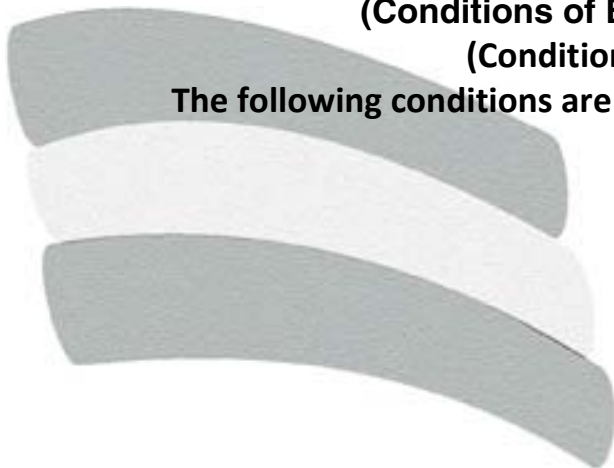


**LOADING and TRANSPORT CONDITIONS**  
**(Conditions of Bills of Lading dated 2010)**  
**(Conditions bill of lading 2010)**

**The following conditions are the exclusive basis of our performances**



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**1. International Loading and Transport Conditions  
for Inland Waterway Transport (ICLT) / IVTB of VBW**

**Status: 2010 Pages 3 - 15**

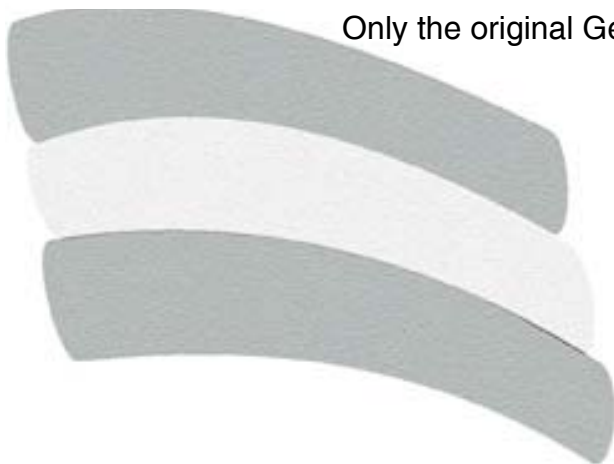
**subject to the special conditions Page 15**

**2. Budapest Convention**

**on the Contract on the Transport of Goods**

**in Inland Waterway Transport (CMNI) subject to IVTB Pages 16 - 30**

Only the original German version is legally binding.



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## § 1 Definitions

1. "Contract of Carriage" means any contract, of any kind, whereby a carrier undertakes against payment of freight to carry goods by inland waterway.
2. "Carrier" refers to any person by whom or in whose name a contract of carriage has been concluded with a shipper.
3. "Sub-carrier" refers to any carrier who actually performs part or all of the carriage independently.
4. "Shipper" refers to any person by whom or in whose name a contract of carriage has been concluded with a carrier.
5. "Consignee" refers to any person entitled to take delivery of the goods.
6. "Parties interested in cargo" refer to the shipper and the consignee.
7. "Transport document" means a document that evidences a contract of carriage and the taking over or loading of goods by a carrier, made out in the form of a bill of lading or consignment note or of any other document used in trade.
8. "Goods" do not include either towed or pushed vessels or the luggage or vehicles of passengers; where the goods are consolidated in a container, on a pallet or in or on a similar article of transport or where they are packed, the term "goods" includes such article of transport or packaging if supplied by the shipper.
9. "In writing" includes, unless otherwise agreed between the parties concerned, the transmission of information by electronic, optical or similar means of communication, including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI), provided the information is accessible so as to be usable for subsequent reference.
10. "Dangerous goods" refer to goods which pursuant to ADN/ADNR and/or other nationally and internationally valid and enforceable conditions are described and/or designated as dangerous substances, as well as all goods which due to their properties or condition could pose a threat to the environment, to persons, to the vessel and/or to other goods being carried on the vessel.
11. "CMNI": the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway.

## § 2 Legal Foundation

1. All carriage on inland waterways performed by the carrier is subject to the following conditions.
2. These conditions are likewise declared an integrated element of the bill of lading or consignment note.

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### § 3 Consignment Note and Bill of Lading

1. The carrier is only obliged to issue a transport document and/or a consignment note and/or a bill of lading if this was agreed on concluding the contract of carriage.

Consignment notes are not securities. They can be neither transferred nor pledged. In such cases, the carrier is authorized to deliver the goods to the consignee named in the consignment note.

Bills of lading are securities made out to a certain name or order. The goods are only handed over when the correctly transferred original bill of lading is returned to the carrier or his representative. One original bill of lading is issued together with several copies. In exceptional cases where several original bills of lading have been issued, the return of just one original to the carrier or his representative renders the others null and void.

