the carrier in due time with the necessary data and the accompanying documentation regarding the goods themselves and the nature of the goods, including all the national and international instructions issued by government authorities to further the safety and protection of the environment and to state in due time all the data regarding the cargo and the treatment thereof in respect of which the shipper knows or must know that they are important to the carrier.
2. The shipper shall guarantee the correctness of the description of the goods and the correctness and completeness of the documentation made available. The shipper shall be liable for all direct and indirect losses, damage and other prejudices resulting from the incorrectness of the statements and the incompleteness of the documentation as well as for the corresponding costs caused by them. In the event the description proves to be incorrect and the required documentation is lacking, the carrier may unload the goods, put them ashore, transport them back or even destroy them in urgent cases, for the account of the parties that have an interest in

the cargo, without the carrier himself becoming liable to pay damages due to any of said actions.

3. The carrier shall not be under any obligation but shall have the right to check whether the documentation and/or information made available to him, is correct.

## **Article 5 – Loading**

1. The carrier shall determine the maximum quantity to be taken on board by him, having due regard to, among other things, the water level, the organisation of the vessel and the public-law instructions.
2. The volume of the cargo taken on board, shall be determined at the discretion of the carrier, using a volume meter, by measuring the difference in contents of the shore tank, by measuring the internal dimensions of the vessel or by measuring the draught marking of the ship.
3. The shipper shall be under the obligation to make sure that the vessel can safely moor, anchor, be loaded at the spot he has designated for loading and that it can safely leave said spot.
4. The carrier shall be under the obligation to make the vessel available at the loading berth ready to be loaded. If the vessel sustains or causes any damage during loading, the party unloading the cargo and/or the party taking possession of it, shall be held to compensate such damage or whatever the carrier may owe third parties in this respect, unless the shipper proves that the damage was not caused by the unsafe condition of the loading berth or by any acts or omissions on the part of the tank terminal staff.
5. The shipper shall be under the obligation to load the goods on board the vessel. The carrier shall have the right to give instructions regarding the safety of the voyage or to prevent damage. The shipper shall be under the obligation to comply with said instructions.

6. The shipper shall be liable for damage to the vessel caused by loading it, unless the carrier is to be blamed for the damage that has arisen.
7. The shipper shall have to compensate the carrier for the damage the latter sustains due to the fact that the cargo agreed upon is not available to the carrier at the place or the time agreed upon for any reason whatsoever.

#### **Article 6 – Delay in Loading**

1. Up to the moment the goods have been loaded on board the vessel or have been made available to the carrier, the shipper shall have the right to dissolve the transport agreement. The carrier shall be entitled to payment of the full cargo in the event of such dissolution.
2. If upon expiry of the period within which the shipper has to load the goods on board the vessel, no goods have been loaded on board the vessel for any reason whatsoever, the carrier shall have the right to declare the transport agreement to be dissolved without notice of default.
3. If upon expiry of the period referred to in section 2, the goods agreed upon have only partially been loaded on board the vessel for any reason whatsoever, the carrier shall have the right to dissolve the agreement without prior notice of default or to start the voyage. If the carrier starts the voyage, the shipper shall remain under the obligation to pay for the full cargo.
4. The dissolutions referred to in sections 2 and 3, may be effected by means of an oral or written statement or by means of another statement whose receipt can be proved. The agreement shall end the moment the statement dissolving the agreement is received but not prior to the moment the goods are unloaded.
5. If the shipper pays the carrier the full cargo before expiry of the period referred to in section 2, the carrier shall be under the obligation to start the voyage with a part of the goods agreed upon, upon the shipper's request. The carrier shall have the right to take on board other goods instead of the missing goods, without the

obligation to set off the payment he receives for the transport of said goods against the cargo to be paid by the shipper.

