

General Austrian Forwarders Terms and Conditions

I. General

Section 1

The freight forwarder ("forwarder") will execute his commercial activities with the due care and diligence of a prudent businessman, safeguarding the interests of the principal.

Section 2

- a. The General Austrian Forwarders' Terms and Conditions apply to all activities performed by the forwarder in the course of commercial transactions with businessmen and companies under Section 1 Para. 2 of the Consumer Protection Act, irrespective of whether it concerns forwarding, freight, warehousing, commission or any other business related to or connected with the forwarding industry.
- b. The General Austrian Forwarders' Terms and Conditions do not apply
 1. If the forwarder is acting solely as vicarious agent of a transport company in accordance with special conditions, or as surface transport entrepreneur on the basis of a surface transport contract of the Austrian Federal Railways;
 2. to the transportation of removal goods using a removal van (trailer, swap-body, container, lift-van), as well as warehousing of removal goods; transportation of removal goods for principals in the sense of Para. (a) above, either domestic or to and from foreign countries, is subject to the General Austrian Forwarders' Terms and Conditions, provided that the forwarding activities are covered under Section 407 of the Austrian Commercial Code.
- c. The General Austrian Forwarders' Terms and Conditions take precedence over local and municipal commercial practice. Mandatory provisions limit the effective scope of the General Austrian Forwarders' Terms and Conditions accordingly. In the case of ocean and inland waterway transportation, deviating arrangements may be concluded in compliance with special shipping terms and conditions of the forwarder.
- d. Furthermore, the terms and conditions stipulated by third parties involved in the execution apply.

Section 3

The rights of the principal may only be assigned to third parties, and claims against the forwarder in the name or for the account of third parties (cf. Section 67 of the Insurance Contract Act) may only be asserted to the extent that such rights or claims against the forwarder are based on these terms and conditions.

Section 4

All quotations made by the forwarder are only valid subject to prompt acceptance for immediate execution of the order concerned, unless stipulated otherwise in the quotation, and only to the extent that the quotation is referenced in the confirmation of the order.

II. Unacceptable Goods

Section 5

- a. Unless expressly agreed upon in writing, all goods that could be detrimental to individuals, animals, goods or other objects, or that are liable to rapid spoiling or decay, will not be accepted.
- b. If these goods are handed to the forwarder without special notification or identification, the principal will be liable for any resulting damages, even if he was not responsible for the damage.
- c. To the extent justified by such circumstances, the forwarder may sell the goods either publicly or privately, without resort to legal process. If possible, the principal should be notified of any such intended sale. In cases of imminent danger, the forwarder may also destroy such goods, even if prior notification to the principal has not been made.

III. Orders, Communication, Instructions and forwarder's Discretion

Section 6

The forwarder assumes no liability for the compliance with orders placed either verbally, by telephone or telegraph, or by any other form of notification, which have not been confirmed in writing by either party, including compliance with any communication made to drivers or accompanying personnel. All goods and documents of any type whatsoever will be released to the forwarder's employees at the sole risk of the principal, unless expressly or implicitly otherwise agreed in advance with the forwarder or one of his authorized employees.

Section 7

- a. All orders placed with the forwarder must contain marking, number, type and content of the consignments, as well as any other information necessary for the proper execution of the orders. The principal will be liable for any consequences of incorrect or incomplete information (even if he was not responsible for the release), unless the forwarder had prior knowledge of the incorrectness or incompleteness of the information. The forwarder is only be obliged to review and supplement such information without being requested to do so if this accords with general business practice. Furthermore, the principal will be liable for any damage caused by the forwarder or third parties due to the absence of weight specifications on freight with a minimum gross weight of 1,000 kg.
- b. The forwarder is obliged to weigh the goods only upon special written request to do so.
- c. A receipt issued by the forwarder will, in case of doubt, not include a guarantee as to the type, content, value, weight or packaging of the goods.
- d. The goods receipt will not include confirmation of quantity, if this is not usual in the forwarding industry (such as bulk goods, lorry-loads, and the like).