In cases where the bill of lading has been made out to order, the carrier may insist on a registration address being given.

2. The carrier is entitled to include in the transport document reservations concerning:
  - a) The dimensions, number or weight of the goods if he has grounds to suspect that the particulars supplied by the shipper are inaccurate or if he had no reasonable means of checking such particulars, especially because the goods have not been counted, measured or weighed in his presence or because, without explicit agreement, the dimensions or weights have been determined by draught measurement;
  - b) Identification marks which are not clearly and durably affixed to the goods themselves or, if the goods are packed, to the receptacles or packagings;
  - c) The apparent condition of the goods.

3. Should the clause “Nature, quantity, dimension or weight unknown” or a mark with the same meaning be entered in the transport document, the information concerning the goods given in the transport document shall not be binding on the carrier unless it is proven that he was or must have been cognizant of the nature, quantity, dimensions or weight of the goods.
4. If the carrier fails to note the apparent condition of the goods or does not enter reservations in that respect, he is deemed to have noted in the transport document that the goods were in apparent good condition.
5. If, in accordance with the particulars set out in the transport document, the goods are placed in a container or in holds of the vessel and sealed by a person other than the carrier, his servants or agents, and if neither the container nor the seals are damaged or broken when they reach the port of discharge or the place of delivery, it shall be presumed that the loss or damage to the goods did not occur during carriage.

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#### § 4 Point of loading, loading and stowage, deck weight

1. The shipper shall designate the point of loading. If the vessel cannot dock at the point of loading for reasons beyond the carrier's control, if the vessel can only dock at extra expense, or if the vessel has to leave its berth for any of these reasons, the carrier may request another loading point and loading process. The costs and extra expenses thus incurred by the vessel and loading process shall be borne by the parties interested in cargo, who shall be held jointly and severally liable. This shall not affect any demurrage claims. Should the shipper fail to fulfil his obligation to designate a suitable point of loading, the carrier may rescind the contract of carriage and demand payment of full freight and the reimbursement of additional expenses including demurrage.
2. The shipper is obliged to ensure that the vessel can reach the designated port of loading safely, lie there safely and depart from there safely.
3. The carrier is obliged to ensure that the vessel is docked at the point of loading and is made ready for loading.
4. The shipper shall undertake to load the goods on board the vessel and to stow, trim and secure the goods so that they can be transported safely. The carrier is entitled to issue instructions to guarantee the seaworthiness of the vessel and to prevent damage. The shipper is obliged to follow these instructions.
5. In accordance with the usage of inland navigation the carrier is entitled to load all or part of the goods on the ship's deck or on an open vessel.
6. The shipper shall be liable for any damage to the vessel inflicted during loading insofar unless the damage was the carrier's fault.

#### § 5 Description and handover of goods

1. On placing the order, and under no circumstances later than the beginning of loading, the shipper shall supply all information required for carriage, provide exact descriptions of the goods and their packaging, nature, condition and quality in the usual manner, and hand over all necessary accompanying papers, in particular those required as per port, customs, health and other regulations.
2. When transporting dangerous goods (§ 1 clause 10), the shipper is obliged to indicate the nature of the hazard and the preventive measures to be taken clearly and in writing in each instance on placing the order. These written instructions and other documents required as per the applicable regulations must be handed over to the carrier and his representatives together with the goods. Standard commercial descriptions of these substances or other documents are insufficient.
3. The shipper shall guarantee the correctness of the goods description pursuant to par. 2 and par. 3 and of the information concerning marks, numbers, quantities, weights and/or volumes pursuant to par. 1 at the time of handover. He shall be liable for all direct and indirect loss, damage and other disadvantages resulting from any errors in this information and for all costs thus incurred. In the case of dangerous goods, the carrier may discharge, land, return or in urgent cases even destroy the goods at the expense of the parties interested in cargo without himself becoming liable for compensation.
4. The carrier is not obliged but nevertheless entitled to check whether the information provided is complete and correct.
5. Should the vessel be detained or prevented from entering or leaving a port due to missing, inaccurate or incorrect information or accompanying documents or due to the disregard of any regulations by the parties interested in cargo, or should the goods be confiscated, the

fallible parties interested in cargo shall be liable to the carrier for all resulting delays, damages, costs, fines, disadvantages and for demurrage.

6. Should the carrier have to submit declarations and/or issue, handle or sign documents relating to the cargo for authorities, customs, public officials, rail administration offices and/or public or private companies, he shall act solely on behalf and at the risk and expense of the parties interested in cargo. In this context, he shall only be held liable in cases of gross negligence, even in the event of omission, loss or non-delivery. Should third parties be contracted, e.g. cross-border carriers, he shall only be liable for the selection thereof.