6. The present article shall not apply to time charter agreements.

#### **Article 7 – Choice of Ships, Routes and the Right to Transshipment and Partial Unloading**

1. The transport shall be carried out using vessels designated to that effect by the carrier. The carrier may also call in the services of other carriers to carry out the transport.
2. The carrier shall be under no obligation to transport the goods in a particular sequence, via a particular route or with a specific vessel. The goods shall have to be transported within the term that a careful carrier may be expected to observe, taking into account in this respect, the circumstances of the voyage by vessel and departing from a trouble-free voyage.
3. The carrier shall have the right to wholly or partially transship the goods on board other vessels, on board lighters or to unload them and/or to store them in shore tanks, to the extent such is in the interest of the vessel or proves to be necessary for the cargo in the given circumstances. The parties that have an interest in the cargo shall be jointly and severally liable vis-à-vis the carrier for the extra costs that thus arise, to the extent the measures concerned did not have to be taken due to any fault on the part of the carrier.
4. The transshipment onto lighters, the storage or unloading on vessels or shore tanks as well as the storage, shall be effected on behalf of and for the risk and account of the parties that have an interest in the cargo.
5. In the cases referred to in sections 3 and 4, it shall be the responsibility of the parties that have an interest in the cargo, to maintain an uninterrupted insurance cover.

## **Article 8 – Lapse of the Obligation To Take Possession of and To Transport the Goods**

1. The obligation to take possession of and to transport the goods, shall lapse on any waterway without further ado, regardless whether or not the goods have already been taken possession of or have already been loaded and whether or not the voyage has already started, when the following events or circumstances manifest themselves in the general sense or only in respect of the vessel that has taken the goods on board:
  - a) force majeure, war, civil war, mobilisation, military actions, riots, terrorist attacks, sabotage, strikes, lockouts, blockades, domestic commotion;
  - b) measures and interventions of government authorities, restrictions on import, export and transit or import, export and transit prohibitions, seizures and recoveries, unless the carrier is to be blamed for said circumstances arising;
  - c) blockades of shipping traffic of any kind whatsoever, shipping traffic accidents, disturbances or operational interruptions of locks, canals, inland ports or other shipping traffic facilities, traffic disturbances and obstructions in harbours or shipping traffic obstructions, unless the carrier has caused said circumstances through his own fault;
  - d) natural disasters, extreme floods, flooding, ice-up and ice danger.
  
2. Throughout the duration of any of the circumstances referred to hereinbefore, and up to maximum of fourteen days after they have ceased to exist, the carrier shall have the right to charge a compensation for all the delays in the voyage to cover the operating losses, increased by the costs incurred for extra efforts, as well as, at the carrier's discretion:
  - a) to either carryout the transport and to charge a transport surcharge for the entire transport route agreed upon, and to charge all the extra costs that have arisen compared to the normal execution of the assignment, to the goods,



whereby the shipper and the party taking delivery of the goods, shall be jointly and severally liable for the extra costs;

- b) or to dissolve the agreement without any notice of default being required, and to charge the dead freight in accordance with article 18 section 5 and to unload or instruct to unload and store or further transport the goods, using other means of transport, that have already been loaded, at a location he deems fit, on behalf of and for the risk and account of the shipper and the party taking delivery of the goods. All the extra costs that have arisen due to the unloading of the goods in an intermediate port, their storage or further transport, transport costs and expenses, shall be for the account of the parties that have an interest in the cargo.
3. The carrier shall also enjoy the rights referred to hereinbefore, if he should have omitted to inform the shipper and/or the party taking delivery of the goods, that such an event has occurred.
  4. If the voyage is permanently prevented from being accomplished due to circumstances other than those listed in section 1 of the present article which the carrier is not held to guarantee in accordance with the present General Terms and Conditions, the transport agreement shall cease to be in effect without the one party being liable to pay the other party any damages. The costs of unloading the already loaded goods, shall be borne by the shipper.
  5. The following in particular, shall be deemed to be a permanent obstruction:
    - a) when an vessel that was supposed to be used to carry out the transport, goes lost or is damaged to such an extent that it cannot make the voyage without extensive repair work;
    - b) shall in particular have to be deemed to be such repair work: activities that require the unloading of the entire cargo ;
    - c) if the goods to be transported get lost.

6. The shipper and the party taking delivery of the goods, shall be jointly and severally liable vis-à-vis the carrier for all extra day cargoes, freight surcharges, operating losses and other extra costs.

#### **Article 9 – Loading and Unloading Periods and Demurrage**

1. Subject to specific arrangements, the duration of the loading and unloading periods as well as the amount of the demurrage shall be calculated on the basis of the ‘Lade- und Löschzeitenverordnung – BINSchLV’ in force at the moment when the transport is carried out.
2. This shall not prejudice any further claims to damages.

