

General Business Conditions

For Ship Brokers And Shipping Agents In The Federal Republic of Germany

Approved By: Bundeskartellamt

§ 1 Scope of application

(1) The General Business Conditions specified below shall apply to all members companies of the following associations(*) belonging to the Zentralverband Deutscher Schiffsmakler e.V. (1) and engaged in ship freighting and clearance, shipping agency operations and the purchase and sale of vessels, including intermediary services for the procurement of contracts in connection with bunkering, towage, transshipment of cargo or any related services (hereinafter referred to as Ship Brokers).

(*) Vereinigung Hamburger Schiffsmakler und Schiffsagenten e.V.
Nord-Ostsee Küstenschiffsmakler Verein e.V.
Vereinigung Bremer Schiffsmakler und Schiffsagenten e.V.
Schiffsmakler-Vereinigung für Küsten- und Seeschiffsbefrachter e.V.
Vereinigung Lübecker Schiffsmakler und Schiffsagenten e.V. zu Lübeck
Schiffsmakler-Vereinigung Kiel e.V.
Interessengemeinschaft der Schiffsmakler Flensburg/Schlei e.V.
Vereinigung Wilhelmshavener Schiffsmakler und Schiffsagenten e.V.
Schiffsmakler-Verband "EMS" e.V.
Schiffsmakler Verband Rhein-Ruhr e.V.
Vereinigung binnenländischer See-Reedereiagenten e.V.
Schiffsmaklerverband Mecklenburg-Vorpommern e.V.

(2) These General Business Conditions shall apply in respect of all future business relations, irrespective of whether the Ship Broker is or has been commissioned as such on a permanent basis (in which case 84 HGB (2) applies) or only occasionally.

§ 2 Nature of activities

(1) The Ship Broker will at all times act on behalf and for account of another party and undertakes to perform this activity with the care of a prudent businessman (3) and duly exercises such care in selecting the persons to assist him in fulfilling his obligations.

(2) The Ship Broker shall be authorised and empowered to take all measures he deems necessary in the execution of an order; in particular, he shall be entitled to conclude agreements with third parties subject to the usual terms and conditions.

(3) The Ship Broker is exempted from the restriction of 181 BGB (4) .

(4) All offers submitted by the Ship Broker shall remain without engagement until an order is placed unless anything to the contrary was expressly agreed in writing.

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(5) Should the Ship Broker be ordered by his principal to execute pre carriage or on carriage work on ocean transport assignments or any related ancillary activities, irrespective of whether such ancillary activities are based on freight agreements on the part of the principal as stipulated in Bills of Lading, Combined Bills of Lading or Charter Parties, the Ship Broker acts on behalf and for account of his principal at all times.

(6) If the Ship Broker conducts the activities of a forwarding agent, his liability as such shall be subject to ADSp. (5)

(7) The Ship Broker must be notified if the goods constituting the subject-matter of the agreement require special treatment and care in terms of loading, storage, receipt, delivery and transportation or may be subject to certain approval and/or notification requirements. This applies in particular to dangerous goods in accordance with the IMDG Code.

(8) The Ship Broker shall not be bound on behalf of his principal to issue guarantees to third parties, provide collateral security or render any payment for which he has no cover or for which he deems the collateral security available to him to be inadequate.

§ 3 Liability

(1) The Ship Broker shall be liable to his principal for damage or loss only if caused through gross negligence or wrongful intent. This also applies to persons who assist him.

(2) The risk of incomplete, faulty and/or delayed transmission of messages, particularly when employing the postal services, radio, telephone, telex, facsimile or data transmission or telegraphic communications, shall be borne by the principal.

(3) The Ship Broker shall not be liable for any losses occasioned by exchange rate fluctuations.

(4) The Ship Broker shall not be liable for any conventional penalties or fines and the like that may be imposed on the principal.

(5) In the event that the Ship Broker is held liable, the extent of such liability shall be limited to the sum of DM 50,000.00 for each particular case of loss or damage. This limit liability shall not apply if the damage is attributable to malicious intent or gross negligence on the part of the Ship Broker or the latter's managerial staff or if the damage is the typical result of an intentional or grossly negligent infringement of a primary contractual obligation by the Ship Broker's authorised employees. The onus of proof in this respect shall rest on the principal.

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§ 4 Remuneration/Accounts receivable

(1) In return for his activities, the Ship Broker shall be remunerated to an extent freely negotiable unless such remuneration is subject to a scale established by collective bargaining or to statutory regulations. Such remuneration shall be payable immediately after invoicing.

(2) The Ship Broker shall be entitled to a commission of at least 2.5 % for all guarantees he may be required to assume and/or out-of-pocket expenses he may incur, regardless of the claim for reimbursement he may already have in respect of all expenses such as interest, bank charges and the like.

(3) Foreign-currency-denominated claims by the Ship Broker or invoices issued by him in foreign currency shall entitle him, at his own discretion, either to require payment in that particular foreign currency or in DM at the current exchange rate – again, at the Ship Broker's discretion – either on the invoice date or on the date of payment.

(4) The Ship Broker shall be entitled to pay any freight invoices denominated in foreign currency or any other claims or receivables he may collect on behalf of his principal in DM at the rate prevailing on the date of such payment.

(5) Any of the Ship Broker's claims outstanding not paid by the principal within 30 days of the invoice date shall bear 1 % interest on arrears per month as of the invoice date.

(6) The Ship Broker shall be entitled to apply the funds collected by him on his principal's behalf (in particular, freight collections) in satisfaction of any claims he may have on the principal.

(7) The Ship Broker may require payment in advance.

(8) Any expenses arising in connections with, or as a result of, any transfers by, to or on behalf of the principal shall be assumed by the principal.

§ 5 Set-off, retention and lien

(1) The Ship Broker shall be entitled to satisfy his claims by set-off at any time such claims become due and payable; furthermore, he shall have a right of retention.

(2) The Ship Broker is hereby granted a contractually agreed right of lien to all assets of his principal in the Ship Broker's possession, or which he may acquire possession of, in respect of all claims he may have on the principal, irrespective of the reason for such claims or the time at which they arose.

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(3) The Ship Broker shall be entitled to realise any of the principal's assets in his possession at his own discretion, either by free sale or public auction if, after a period of 30 days has elapsed from the time the Ship Broker sent the principal a final notice by registered mail providing for a final term for payment of 20 days, the principal fails either to render payment or provide collateral security of a nature or extent considered adequate by the Ship Broker.

§ 6 Prescription under Statue of limitations

(1) All claims on the Ship Broker, regardless of the legal basis of such claims, shall lapse unless filed and made pending in court within six month.

(2) The period of prescription shall begin to run once the claim arises, and if the claim is based on a case of loss or damage, at the time at which the person entitled is actually notified of such loss or damage or could reasonably be expected to have obtained knowledge thereof.

§ 7 Jurisdiction

(1) Any disputes with the Ship Broker shall be subject to the exclusive jurisdiction of the competent court of his registered place of business as evidenced by registration in the Commercial Register.

(2) The Ship Broker's overall performance, even if wholly or partly rendered abroad, shall be subject exclusively to the laws of the Federal Republic of Germany.

§ 8 Concluding provision (severability)

Any invalidity of individual clauses of the terms and conditions specified above shall not lead to the remaining terms and conditions being invalidated.

Dated at Hamburg, August 1993

- (1) German Ship Brokers' Association
- (2) German Commercial Code
- (3) as defined by § 347 of the Commercial Code
- (4) German Civil Code
- (5) General Business Conditions for German Forwarding Agents

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