## **§ 6 Choice of Vehicle and Transport Route, Transshipment and Lightening Rights**

1. Carriage shall be performed using the vehicles designated by the carrier. The carrier may contract other carriers to perform carriage.
2. The carrier is not obliged to load goods in a specific order or to transport them along a specific route or on a specific vessel. The goods shall be transported within the time limit which could reasonably be required of a diligent carrier, taking into account the circumstances of the voyage and unhindered navigation.
3. The carrier is entitled to lighten, discharge or transfer part or all of the goods to another vessel and/or to store them in warehouses or on land should circumstances appear to render this necessary or being in the interest of the vessel or goods. The parties interested in cargo shall be jointly and severally liable to the carrier for the extra costs thus incurred, insofar as the measures taken did not become necessary due to any culpability on the carrier's part.
4. The lightening, discharge or transshipment of goods to other vessels or to warehouses along with the storage thereof shall be effected on behalf, on account and at the risk of the par-

ties interested in cargo.

5. In the cases described in par. 3 and 4, the parties interested in cargo shall be responsible for maintaining continuous insurance cover.

## **§ 7 Point of Discharge, Discharging**

1. The parties interested in cargo shall designate a suitable point of discharge. The conditions governing changes to and the safety of the loading point given in § 4 par. 1 and par. 2 also apply to changes to and the safety of the discharge point.
2. The parties interested in cargo shall undertake to issue instructions concerning discharge and customs formalities to the carrier before the ship reaches the port of discharge; otherwise, the carrier shall be entitled to take all measures which appear to him to be necessary in the name, on behalf, on account and at the risk of the parties interested in cargo.
3. In the cases of optional batches, the carrier or shipper must receive written notification of the port of destination at least twelve hours before the vessel arrives at the first optional port. The shipper and consignee shall be jointly and severally liable to the carrier for any extra costs incurred if no punctual notification of the port of destination is received.
4. The vessel's readiness for discharge may be reported to the port of discharge at any time.
5. The parties interested in cargo are obliged to discharge the goods from the vessel.
6. The parties interested in cargo shall be jointly and severally liable for any damage to the vessel inflicted while discharging the goods. The parties interested in cargo shall not be held liable if the damage is the carrier's fault.
7. All residues of the cargo must be discharged from the vessel. Should this obligation not be fulfilled at the point of discharge, the carrier

shall be entitled after due request to remove all residues of the cargo or have them removed at the expense of the parties interested in cargo.

## § 8 Loading and Discharge Times, Demurrage

1. Unless otherwise agreed, the regulations concerning loading and discharge times shall apply at the ports of loading and discharge.
2. Should the loading and discharge times agreed or applicable at the points of loading and discharge not be adhered to, the carrier shall be entitled to claim for demurrage and loss of profit.  
Other compensation claims remain unaffected.

## § 9 Termination of the Contract of Carriage, Loading Delays

1. The shipper has the right to terminate the contract of carriage before the goods are loaded onto the vessel or placed at the carrier's disposal.
2. Should no goods have been loaded onto the vessel or placed at the carrier's disposal by the end of the time within which the shipper should have loaded the goods onto the vessel or placed them at the carrier's disposal, for whatever reason, the carrier shall be entitled to terminate the contract of carriage without the necessity of issuing a reminder.
3. Should only part of the goods have been loaded onto the vessel or placed at the carrier's disposal by the end of the time stipulated in clause 2, for whatever reason, the carrier shall be entitled to terminate the contract or start the voyage without the necessity of issuing a reminder. In the event of termination, the shipper shall be obliged to discharge the goods already loaded at the carrier's request; if the voyage has already commenced and the vessel cannot depart without re-stowing the goods already stowed, the shipper shall be obliged to re-stow the goods.

4. The terminations mentioned in clauses 2 and 3 must be declared orally, in writing or using any other form of message for which receipt can be clearly verified. The contract shall end at the time the notice to terminate is received, but not before the goods have been discharged.
5. Should the shipper pay all carriage costs before the end of the time specified on clause 2, the carrier shall be obliged to start the voyage with part of the goods as agreed at the shipper's request. The carrier shall be entitled to accept other goods in lieu of the missing goods without being obliged to offset the carriage costs received for the transportation of these goods against the carriage to be paid by the shipper. Should the vessel be unable to depart without re-stowing the additional cargo and the goods already stowed, the shipper shall undertake to re-stow the goods at the carrier's request.

This paragraph does not apply to time charters.