#### **Article 10 – Obstructions to Delivery, Storage and Emergency Sale**

1. If the party designated to take delivery of the goods does not take delivery of the goods, or if payment of the claims the goods are encumbered with is refused, or if other kinds of obstruction are concerned, or if the party taking delivery of the goods fails to report in, the carrier shall have to inform the shipper thereof and ask the latter for instructions. If such is not feasible in the given circumstances or if the shipper fails to give instructions or if the carrier cannot be expected in reason to comply with said instructions, the carrier shall be entitled to store the goods in a shore tank or a lighter on behalf of and for the risk and account of the parties that have an interest in the cargo.
2. If the unloading period is exceeded, the carrier shall have the right to unload the goods himself or have them unloaded for the risk and account of the parties that have an interest in the cargo or to store them in accordance with the stipulations of section 1, all this without prejudice to the carrier’s right to berthing charges that have come into being. This shall not prejudice any further claims to damages of the carrier due to the exceeding of the unloading periods.

3. The storage of goods in shore tanks or lighters shall be considered to be a correct delivery. The carrier's right of retention and/or right of pledge shall not be affected by it.
4. If delivery is not taken of the goods within two months after they were transmitted for storage, the carrier shall have the right to sell the goods in private or in public or to auction them, all this without any need for an announcement or warning and without an official decision or judicial order being required. If the goods require high maintenance or storage costs or if the carrier estimates that their value does not cover the corresponding costs, the carrier shall have the right to sell or auction the goods forthwith without being bound by the term of two months.

#### **Article 11 – Unloading Berth, Unloading**

1. The parties that have an interest in the cargo shall determine the suitable unloading berth. The stipulations regarding the condition and safety of the loading berth set out in article 15, shall apply accordingly to the condition and safety of the unloading berth.
2. The parties that have an interest in the cargo shall be under the obligation to communicate the unloading instructions and the customs procedure to the carrier before the vessel arrives in the port, in the absence of which the carrier shall have the right to take all the measures he deems necessary on behalf of and for the risk and account of the parties that have an interest in the cargo.
3. The moment the vessel is ready to be unloaded, can be reported to the unloading berth at all times.
4. The parties that have an interest in the cargo shall be jointly and severally liable for all the damage that is caused by the unloading activities. If the damage is caused by a fault or a failure to act on the part of the carrier, the parties that have an interest in the cargo shall not be liable. The stipulations set out in article 5, sections 4 and 6, shall apply accordingly.

5. The vessel shall have to be unloaded free of cargo residue. If the unloading berth fails to comply with said obligation, the carrier shall have the right, following a complaint, to remove or instruct to remove the cargo residue for the account of the parties that have an interest in the cargo.
  
6. The carrier shall be under no obligation to check whether the vessel has been unloaded completely clean and free of cargo residue. The shipper shall therefore at all times be under the obligation to indemnify the carrier against damage as a result of pollution of the cargo during the latter's next voyage due to pollution by cargo residue. The shipper shall equally be liable vis-à-vis the carrier for all other damage the carrier might sustain due to the fact that the vessel is not clean and free of cargo residue, including in particular damage due to the loss of time, expertise costs and clean-up costs.

## **Article 12 – Liability of the Carrier**

The carrier or the subcarrier shall not be liable for damage caused

- a) by the actions or omissions of the skipper of the vessel, the pilot or any other person serving on the vessel or the pusher tug or tow boat during navigation or in respect of the composition or decoupling of a tow boat or pusher tug convoy, provided the carrier has complied with his obligations regarding the crew by virtue of article 3 section 3 of the CMNI, unless the action or omission was the result of a deliberate attempt to cause damage or of reckless behaviour in the knowledge that this would probably result in such damage;
- b) by fire or an explosion aboard the vessel, without any party being able to demonstrate that the fire or the explosion was caused due to the fault of the carrier, the subcarrier or their subordinates or due to a defect to the vessel;
- c) by defects to his vessel or to a leased or chartered vessel, which existed before the start of the voyage, if he proves that said defects could not have been detected prior to the start of the voyage, despite the fact that the necessary due care has been observed.

### **Article 13 – Liability of the Shipper**

The shipper shall be under the obligation to compensate the carrier for damage caused by the goods or by material or other things that were made available by the shipper, the party unloading the goods or the party taking delivery of the goods. The shipper's obligation to pay damages shall be excluded if the damage is caused due to the carrier's fault. If the damage is caused due to the fault of both the shipper and the carrier, both of them shall be liable for their part in the fault.