Section 8

Should manufacturers or dealers of specific products release a consignment without statement of contents to the forwarder for dispatch, it will be assumed in case of doubt that the consignment contains the products of the dispatcher. The terms and conditions set out in Section 7 remain unaffected.

Section 9

The principal will notify the forwarder without delay of his address and any change of address. Otherwise, the last address known to the forwarder will apply.

Section 10

- a. Unless specifically requested in writing, the forwarder is not obliged to send notifications by registered mail, or to insure documents of any type whatsoever prior to dispatch.
- b. The forwarder is not obliged to verify the authenticity of either the signatures on any communication or other documents concerning the goods, or the authority of the signing officer, unless otherwise agreed upon with the principal in writing, or unless the lack of authenticity or authorization is obvious.
- c. The forwarder is entitled, but not obliged, to consider a notification (advice) sent by him to be sufficient evidence of dispatch. He is entitled, but not obliged, to verify the authorization of any party presenting documents to him.

Section 11

- a. Any instructions made with respect to the goods will be decisive for the forwarder pending the principal 's revocation of it.
- b. An instruction to hold goods at the disposal of third parties cannot be revoked once the forwarder has received these instructions.

Section 12

An instruction by the principal to carry out an order on account of a third party will not affect the principal's obligation towards the forwarder.

Section 13

In case of insufficient or impractical instructions, the forwarder is entitled to act at his own discretion in the interest of the principal, and in particular to choose the type, route or means of transportation.

Section 14

The forwarder may dispatch the goods together with those of other consignors in consolidated shipments or on a general bill of lading, unless he has been expressly ordered in writing to proceed otherwise. The acceptance of a package cargo bill of lading will not be deemed to be a contrary order .

Section 15

If the forwarder accepts the goods together with a bill of lading or any other freight document (waybill/consignment note) given to him by the principal, the forwarder is entitled to convey the goods with a new bill of lading bearing his trade name and the name of the principal, unless the latter has stipulated otherwise.

IV. Inspection, Maintenance and Packing of Goods

Section 16

- a. In the absence of a written agreement, the forwarder is only be obliged to inspect, maintain and rectify any damage to the goods and their packaging within the scope of general business practices. Section 388 Para. 1 of the Austrian Commercial Code remains unaffected.
- b. In the absence of instructions to the contrary, the forwarder is entitled to make all declarations required by the Austrian Federal Railways concerning lacking or deficient packaging.

V. Time Periods and Deadlines

Section 17

No guarantee will be granted for loading times or a specific sequence of goods handling to be transported in the same manner unless specifically agreed. In the absence of such an agreement, goods marked as trade or fair goods will not receive preferential handling.

VI. Force Majeure

Section 18

Circumstances (including strikes and lock-outs) for which the forwarder is not responsible, but which prevent him in whole or in part from fulfilling his obligations, will release him from his obligations in connection with the orders affected by such circumstances, as long as such circumstances continue. In such cases the forwarder will be entitled but not obliged (evell if a fixed date for acceptance of the goods has been agreed) to withdraw from the contract, even if the order has already been partially carried out. In such cases the principal is entitled to the same rights, provided that he cannot be reasonably expected to execute the contract. Should the forwarder or the principal withdraw from the contract in accordance with the provisions set out above, the forwarder must be recompensed for all resulting costs.

Section 19

Within the scope of his duty to be diligent, the forwarder must check whether legal or official impediments exist concerning forwarding, and must inform the principal accordingly.

VII. Forwarder's Services, Remuneration and Expenses

Section 20

Offers by the forwarder and agreements with him regarding price and services always refer to his own services or those of third parties, and to goods of normal size, weight and characteristics. The following presumptions are made: Normal unfettered transport, unimpeded access and the possibility of immediate oll-shipment Furthermore it is assumed that freight rates, exchange rates and tariffs upon which the quotation was based remain valid. The forwarder may charge the usual supplements and surcharges, provided that he has drawn the principal' s attention to them. The note "plus the usual ancillary charges" is sufficient for this purpose.

Section 21

Should an order be withdrawn, the forwarder is entitled at his own discretion to demand either payment of the agreed remuneration (minus expenditures not incurred), or of a reasonable commission fee.