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## § 10 Obstacles Precluding Delivery, Deposition and Distress Sale

1. Should the designated consignee refuse to accept the goods or to pay the receivables secured by the goods, or should any other obstacle precluding delivery arise or the consignee fail to get in touch, the carrier shall inform the shipper and request his instructions. Should circumstances render this inadvisable, should the shipper fail to issue instructions or can the carrying out of the instructions not be reasonably requested of the carrier, the carrier shall be entitled to deposit the goods in a public or private warehouse, discharge them into lighters, put them ashore or hand them over to a forwarder on behalf and at the risk and expense of the parties interested in cargo .
2. If the agreed discharge time or, in default of such an agreement, the regulations governing discharge time in force at the port of discharge are not adhered to, the carrier shall be entitled to discharge the goods himself or have them discharged, to deposit them pursuant to clause 1 or to hand them over at the risk and expense of the parties interested in cargo notwithstanding the demurrage claims incurred. The carrier reserves the right to assert other compensation claims arising as a result of unpunctual discharge.
3. The deposition of goods, discharge of goods into lighters, discharge of goods ashore or the handover of goods to a forwarder shall be deemed to constitute correct delivery. The carrier reserves the right to retain or pledge the goods.
4. If the goods are not accepted within two months of deposition, the carrier shall be entitled to sell the goods at his own discretion, sell them publicly or auction them without giving prior notice or threat or obtaining approval from the authorities or court. If the goods are subject to rapid decay or to maintenance or considerable storage costs, or if the value thereof as assessed by the carrier fails to cover the associated costs, the carrier shall be entitled to sell them immediately or auction

them without observing the two-month deadline.

## § 11 Freight

1. In default of a special agreement, freight shall be calculated ex free stowed inland waterway vessel (port of loading) to free arrival inland waterway vessel (port of discharge). It shall be calculated at no less than the gross weights, quantities or dimensions of the goods entered in the ship's papers. Should other papers cite higher weights or quantities, or should higher weights or quantities be determined during weight checks or tests, these shall be definitive for the freight calculations. Freight must be paid on delivery of the goods.
2. The costs of loading, stowage, securing and discharge together with all other costs, outlay and expenditure shall be reimbursed in addition to the freight insofar as they are not expressly included in the agreed freight or handover rate.
3. The freight agreement presupposes open and unimpeded navigation. All extra costs and expenditure incurred above and beyond those to be expected on an ordinary voyage shall be borne by the parties interested in cargo unless they are due to the fault of the carrier.
4. The freight rates are based on the operating costs, exchange rates, fees and public charges in force at the time the contract of carriage was concluded. Any exceptional increases, especially in fuel costs, crew wages and public charges made while the contract of carriage is being fulfilled shall entitle the carrier to adjust the freight rate in line with the change in conditions or, in the event of batches not yet being loaded, to withdraw from the contract.
5. The shipper shall be liable to the carrier for freight, dead freight, freight surcharges, costs, outlay, fees and other receivables secured on the goods as well as for demurrage and loss of profit. Delivering the goods without payment or refraining from exercising an existing pledge shall not exempt the shipper from liability. The consignee shall assume joint and several liabilities



ty by requesting delivery of the goods or having them at his disposal in any other way. Should a bill of lading be marked “freight prepaid” or similar, the consignee shall not be liable for freight.

the inadequate fulfilment of the contract or on the vessel scheduled for the transport being available and ready for loading. These claims shall also exist if the obstacle arose from one of the causes named in § 13 par. 1.

## § 12 Full Freight, Dead Freight

1. The carrier shall be entitled to full freight even if
  - a) only part of the cargo is delivered;
  - b) the shipper or consignee request discharge of the goods at the port of loading or any intermediate port;
  - c) continuation of the voyage is temporarily or permanently prevented for reasons beyond the carrier’s control, or if the voyage is only made in part;
  - d) the goods have been destroyed, lost, confiscated, seized, damaged, reduced or otherwise rendered worthless.
2. The shipper and consignee may not withdraw from the contract after the voyage has commenced. However, the carrier shall be obliged to discharge the goods at the port of loading or at any other port on the route, the parties interested in cargo being bound to pay full freight and other costs and extra expenditure associated with the discharge.
3. The carrier shall also be entitled to half of the freight if a) the shipper terminates the contract of carriage as per § 9 paragraph 1 or b) the carrier terminates the contract of carriage as per § 9 paragraph 2.
4. Along with payment of all or half of the freight, the carrier shall also be compensated for demurrage, damage suffered by the carrier as a result of the termination and for general average contributions.
5. The assertion of these claims does not depend on the shipper or consignee being culpable for