### **Article 14 – Insurance**

Without explicit order in writing to that effect, the carrier shall not be under any obligation to insure the goods against any risks or dangers.

### **Article 15 – Transport Documents**

1. Transport documents may only be signed on behalf of RJ if RJ has given its consent to that effect.
2. When the shipper signs transport documents on behalf of RJ in violation of the previous section and this leads to liability on the part of RJ that exceeds the liability by virtue of the present General Terms and Conditions of Transport, the shipper shall be held to indemnify RJ against any claim lodged by a third party.

### **Article 16 – Mutual Assistance in the Case of Damage**

1. The carrier and the parties that have an interest in the cargo shall assist each other in the event of damage to or loss of the goods, in the event of damage to the tank terminal facilities as well as in the event of damage to the vessel in order to establish the scope of the damage and/or loss and the cause concerned. Both the carrier and the shipper shall be authorised, prior to or upon delivery of the cargo, to launch a judicial or an extrajudicial inquiry into the condition and the quantity of the cargo and the scope of the damage. The shipper who suspects any damaging or any defect, shall be authorised, prior to or upon delivery of the cargo, to launch a

judicial or extrajudicial inquiry into the way the goods were loaded and into what appears from the condition the vessel and the cargo were in in terms of the cause of the damaging or the defect.

2. Within the framework of an inquiry as described in section 1, the carrier and the parties that have an interest in the cargo, shall be under the obligation to grant access to cargo samples, the vessel and the tank terminal facilities following a request to that effect.

### **Article 17 – General Average**

1. In the event of general average, the IVR general transport average rules at the time delivery of the goods was taken and as they are available at the url [www.ivr.nl](http://www.ivr.nl), shall apply.
2. The parties that have an interest in the cargo, shall be under the obligation to forthwith pay the contributions and/or advance payments, regardless and without prejudice to their potential rights pursuant to the transport agreement to claim back the contributions to be paid. They shall be jointly and severally liable vis-à-vis the carrier for all contribution in general average encumbering their goods by virtue of an average adjustment. The carrier shall have the right to demand a reverse and an advance payment on costs for said contributions. A right to suspend performance in terms of the contribution in general average, shall be excluded.
3. The right to claim back contributions in general average is excluded for the parties that have an interest in the cargo in the event of a general average event due to a nautical fault in the sense of article 25 section 2 letter a of the CMNI, fire or explosion or a defect to the vessel that could not be detected the moment the voyage was started (article 25 of the CMNI section 2 letters b and c). The right to claim back paid contributions in general average, shall not lapse in the aforementioned cases unless in the event of either a nautical fault, a fault on the part of the carrier is concerned in the sense of article 21 section 1 of the CMNI or if a fault of the carrier is concerned in the event of fire or explosion or a defect to the vessel at the moment the voyage started.

## **Article 18 – Cargo, Dead Freight**

1. Subject to specific arrangements, the cargo shall include the transport in the period in between the moment possession is taken of the goods and delivery of the goods on board the vessel. The cargo shall as a minimum be calculated on the basis of the gross weights, quantities or dimensions of the goods stated on the cargo documents. If higher weights or quantities are stated on other papers, or if they are determined following weighing or checks, they shall be decisive for the calculation of the cargo. The cargo shall be exigible upon delivery of the goods.
2. The cargo agreed upon shall be based on open and unhindered shipping traffic. All extra costs and expenses that have to be incurred in deviation from a normal course of shipping traffic, shall be for the account of the parties that have an interest in the cargo unless said extra costs and expenses are caused due to the fault of the carrier.
3. The cargo shall be based on the operational costs, exchange rates and public levies that existed the moment the agreement was concluded. Each and every extraordinary increase, more in particular in the costs of fuel, wages and public levies during the execution of the transport agreement, shall give the carrier the right to adjust the cargo to the changed circumstances or, with respect to the batches not yet transported, to dissolve the agreement.
4. The shipper shall be liable vis-à-vis the carrier for the cargo, the dead freight, freight surcharges, costs, expenses, levies and other claims the goods are encumbered with as well as for the berthing charges and the loss of profit. The shipper shall not be released of said liability through delivery of the goods without payment or without exercising an existing right of pledge. The party taking delivery of the goods shall accept joint and several liability due to the fact that it wants delivery of the goods or disposes of them otherwise.