Section 22

Should a consignee refuse acceptance of a consignment dispatched to him, the forwarder is entitled to reasonable remuneration for the return transport of such a consignment. Should the forwarder incur expenses due to delayed acceptance of delivery, such expenses will be borne by the principal.

Section 23

The commission will also be collected if a C.O.D. or other collection order has been withdrawn retroactively, or if payment for an order has not been received.

Section 24

If the forwarder has arranged for the shipment of goods to a foreign country up to the recipient's door at a fixed percentage of the invoice value (including customs charges), the principal is obliged to declare the total invoice value irrespective of any cash discounts granted (including customs, freight and packing charges).

Section 25

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.

- a. The forwarder is entitled to an extra fee for customs clearance, over and above the actual costs incurred.
- b. The instruction to forward bonded goods or to deliver them free house, authorizes the forwarder at the same time to effect customs clearance at his own discretion (Section 13) and to advance the applicable customs and excise duties and fees.
- c. Should the principal give the forwarder instructions concerning the handling of customs formalities, these must be strictly complied with. Should the handling of customs formalities according to the principal's instructions not be possible, the forwarder must inform him accordingly without delay.

Section 26

The order to receive incoming goods authorizes (but does not oblige) the forwarder to pre-pay all charges imposed on the goods concerning freight, connection fees, customs duties and expenses incurred.

Section 27

The forwarder is entitled at his own discretion to demand payment from foreign consignees and principals either in the currency of their country or that of Austria, under observance of existing foreign currency regulations.

Section 28

If the forwarder owes foreign currency amounts, or if he advances sums in foreign currencies, he can demand (unless stipulated otherwise by provisions under public law) at his discretion either payment in foreign or Austrian currency. If he demands payment in Austrian currency, the current exchange applicable on the day the order was commissioned will be used, unless he can prove to have paid a higher rate of exchange rate.

Section 29

All the forwarder's invoices must be paid promptly. Payments will be deemed in arrears by no later than a period of five days following their due date, with no reminders or other requirements (unless delay in payment according to law has already occurred at an earlier date). In case of default the forwarder is be entitled to charge local interest and expenses. Any further claims under law remain unaffected.

Section 30

- a. At the request of the forwarder, the principal will immediately indemnify him against any claims concerning freight, contributions and settlements of average, customs duties, taxes and other levies made against the forwarder, especially in his capacity of authorized agent or owner of third-party goods. Otherwise the forwarder is entitled to take all measures he deems appropriate for his security or indemnification, even including (if justified by the facts and circumstances) the destruction of the goods themselves.
- b. The principal must inform the forwarder in an appropriate manner about all public law obligations arising from the possession of the goods. e.g. regarding customs regulations or trademark obligations.

Section 31

Seizure of goods or any other legal action taken by public authorities does not affect the forwarder's rights concerning the principal. The principal remains the forwarder's contractual partner and is liable to the forwarder for any resulting consequences, even if he was not responsible for them. Any claims of the forwarder concerning the State or any other third party whatsoever remain unaffected.

Section 32

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

VIII. Delivery

Section 33

- a. Delivery of goods with discharging effect takes place when the goods are handed over to any adult person belonging to and present at the business or household premises of the recipient.
- b. In the absence of an agreement, the forwarder will place the goods in or on the conveyance (e.g. truck, loading ramp) in front of or, if possible, on the consignee's property for the latter's acceptance.
- c. The consignee may request that the goods are unloaded in a courtyard, onto ramps, into rooms, onto shelves and the like at his own risk and expense. This does not apply for goods weighing more than 50 kg apiece, or for goods which, due to their bulk, cannot be carried by one person alone.

Section 34

- a. Upon acceptance of the goods, the consignee is obliged to immediately pay all costs concerning to the goods, including C.O.D. charges. Should payment not be effected, the driver and accompanying personnel are entitled to re-appropriate the goods.
- b. If payment of the costs upon delivery (including C.O.D. charges) is omitted inadvertently or not effected for any other reasons whatsoever, the consignee is obliged (should he fail to pay the required amount despite a reminder) to return the goods immediately and unconditionally to the forwarder, or if he is unable to do so, to pay damages to the forwarder. Assertion of counterclaims, rights of retention or disposition of the goods are not allowed.