## § 13 Lapse of Acceptance and Transport Obligations

1. Regardless of whether the goods have already been accepted or loaded and whether or not the voyage has already commenced, the carrier’s obligation to accept and transport the goods on any waterway shall immediately lapse should the following events or circumstances occur or exist, whether in general or only affecting the specific vessel transporting the goods:
  - a) force majeure, war, civil war, mobilisation, military undertakings, riots, sabotage, strikes, lockouts, blockades, civil unrest;
  - b) official measures and interventions, import, export or transit restrictions or prohibitions, seizures or requisitions, insofar as the carrier is not culpable for these circumstances;
  - c) any kind of barrier to navigation, shipping accidents, disruptions or shutdowns in locks, canals, ports or other shipping facilities, traffic disruptions, traffic obstructions in sea ports or closure of navigation, insofar as the carrier is not culpable for these circumstances;
  - d) natural phenomena, high water, floods, ice and ice hazards.
2. For the entire duration of any such event and for max. 14 days thereafter, the carrier shall be entitled to claim compensation for loss of use plus additional expenses for all delays in shipping turnaround. He may also choose one of the following options:
  - a) either to perform the transport and to

levy a freight surcharge for the whole of the route agreed, and to encumber the goods with the expenses incurred over and above those incurred when the contract is fulfilled in the usual manner, in which case the shipper and consignee shall be jointly and severally liable for the extra expenses;

- b) or to withdraw from the contract entirely, to invoice dead freight as per § 12 and to discharge the goods already loaded or have them discharged at a place which appears to him to be suitable on behalf of and at the risk and expense of the shipper and consignee, and to store them or have them transported further by other means. All extra costs, freight and outlay incurred by discharge in intermediate ports, storage or further transportation shall be borne by the parties interested in cargo .

The carrier shall also have the right to take the action described above even if he omits to inform the shipper and consignee that such an event has occurred.

3. Should the commencement of the voyage be permanently prevented by accident or a circumstance beyond the carrier's control according to these Conditions of Loading and Transportation, the contract of carriage shall expire without any obligation of one party to indemnify the other one. The shipper shall bear the costs of discharge of goods which are already loaded. In particular, it shall be regarded as permanent prevention,
- a) if the vessel used to perform the carriage should get lost or damaged to such an extent that the voyage cannot be commenced without a complete renovation of the vessel. Namely, such one which makes necessary a complete discharge shall be considered as renovation on this note;

- b) if the goods to be carried should get lost, provided that they were described not only concerning nature and type, but specifically in the contract of carriage or were already loaded or accepted by the carrier yet.

4. Should the continuation of the voyage after its start be permanently prevented by accident or a circumstance beyond the carrier's control according to these Conditions of Loading and Transportation, the contract of carriage shall expire. The shipper shall bear the costs of discharge and the freight for the part of the voyage which has been made already (distance freight).
5. The shipper and consignee shall be jointly and severally liable to the carrier for all additional day freight, freight surcharges, loss of use and other additional expenses.

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#### § 14 Carrier's Right of Retention and Lien

1. The carrier shall have a right of retention and lien on the goods for all receivables arising from the contract of carriage and for undisputed receivables from other carriage, forwarding or storage contracts concluded with the shipper. The right of retention and lien shall also extend to the accompanying documents,
2. The right of retention and lien shall exist for as long as the carrier has the goods in his possession, in particular for as long as he has them at his disposal by means of bill of lading or warehouse bond.
3. When exercising his right of retention or lien, the carrier shall be entitled to discharge goods on behalf of and at the risk and expense of the shipper and consignee and to store them at a suitable place or to demand security for his claims.
4. Third parties laying claim to the goods by means of the bill of lading or consignment note shall acknowledge the carrier's right of retention or lien on receipt of the bill of lading or consignment note or on these papers being placed at their disposal only on the grounds of the receivables associated with the contract of carriage.
5. Sale of the goods on account of the right of retention or lien is admissible after one week.
6. The carrier may in any case request payment of sales commission at the standard local rate on the gross earnings from any sale made on account of the right of retention or lien.

#### § 15 Carrier Liability as per CMNI

1. Those transports to be effected by the carrier which are subject to CMNI shall be governed by the CMNI liability regulations.
2. The carrier or actual carrier shall not be liable for damage caused by
  - a) an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the carrier complied with the obligations set out for the crew in Article 3 par. 3, CMNI unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result;
  - b) fire or an explosion on board the vessel, if it cannot be proved that the fire or explosion resulted from a fault of the carrier or the actual carrier or their servants or agents or a defect of the vessel;
  - c) defects existing prior to the voyage of his vessel or of a rented or chartered vessel if he can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.

