

General Terms and Conditions

ARA Shipbrokers Hamburg GmbH

(in case of doubt/s the German “AGB” wording is valid)

Art. 1 Scope

The present General Terms and Conditions are applicable for all business relations, regardless of whether the Shipbroker is constantly or occasionally engaged in such business (Art. 84 HGB) or has been engaged in it.

Art. 2 Activity characteristics

- 1) The Shipbroker acts in all cases on behalf of and for the account of another (hereinafter called “Client”) and undertakes to exercise his activity with the diligence of a prudent businessman, and to select with care the persons and/or companies acting for him in fulfillment of his obligations. The same shall also apply where he receives an order from his Client for conduct of upstream or downstream activities for marine transport (hereinafter called “Additional Business”) or for auxiliary activities related to marine transport or to other Additional Business.
- 2) The Shipbroker is entitled and also empowered to take all measures which are, from his point of view, necessary for execution of an order, in particular to sign contracts with third parties with usual conditions, on behalf of and for the account of the Client.
- 3) All offers made by the Shipbroker shall be without obligation until final placement of order, unless explicitly agreed otherwise in writing.
- 4) The Shipbroker is required to treat only such information and data of the Client confidentially that are explicitly identified by the Client to him as confidential.
- 5) The Shipbroker is not required to give financial guarantees for his Client vis-à-vis third parties, or to provide securities, or to make any payment for which he does not have definite cover, or for which he has not received collateral to an extent which is sufficient from his point of view.
- 6) The Shipbroker is exempted from the restrictions of Art. 181 Civil Code (BGB).

Art. 3 Liability

- 1) Claims for damages or reimbursement of expenditures (hereinafter referred to in summary form as “Claims for Damages”) by the Client vis-à-vis the Shipbroker, his official bodies, his employees or other persons employed by him to fulfill obligations, are excluded, unless based on acts committed by the Shipbroker, his official bodies, employees or other persons employed to fulfill obligations that constitute
 - a. intentional or grossly negligent violation of obligations;
 - b. culpable violation of obligations resulting in injury or death, or damage to health to the Client; or



C. culpable violation of principal contractual duties.

- 2) Where none of the liability cases indicated in the above clause 1 sub-clause a., b. or c. are present, the liability of the Shipbroker, his official bodies, his employee or other persons employed to fulfil his obligations, is limited to such damage as is foreseeable and may typically occur in such contracts.
- 3) The liability for such foreseeable damage as may typically occur in such contracts is limited to a maximum of EUR 50,000.00 per case of damage.
- 4) The above regulations are not linked with reversal of the burden of proof to the disadvantage of the Client.
- 5) The risk of incomplete, incorrect and/or delayed communication of information between Client and Shipbroker, in particular by the use of postal or electronic means of communication, shall be borne by the Client, subject to the liability cases set out in clause 1 of this Article.

Art. 4 Remuneration/Claims

- 1) The Shipbroker shall be paid an amount for his activity which is subject to free negotiation, in case that there is no tariff or statutory requirement. Payment of the remuneration becomes due on receipt of the invoice.
- 2) For any financial guarantees and/or disbursements provided by the Shipbroker, the Shipbroker shall be paid a commission of at least 2.5% related to the nominal value of the respective services, in addition to the reimbursement claim for all expenditures, such as interest, bank charges, etc. which are related to such services.
- 3) Any claims by the Shipbroker in foreign currency or invoices drawn up by him in foreign currency, entitle the Shipbroker at his option either to require payments in the respective foreign currency, or in Euros at the daily exchange rate – at his option – either as valid on the invoice date or as valid on the date of payment.
- 4) The Shipbroker has the right to pay out freight or other charges collected by him on behalf of other third parties in foreign currency to his Client in Euro, at the rate of the date of payment.
- 5) Any outstanding payment claims of the Shipbroker which are not settled by the Client within 30 days after the invoice date shall be subject to interest for delay, amounting to 7.5 percent p.a. above the base rate applicable at the time of such delay, from the date of the invoice.
- 6) The Shipbroker may require reasonable advance payments.
- 7) All costs incurred in connection with or as a result of transfer by, to or on behalf of the Client, shall be borne by the Client.

Art. 5 Limitation of time

All claims against the Shipbroker, his official bodies, his employees or other persons employed for fulfillment of his obligations, for any legal cause whatsoever, shall be limited by the statute of limitations within one year, counting from the statutory beginning of the period of limitation, provided that none of the liability cases as stated in Art. 3 clause 1 of the present Terms and Conditions are applicable.



Art. 6 Offset, Retention right, Lien

- 1) The Shipbroker is entitled to gain satisfaction of his claims at any time from the due date of his claims, by offset with counterclaims of the Client. The Shipbroker is additionally entitled to satisfy his claims from amounts collected by him for the Client (e.g. address commission) for all claims he has against the Client and any companies in which the Client has a direct or indirect majority holding. The Shipbroker also has a retention right.
- 2) On conclusion of the respective contract of which these conditions shall be one part, the Shipbroker shall have a contractually agreed right of lien with respect to all assets of his Client which are in the possession of the Shipbroker or come into his possession, regardless of the reason why and of the time when such claims arose.
- 3) The Shipbroker shall be entitled to realize, in his own option either by private or auction sale, all assets of the Client which are in his (the Shipbrokers' possession, if the Client has not, within 30 days at the latest following reminder by registered letter setting a final date for payment within 20 days, either made payment in full or granted the Shipbroker other securities which appear to be sufficient from the Shipbroker's point of view.

Art. 7 Place of jurisdiction, Law applicable

- 1) Any disputes with the Shipbroker on the basis of a contract of which these conditions are a part, shall be decided exclusively by the ordinary court of law responsible for the location of his registered office as entered in the Commercial Register.
- 2) The activity of the Shipbroker is exclusively governed by German law, even if same is wholly or partly executed abroad.

Art. 8 Final provisions

- 1) Any amendments or additions to these Terms and Conditions and/or the contract of which these Conditions are a part, are valid only if stated in written form. The same applies also for cancellation or amendment of the requirement for written form itself.
- 2) In the event that a provision of these General Terms and Conditions and/or the respective contract of which these Terms and Conditions are a part, is or becomes invalid, such invalid provision shall be replaced by a provision that complies fully or at least as far as possible with what the parties wanted, in legally valid form.

Hamburg, February 2012