IX. Insurance of Goods (Transportation, Fire Insurance, etc.)

Section 35

- a. The forwarder is not obliged to insure the goods unless an express written order (including the value to be insured and risks to be covered) has been concluded. In case of not unclear or unfeasible insurance cover, the forwarder is entitled to determine the type and scope of such insurance at his own discretion. Insurance policies will not enter into force until the forwarder, in the ordinary course of business, has been able to take out such policies.
- b. The forwarder is not entitled to consider the mere statement of value as an order to take out an insurance policy.
- c. The acceptance of an insurance policy certificate by the forwarder does not mean that he assumes the obligations concerning the insured party. However, the forwarder must take all reasonable measures to ensure the maintenance and support of all insurance claims.

Section 36

In the absence of a written agreement to the contrary, the forwarder is only obliged to have insurance coverage in accordance with the usual terms and conditions relevant to his place of performance, but not including breakage risk. The forwarder will always be considered to have fulfilled his mandatory obligation to take out insurance, if coverage under an open-cargo policy has been provided.

Section 37

- a. Should coverage be provided under an insurance policy, the principal is only entitled to such compensation as the forwarder has received from the insurer subject to the terms and conditions of such a policy.
- b. The forwarder has fulfilled his obligations upon assigning his claims against the insurer to the principal at the latter's request. The forwarder is only obliged to pursue claims on the basis of special written agreements and at the principal's risk and expense.
- c. The forwarder is not liable for damages covered under an insurance policy concluded by him in the name of the principal.
- d. Should the principal take out the insurance himself, any claims against the forwarder for damages concerning the risks covered under such insurance will be excluded (i.e. they cannot be assigned to the insurer).

Section 38

The forwarder is entitled to special remuneration for obtaining insurance, connecting damages, compensation and other efforts involved in the handling of insurance cases and sea damage.

X. Forwarder's Risk and Cartage (Haulage) Insurance Policies

Section 39

- a. The forwarder will conclude, unless expressly forbidden by the principal in writing, a policy with the insurer of his choice and at the principal's expense, covering all damage, which could be caused by the principal in the course of the order's execution by the forwarder. Such an insurance policy must at least meet the requirements of the Forwarder's Risk and Cartage Insurance Policy ("Speditions- und Rollfuhrversicherungsschein", "SVS/RVS"), particularly concerning the scope of the policy's coverage. The forwarder will make a record of premiums paid for each individual transport agreement under every order, and remit them in full to the insurer concerned in the form of expenditures incurred by the principal exclusively for payment of the forwarding insurance. The forwarder undertakes to report to the principal, at the latter's request, the name of the company from whom he has taken out the forwarding insurance.
- b. To the extent provided for in the Forwarder's Risk Insurance Policy ("Speditionsversicherungsschein", "SVS"), all damage, which could be caused by those persons entitled to claim coverage at the time when the event causing the damage occurred, will also be insured.
- c. It is most strongly emphasized that, according to Section 5 Para. 1 of the Forwarder's Risk Insurance Policy, all damage covered by transport or warehousing insurance, or otherwise usually covered under such insurance, is excluded from the scope of the forwarder's insurance. On the other hand, the principal will be insured against so-called cartage damage in accordance with the Cartage Insurance Policy unless he has explicitly refused such additional insurance in writing.
- d. If the principal provides forwarding insurance himself, any claims for damages against the forwarder concerning risks covered by such an insurance policy will be excluded and may not be transferred to the forwarder's insurer.

Section 40

The principal, as well as all those persons in whose interest or for whose account he acts, will be subject to all terms and conditions of the Forwarder's Risk and Cartage Insurance Policies. In particular, the principal must ensure that all damage is reported promptly (Section 10 of the Forwarder's Risk Policy).