## § 16 Carrier Liability Outside the Scope of CMNI

1. If the CMNI is not applicable, the liability regulations of the national legislation applicable as per § 27 of these conditions shall apply.
  2. The carrier shall not be held liable
    - a) insofar as the goods to be transported have not yet been loaded/stowed on board the vessel;
    - b) for damages of any kind arising during the loading or discharge of the goods;
    - c) for damage of any kind arising after discharge;
    - d) for any consequential damages, including damages due to delay, regardless of the cause thereof.
  3. Moreover, the carrier shall not be liable for damage caused by any of the following circumstances or hazards:
    - a) actions or omissions on the part of the shipper, consignee or the person entitled to dispose of the goods
    - b) handling, loading, stowage or discharge of the goods;
    - c) carriage of the goods on deck or in open vessels, where such carriage has been agreed with the shipper or is in accordance with the practice of the particular trade, or if it is required by the regulations in force;
    - d) nature of the goods which exposes them to total or partial loss or damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage (in volume or weight), or the action of vermin or rodents;
    - e) the effects of heat, cold or melting, ignition or corrosion of the goods;
    - f) fire or explosion;
    - g) lack of or defective condition of packaging in the case of goods which, by their nature, are exposed to loss or damage when not packed or when the packaging is defective;
    - h) insufficiency or inadequacy of marks identifying the goods;
    - i) rescue or salvage operations or attempted rescue or salvage operations on inland waterways;
    - j) carriage of live animals, unless the carrier has not taken the measures or observed the instructions agreed upon in the contract of carriage.
    - k) errors in navigating or handling the vessel, including errors caused by the arrangement of group of tugs or pushers;
    - l) behaviour of any mandatory pilot;
    - m) delays or tardiness.
- Should any damage arise which depending on the circumstances of the case could arise from any of the circumstances or hazards described above, it shall be assumed that the damage arose from this circumstance or hazard and that a careful carrier would not have been able to prevent the damage.
4. Insofar as the applicable national law contains exclusions of liability additional to those contained in paragraphs 2 and 3, the carrier may also draw on these additional exclusions of liability.

## § 17 Scope of Liability

1. Insofar as the CMNI is not applicable, the compensation to be paid by the carrier in the event of loss or damage to the goods, damage caused by delay or pecuniary loss shall be determined by the international or national legislation applicable to the contract of carriage, insofar as no alternative arrangements have been made as part of a legally admissible right of disposition.
2. Insofar as national law does not stipulate lower limitations of liability, **the compensation to be paid by the carrier for loss or damage to goods shall be limited to two accounting units per kg.** The accounting unit per kg is the special drawing right determined by the International Monetary Fund. Should the delivery deadline be exceeded, the carrier's liability shall be limited to triple the freight.
3. Subject to alternative trading practice, no liability is accepted for deficits, short weight or short dimensions not more than 2% below the total weight or dimensions of the batch concerned.
4. If bulk products of the same type are stowed together in the same vessel or hold, the individual load owners, shippers and consignees shall divide any short weight, damage, average, excess weight or excess dimensions among themselves proportionally.
5. The conditions governing the exclusion, limitation and definition of the carrier's liability shall apply to all contractual and extra-contractual claims regardless of the legal grounds.
6. All exclusions and limitations of liability in the carrier's favour stipulated in these conditions and in the applicable statutes shall likewise apply to his employees and all other assistants.

Should the carrier's liability be excluded or limited on the basis of these conditions, the shipper shall also undertake to exempt him from third-party claims.

## § 18 Shipper's Liability for Carrier Damage

The shipper is obliged to compensate the carrier for damage caused by the material provided by the shipper or through the transport of his consignment. The shipper shall not be obliged to pay compensation if the carrier is culpable for the damage. Should both the shipper and the carrier be culpable for the damage, both parties shall bear the liability proportionately.

## § 19 Insurance

The carrier is not obliged to insure the goods against specific hazards and risks unless he has been expressly requested to do so in writing.

## § 20 General Average

The currently valid version of IVR's general average regulations (published under [www.ivr.nl](http://www.ivr.nl)) shall apply in cases of general average. The text is available on request.

The parties interested in cargo shall be obliged to pay contributions and/or advancements immediately, notwithstanding and irrespective of any right to reclamation of the payable amounts which may be stipulated in the contract of carriage. They shall be jointly and severally liable to the carrier for all general average contributions charged due to any average adjustment on their goods. The carrier is entitled to request the reversal of these amounts along with the submission of a quotation. Any right of retention on general average contributions is herewith excluded.

Any right to reclamation of general average contributions already paid is excluded in cases where CMNI is applicable and the general average was caused by nautical culpability as per Article 25 par. 2a CMNI, by fire or explosion or by a defect in the vessel which was not recognisable when the voyage commenced. The right to reclaim general average contributions in the cases mentioned above shall not be waived where specific responsibility exists in cases of nautical culpability, or if the carrier is culpable in cases of fire, explosion or defects in the vessel when the voyage commences.

### **§ 21 Offsetting / Prohibition of Assignment**

The shipper and consignee are not entitled to offset receivables due to the carrier against receivables disputed by the carrier, irrespective of the legal grounds, and/or to assert any right to retention of receivables due to the carrier.