5. The carrier shall have a right to the full cargo if:
  - a) the cargo is delivered only partially;
  - b) the shipper or the party taking delivery of the goods wants the goods to be unloaded in the loading port or an intermediate port;
  - c) the continuation of the voyage is temporarily or permanently obstructed due to reasons for which the carrier cannot be blamed or if the voyage can only be made partially or;
  - d) if the goods are destroyed, have gone lost, have been attached, have been damaged, have deteriorated or have otherwise become valueless.
  
6. Following the start of the voyage, the shipper may give instructions to unload the goods back in the loading port or in another port situated on the route of the voyage. If the shipper gives any such instructions, he shall be under the obligation to pay the full cargo and all the corresponding extra costs the carrier has to incur consequently.

#### **Article 19 – Right of Retention and Right of Pledge of the Carrier**

1. With respect to all the claims pursuant to the transport agreement as well as with respect to unchallengeable claims pursuant to other transport agreements concluded with the shipper, the carrier shall have a right of retention to and/or a right of pledge on the goods. The right of retention and/or right of pledge shall also apply to the accompanying documents.
  
2. The right of retention and/or the right of pledge shall continue to exist as long as the carrier has the goods in his possession, more in particular as long as he can dispose of them by virtue of the bill of lading or the proof of storage.
  
3. When exercising the right of retention or the right of pledge, the carrier shall be entitled to unload and store the goods at a suitable location on behalf of and for the risk and account of the shipper and the party taking delivery of the goods, or to demand security for his claims.



4. Third parties that lay claim to the goods by virtue of the bill of lading or the consignment note, shall acknowledge the carrier's right of retention and/or right of pledge through receipt of the bill of lading or the consignment note or through the fact that they have such documents at their disposal, but only in so far as such relates to claims that concern transport as set out in the bill of lading.

#### **Article 20 – Prohibition To Set Off / Prohibition To Assign**

1. The shipper and the party taking delivery of the goods, shall not be entitled to set off any claim disputed by the carrier by virtue of any legal relationship whatsoever, against claims of the carrier and/or to exercise any right to suspend performance with respect to any claim of the carrier.
2. Without written consent to that effect of the carrier, the shipper and the party taking delivery of the goods, shall not be entitled to assign claims on the carrier or on the latter's auxiliary persons to any third party, unless the assignment to a transport insurer, who has insured the transport concerned, is concerned.

#### **Article 21 – Payment**

1. Payment shall have to be made within thirty days from the date of invoice.
2. If the parties that have an interest in the cargo fail to pay the amount owed by them in full within the aforementioned term, they shall be in default without notice of default. Commencing on the day the parties that have an interest in the cargo are in default, they shall owe RJ an interest for overdue payment of 1.5% per month or part of a month for the duration of the period the payment concerned is overdue. If the parties that have an interest in the cargo are in default as referred to in the present article, they shall owe RJ as from the date of their default, the extrajudicial collection costs, which said costs shall be fixed at 15% of the invoice amount, without prejudice to the right of RJ to full damages.
3. All payments to RJ shall have to be made into the bank account to be designated to this effect by RJ or by means of another payment method stated by RJ.

## **Article 22 – Conversion**

To the extent the present General Terms and Conditions should be, partially or not, in violation of imperative rules of law, including in the event when only a part of a stipulation is concerned, the remainder of the present General Terms and Conditions shall remain in force. If the tenor of a stipulation, to the extent it should be in violation of the imperative rules of law, preponderantly corresponds to another legally valid stipulation, said other stipulation shall have to be considered to be valid to this extent and the effect of the replaced stipulation shall be vested in the legally valid stipulation.

## **Article 23 – Competent Court**

1. All disputes, including those that are only considered to be one by one of the parties, that might arise further to an agreement to which the present General Terms and Conditions wholly or partially apply or further to a further agreement which is the outcome of such an agreement, shall be ruled upon by the competent Court in the district of Duisburg, subject to the parties' authority to seek a provision in interim injunction proceedings.
2. The stipulations of the previous section shall not prejudice the right of RJ to submit the dispute to the Court that is competent in accordance with the normal rules of competence.

## **Article 24 – Languages**

A text in Dutch and a text in English exist of the present General Terms and Conditions of Transport. In the event of any conflict between said texts, the German text shall prevail.