Section 41

- a. If the forwarder has provided coverage under the Forwarder's Risk Policy in compliance with an explicit or assumed order (Section 39), he will be released from liability for any damage covered under such a policy. This also applies in particular if the insured sum falls short of the actual value or damage claim due to lacking or insufficient statement of value by the principal.
- b. In case of dispute, the competent court will exclusively resolve the issue of whether damage is covered by the Forwarder's Risk Policy.
- c. Should the forwarder not have concluded a Forwarder's Risk Policy in accordance with Section 39, he may not invoke the General Austrian Forwarders' Terms and Conditions concerning the principal.
- d. Paras. (a) through (c) apply analogously to the insurance covered under the Cartage Risk Policy.

Section 42

The second and third sentences of Section 35 Para. (a), apply analogously to the Forwarder's Risk and Cartage Insurance Policies.

XI. Warehousing

Section 43

- a. Warehousing will be carried out at the warehouse keeper's discretion, either in his own warehouse or that of a third party (private or public). Should the warehouse keeper store goods in a third party's warehouse, he has to inform the depositor in writing of the location of the warehouse and the name of its keeper or, in case of a warehouse warrant, to mark these on the warrant. This provision does not apply in cases of warehousing abroad or warehousing connected with the transportation of the goods.
- b. If the warehouse keeper has stored the goods in a third party's warehouse, the relationship between the principal and himself according to Section 2 Para. (c) will be subject to the same terms and conditions, which apply to the relationship between the warehouse keeper and the third party concerned. If requested to do so, the warehouse keeper must supply the principal with details of such terms and conditions. However, the terms and conditions of the third-party warehouse keeper will not apply to the relationship between the principal and the warehouse keeper, to the extent that they include a right of lien exceeding the scope of the lien set out in Section 50 of these terms and conditions.
- c. The warehouse keeper is only liable for the security and surveillance of the warehouse to the extent that he himself is the proprietor and the security and surveillance of the warehouse is deemed reasonable and usual under consideration of all circumstances concerning the warehouse location. The warehouse keeper is deemed to have fulfilled his surveillance duty, provided that he has applied due and proper diligence upon recruiting and hiring security personnel.
- d. The depositor is entitled to inspect the warehouse or have it inspected. Objections or complaints about the storage of the goods or the choice of warehouse must be made without delay. If he does not exercise the right of inspection, he waves all rights to objections against the storage and warehousing, as long as the choice and type of storage complies with the due and proper diligence of a prudent warehouse keeper .

Section 44

- a. The depositor can only access the warehouse if accompanied by the warehouse keeper or an employee duly authorized by him.
- b. Access to the warehouse may only be granted during the warehouse keeper's normal business hours, and only if the work can be conducted during daylight.

Section 45

- a. Should the depositor handle the goods in any way whatsoever (e.g. taking samples), he will return them to the warehouse keeper in a manner appropriate under the circumstances and complying with customary business practice, and, if necessary, inspect and record the quantity, weight and state of the goods together with the warehouse keeper. Otherwise, the warehouse keeper is released from any liability for damages, which are subsequently discovered.
- b. The warehouse keeper reserves the right of handling the stored goods by his own employees in the manner requested by the depositor.

Section 46

- a. The depositor is liable for all damage to the warehouse keeper, other depositors or the property owner, caused by his employees or agents upon entering or driving into the warehouse or warehouse property, unless he, his employees or agents are not responsible for the damage. Agents of the depositor include also third parties visiting the warehouse or the warehouse property on the depositor's authority.
- b. The warehouse keeper may not assign the rights to third parties, which he is entitled according to Para. (a), provided that such rights exceed the scope stipulated by law.

Section 47

- a. Unless otherwise agreed in writing, the warehouse keeper is entitled to terminate the warehouse contract by giving one month's advance notice by means of registered letter to the address last known to him.
- b. Termination without advance notice is allowed in particular if the goods concerned constitute a hazard to other goods stored.
- c. If the warehouse keeper has reasonable doubt that the security of his claim is covered by the value of the goods, he is entitled to set a reasonable time limit for the depositor to either secure the claims of the warehouse keeper or to make alternative provisions for the storage of the goods. If the depositor does not comply with this, the warehouse keeper is entitled to terminate the contract without further notice.