The shipper and consignee are not entitled to cede claims associated with the contract of carriage due to the carrier, his auxiliaries or vicarious agents as per § 2 par. 2 to third parties without the carrier's written agreement – with the exception of transport insurers.

### **§ 22 Temporal Limitation**

All claims against the carrier or sub-carrier, their auxiliaries and vicarious agents shall be time-barred one year after the day on which the goods were delivered or should have been delivered to the consignee. The day on which the limitation period commences is not included in the period.

### **§ 23 Liability Regulations in the Carrier's Favour**

The carrier may claim all exclusions or limitations of liability, shortened deadlines or waivers of recourse agreed between the shipper and consignee for himself.

### **§ 24 Legal Venue**

The legal venue for all disputes arising from or in connection with the contract of carriage is the carrier's headquarter. This legal venue is exclusive for all lawsuits filed against the carrier. The carrier is entitled to resort to another court which is declared by statutory legislation to be competent.

### **§ 25 Severability Clause**

Should any of the conditions above be ineffective, this shall exert no influence on the validity of the other conditions.

In such cases, the parties shall undertake to replace the ineffective condition with an effective condition-serving the commercial purpose of the invalid condition as closely as possible.

### **§ 26 Exceptions to the Application of Specific National Legislation**

Should the contract of carriage be subject to German legislation, the conditions given below shall not apply or shall only apply subject to the reservations mentioned:

§ 12 par. 1 is subject to the proviso that the constellations described are not the carrier's responsibility. Pursuant to par. 2, the contract may be rescinded under the conditions mentioned in this paragraph.

The carrier's rights described in § 13 par. 2 are subject to the proviso that he is not responsible for the events described in paragraph 1.

The limitations of liability as set out in § 13 clause. 3 letter k do not apply.

### **§ 27 Applicable Law**

The contract is subject to the law chosen by the parties. If the parties have not stipulated any contractual legislation, the law of the country in which the carrier is domiciled shall apply, including the locally relevant and applicable international agreements, in particular the CMNI.

The conditions given above were drawn up in collaboration with the committee on inland shipping legislation of the VBW (European Inland Shipping and Waterways Association) and the Legal Committee of IVR.

## Special Conditions

§ 1 If the statutory/agreed discharging time is exceeded by more than 100% and if in spite of request, the eligible person does not issue any instruction or issues the instruction to continue to wait for the discharging, then the carrier shall receive the 2.5-fold demurrage compensation for this period of time until the complete unloading of the ship, according to BinSchLV. The assertion of other damages and other expenditures within the meaning of § 418, section 1 of HGB (German Commercial Code) shall not be affected by this.

§ 2 In order to clarify § 4 of BinSchLV, it is deemed agreed that whole days after expiration of the loading or discharging time have to be estimated at 24 hours. This is likewise without influence on the calculation of the loading and discharging time and the regulation according to § 4, section 2 of BinSchLV.

§ 3 Within the meaning of § 24 of IVTB, the court competent for Duisburg is chosen as venue.



HTAG

Häfen und Transport AG

## 2. Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI\*) subject to ICLT (german IVTB)

The States Parties to this Convention, Considering the recommendations of the Final Act of the Conference on Security and Cooperation in Europe of 1 August 1975 for the harmonization of legal regimes with a view to the development of transport by member States of the Central Commission for the Navigation of the Rhine and the Danube Commission in collaboration with the United Nations Economic Commission for Europe, Having recognized the necessity and desirability of establishing by common agreement certain uniform rules concerning contracts for the carriage of goods by inland waterway, Have decided to conclude a Convention for this purpose and have thereto agreed as follows:

### CHAPTER I GENERAL PROVISIONS

#### Article 1 Definitions

In this Convention,

1. "Contract of carriage" means any contract, of any kind, whereby a carrier undertakes against payment of freight to carry goods by inland waterway;
2. "Carrier" means any person by whom or in whose name a contract of carriage has been concluded with a shipper;
3. "Actual carrier" means any person, other than a servant or an agent of the carrier, to whom the performance of the carriage or of part of such carriage has been entrusted by the carrier;
4. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage has been concluded with a carrier;
5. "Consignee" means the person entitled to take delivery of the goods;
6. "Transport document" means a document which evidences a contract of carriage and the taking over or loading of goods by a carrier, made out in the form of a bill of lading or consignment note or of any other document used in trade;
7. "Goods" does not include either towed or pushed vessels or the luggage or vehicles of passengers; where the goods are consolidated in a container, on a pallet or in or on a similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper;
8. "In writing" includes, unless otherwise agreed between the parties concerned, the transmission of information by electronic, optical or similar means of communication, including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI), provided the information is accessible so as to be usable for subsequent reference.
9. The law of a State applicable in accordance with this Convention means the rules of law in force in that State other than its rules of private international law.