Section 48

- a. As soon as the goods have been duly and properly stored, either a warehouse warrant or a warehouse warrant made out to a named person is to be issued upon request. In case of doubt, the certificate issued by the warehouse keeper will be considered to be merely a warehouse warrant.
- b. The warehouse warrant constitutes merely a certificate of goods received by the warehouse keeper, who is not obliged to release the goods to any party presenting the warrant.
- c. The warehouse keeper is entitled, but not obliged, to check the identity of the party presenting the warrant. Accordingly, the warehouse keeper may release the goods immediately to any party presenting him with the receipt.

- d. Any assignment or pledging of the depositor's rights arising from the warehouse contract is not binding on the warehouse keeper until the depositor has informed him about it in writing. In such a case only the person who has been assigned or pledged the depositor's rights concerning the warehouse keeper, is entitled to deal with the stored goods.
- e. If a warehouse warrant to a named person has been issued, the warehouse keeper is only authorized to release the goods against presentation of the warrant, and not against a delivery note, delivery order or the like. In case of assignment, the goods may only be released to the holder of a warehousing warrant whose authority can be traced back on the basis of the assignments listed in uninterrupted sequence on such a receipt.
- f. The warehouse keeper is not obliged to verify
 - 1. the authenticity of the signatures appearing on the declarations of assignment;
 - 2. the authenticity of the signatures appearing on the delivery order or the like;
 - 3. the authority of the signatories under Clauses (1) and (2) above, unless otherwise agreed with the principal, or if a lack of authenticity or authority is obvious.
- a. Any assignment or pledging of the depositor's rights arising from the warehousing contract will not be binding on the warehouse keeper, unless confirmed on the warehouse receipt in writing and, in the case of a pledging, also reported to the warehouse keeper.
- b. In accordance with the terms and conditions set out above, the warehouse keeper may only dispute the depositor's authorized legal successor on the basis of the validity of the issuance of the warehousing warrant, or objections concerning the warrant itself, or with other objections to which the warehouse keeper is directly entitled concerning the legal successor concerned. The warehouse keeper's right of lien or retention as stipulated by law remains unaffected.

Section 49

The provisions of this section also apply to temporary storage of goods, e.g. for purposes of shipment (unless stipulated otherwise in Section 43).

XII. Right of Lien

Section 50

- a. The forwarder has a right of lien and retention on all goods or other valuables in his possession to cover any accounts receivable, whether due or not due, to which he is entitled concerning the principal on the basis of his activities as set out in Section 2 Para. (a). To the extent that such right of lien or retention, in the sense of the preceding sentence, is used to secure accounts receivable not secured under legally stipulated rights of lien or retention, only those goods and valuables belonging to the principal will be covered.
- b. To the extent that the right of lien or retention as set out in Para. (a) above should exceed the legally stipulated rights of lien or retention, it covers, in the case of orders placed by one forwarder with another, only those goods and other valuables, which belong to the principal forwarder or which the commissioned forwarder possesses or is entitled to possess in the name of the principal forwarder (e.g. removal van, blankets).
- c. The 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 forwarder at risk.
- d. In connection with an order, the forwarder is not entitled to keep the goods at a third party's disposal or to release them to a third party, or to exercise his right of lien or retention with respect to accounts receivable from a third party, which are not connected with the goods concerned, to the extent that and as long as the exercise of such right could be in contradiction to the instructions and the legitimate interests of the original principal.
- e. The provisions set out above do not affect any of the forwarder's further legal rights of lien or retention.
- f. If a threat of forced sale arises, the debtor will be granted a period of one week to settle the matter. The debtor must be notified of any sale of the goods.

XIII. Forwarder's Liability

Section 51

- a. As a rule, the forwarder is only liable for all his activities (Section 2 Para. [a]) to the extent that he is at fault. The forwarder carries the burden of proof. However, if no damage to the goods was externally recognizable, or if it cannot be reasonably expected of the forwarder under the circumstances to have clarified the cause of such damage, the principal must prove that the forwarder was responsible for the damage.
- b. Furthermore, the forwarder's liability is limited or not applicable, subject to the provisions set out above and below, except in the case of intent or gross negligence.
- c. The principal is free to arrange for liability coverage with the forwarder beyond the scope of these terms and conditions against special compensation, apart from the insurance mentioned above (Sections 35 and Section 39). Such an agreement must be in writing.

Section 52

- a. Should damage have been caused to a third party, i.e. a freight carrier, warehouse keeper, shipping company, interim or sub-forwarder, insurer, a railway or freight connection point, banks or other enterprises involved in the execution of the order, the forwarder will assign any of his claims concerning the third party to the principal at the latter's request, unless the forwarder, on the basis of a special agreement, pursues the claim on the account and risk of the principal. The third parties mentioned above will not be considered to be vicarious agents of the forwarder .
- b. Any further obligation or liability of the forwarder only exists if he is in culpable violation of his obligations as set out in Section 408 Para. 1 of the Austrian Commercial Code.
- c. The forwarder is also liable subject to these terms and conditions in cases concerning Sections 412 and 413 of the Austrian Commercial Code.

Section 53

The forwarder's liability ends as soon as the goods have been made available for acceptance by the consignee (Section 33 Para. [b]) and have been accepted by him.

Section 54

- a. To the extent that the forwarder is actually liable, his liability is limited to:
 1. € 7.267,28 for each damage claim resulting from misappropriation or embezzlement by the forwarder's employees. This does not include legal agents, holder of a statutory authority, whose actions are not subject to limited liability. A case of damage in the sense of this provision is defined as any damage caused by an employee of the forwarder through misappropriation or embezzlement, irrespective of whether other employees of the forwarder are involved in the damage concerned, and whether the damage affects one sole principal or several independent principals of the forwarder. The forwarder is obliged upon request to inform his principal whether he has covered this liability risk and, if so, with which insurance company.
 2. € 1,09 per kg of gross weight of each damaged or lost package, however not to exceed € 1.090,09 per damage claim.
 3. € 2.180,19 maximum liability per damage claim other than that set out in Clause 1.

- a. Should the stated value of the goods be lower than that set out in Para. (a) above, the stated value forms the basis for assessment.
- b. Should the relevant value in the sense of Para. (b) above be higher than the common market value or, in its absence, higher than that common value, which is applicable to goods of the same type and character at the time and place of their release to the forwarder, said common market value or other common value supersedes the stated value.
- c. In case of discrepant values, the lower value applies in each case.

Section 55

In case of material damage to goods having an independent value (e.g. machine parts), or damage to any of several objects belonging together (e.g. household furniture), any eventual decrease in value of the rest of the object, or the remaining objects or parts, will not be taken into consideration.

Section 56

- a. In the case of goods worth more than € 29,07 per kg of gross weight, and with respect to money, documents and official stamps and coupons, the forwarder is only liable for damage of whatever kind, if he has received a written statement of value from the principal in sufficient time for him to have been able to conclusively decide about the acceptance or rejection of the order, as well as precautionary measures to be taken with respect to the acceptance, custody and dispatch of the goods.
- b. A statement of value given to drivers and accompanying personnel has no legal effect unless it has been received by the forwarder or one of his commercial employees authorized to do so, or unless otherwise agreed.
- c. Para. (a) above is applicable if the principal can prove that damage has been caused by circumstances other than the omission of a statement of value, or that it would also have been incurred if a statement of value had in fact been made.
- d. The provisions of the other Sections remain unaffected, in so far as they limit liability or render it inapplicable beyond the scope of the provisions of this Section.

Section 57

* The forwarder will not be liable for:

- a. (1) damage (including in particular damage caused by theft) to unpacked or inadequately packed goods, unless a special written agreement concerning such liability has been concluded in advance;
 - b. (2) goods which are deemed to be unpacked or inadequately packed in accordance with applicable terms and conditions of conveyance; such goods will also be deemed unpacked or inadequately packed by the forwarder;
- (3) externally recognizable damage to packaging appearing at once or at a later time; the forwarder may remedy such damage at the principal's expense, but does not assume any liability extending beyond the liability set out in the preceding paragraphs.

- c. damage caused by outdoor storage, if such storage was agreed upon, or if another type of storage was inappropriate according to normal business operations or under the circumstances prevailing at the time;
- d. damage caused by theft in the sense of Sections 127 of the Austrian Penal Code, or through blackmail or robbery in the sense of Sections 144 and 142 of the Austrian Penal Code;
- e. the direct or indirect consequences of any other occurrence, which cannot be attributed to the forwarder (e.g. acts of God, weather conditions, defective equipment or cables, impact of other goods, damage caused by animals or natural change in the goods themselves);
- f. damage and loss caused during inland waterway shipping (including pre-carriage and oncarriage transportation via land vehicles, as well as preliminary, interim and onl-carrying storage) which is covered under transport or warehouse insurance, or which could have been covered by transport or warehouse insurance policies of the usual kind, or which can be covered applying the usual principles of diligent business practice above and beyond the scope of transport or warehouse policies of the usual sort, unless any duly concluded insurance policy is rendered ineffective due to improper action on the part of the forwarder.

Section 58

- a. If damage could have arisen as a result of one of the risks defilled in Section 57, it will be assumed that it actually arose in this way. In such cases, the forwarder will only be liable to the extent that it can be proved that he caused the damage.
- b. The provisions of the other Sections remain unaffected, provided that that they limit liability or render it inapplicable beyond the scope of the provisions of Sections 57 and 58 Para. (a).

Section 59

The forwarder will be exempted from any liability if he is able to prove that he delivered the goods in the same external condition in which he had received them. The forwarder's obligations as set out in Section 388 of the Austrian Commercial Code remain unaffected.

Section 60

- a. All damage, even if not externally recognizable, must be reported to the forwarder in writing without delay. If the goods have been delivered by a forwarding agent, the forwarder delivering the goods must be in possession of the damage report by no later than the sixth day following that of delivery .
- b. In cases of non-compliance with this provision, damage will be deemed to have occurred subsequent to their delivery.
- c. Should the forwarder receive a damage report at a time when it is no longer possible for him to safeguard rights against third parties, the forwarder will not be responsible for the consequences.

Section 61

In all cases, in which the damage amount to be paid or voluntarily offered by the forwarder covers the full value of the goods, he will only be obliged to effect payment subject to back-to-back transfer of the goods, and against assignment of all claims to which the principal or payee is entitled concerning third parties with respect to the goods.

Section 62

Unless limited in its meaning by preceding clauses, damage as used in these terms and conditions is to be understood in the broadest sense of the term (cf. Section 1295 of the Austrian Civil Code), thus including in particular total or partial loss, diminution, decrease in value, breakage, damage through theft as well as consequential damages.

Section 63

- a. Should the forwarder claim one of the liability restrictions or exemptions set out in these terms and conditions, no objection may be raised asserting a case of unlawful action.
- b. Should a third party directly or indirectly interested in the subject or execution of the order placed with the forwarder assert claims against the forwarder for reasons of allegedly committed unlawful action which, according to Para. (a), may not be asserted against the forwarder, the principal will indemnify the forwarder against any such claims without delay.

XIV. Statute of Limitations

Section 64

All claims asserted against the forwarder, irrespective of their legal basis and the degree of fault, are subject to the Statute of Limitations following the expiration of a period of six months. The limitation period begins upon the beneficiary's awareness of his claim, however, no later than upon delivery of the goods.

XV. Place of Performance, Jurisdiction and Applicable Law

Section 65

- a. The place of performance is where the forwarder receiving the order has his commercial head office.
- b. The place of jurisdiction for all matters of legal dispute arising from the contractual relationship or in connection therewith will be the place of performance where the forwarder receiving the order has his commercial head office. This jurisdiction will have exclusive competence in all matters concerning claims against the forwarder.
- c. Austrian law applies to all legal relations between the forwarder and the principal, and the latter's legal successors.