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\*) Adopted by the Diplomatic Conference Organized Jointly by CCNR, the Danube Commission and UN/ECE, held in Budapest from 25 September to 3 October 2000.



**Article 2**  
**Scope of application**

1. This Convention is applicable to any contract of carriage according to which the port of loading or the place of taking over of the goods and the port of discharge or the place of delivery of the goods are located in two different States of which at least one is a State Party to this Convention. If the contract stipulates a choice of several ports of discharge or places of delivery, the port of discharge or the place of delivery to which the goods have actually been delivered shall determine the choice.
2. This Convention is applicable if the purpose of the contract of carriage is the carriage of goods, without transshipment, both on inland waterways and in waters to which maritime regulations apply, under the conditions set out in paragraph 1, unless:
  - a) a maritime bill of lading has been issued in accordance with the maritime law applicable, or
  - b) the distance to be travelled in waters to which maritime regulations apply is the greater.
3. This Convention is applicable regardless of the nationality, place of registration or home port of the vessel or whether the vessel is a maritime or inland navigation vessel and regardless of the nationality, domicile, registered office or place of residence of the carrier, the shipper or the consignee.

**CHAPTER II**  
**RIGHTS AND OBLIGATIONS OF THE**  
**CONTRACTING PARTIES**

**Article 3**  
**Taking over, carriage and delivery of the goods**

1. The carrier shall carry the goods to the place of delivery within the specified time and deliver them to the consignee in the condition in which they were handed over to him.
2. Unless otherwise agreed, the taking over and delivery of the goods shall take place on

board the vessel.

3. The carrier shall decide which vessel is to be used. He shall be bound, before and at the beginning of the voyage, to exercise due diligence to ensure that, taking into account the goods to be carried, the vessel is in a state to receive the cargo, is seaworthy and is manned and equipped as prescribed by the regulations in force and is furnished with the necessary national and international authorizations for the carriage of the goods in question.
4. Where it has been agreed that the carriage shall be performed by a specific vessel or type of vessel, the carrier shall be entitled to load or transship the goods in whole or in part on to another vessel or on to another type of vessel without the consent of the shipper, only:
  - a) in circumstances, such as low water or collision or any other obstacle to navigation, which were unforeseeable at the time when the contract of carriage was concluded and in which the loading or transshipment of the goods is necessary in order to perform the contract of carriage, and when the carrier is unable to obtain within an appropriate period of time instructions from the shipper, or
  - b) when it is in accordance with the practice prevailing in the port where the vessel is located.
5. Except as provided by the obligations incumbent on the shipper, the carrier shall ensure that the loading, stowage and securing of the goods do not affect the safety of the vessel.
6. The carrier is entitled to carry the goods on deck or in open vessels only if it has been agreed with the shipper or if it is in accordance with the usage of the particular trade or is required by the statutory regulations.

#### **Article 4** **Actual carrier**

1. A contract complying with the definition set out in article 1, paragraph 1, concluded between a carrier and an actual carrier constitutes a contract of carriage within the meaning of this Convention. For the purpose of such contract, all the provisions of this Convention concerning the shipper shall apply to the carrier and those concerning the carrier to the actual carrier.
2. Where the carrier has entrusted the performance of the carriage or part thereof to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him.
3. The carrier shall in all cases inform the shipper when he entrusts the performance of the carriage or part thereof to an actual carrier.
4. Any agreement with the shipper or the consignee extending the carrier's responsibility according to the provisions of this Convention affects the actual carrier only to the extent that he has agreed to it expressly and in writing. The actual carrier may avail himself of all the objections invocable by the carrier under the contract of carriage.
5. If and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several. Nothing in this article shall prejudice any right of recourse as between them.

#### **Article 5** **Delivery time**

The carrier shall deliver the goods within the time limit agreed in the contract of carriage or, if no time limit has been agreed, within the time limit which could reasonably be required of a diligent carrier, taking into account the circumstances of the voyage and unhindered navigation.

#### **Article 6** **Obligations of the shipper**

1. The shipper shall be required to pay the amounts due under the contract of carriage.
2. The shipper shall furnish the carrier in writing, before the goods are handed over, with the following particulars concerning the goods to be carried:
  - a) dimensions, number or weight and stowage factor of the goods;
  - b) marks necessary for identification of the goods;
  - c) nature, characteristics and properties of the goods;
  - d) instructions concerning the Customs or administrative regulations applying to the goods;
  - e) other necessary particulars to be entered in the transport document.

The shipper shall also hand over to the carrier, when the goods are handed over, all the required accompanying documents.

3. If the nature of the goods so requires, the shipper shall, bearing in mind the agreed transport operation, pack the goods in such a way as to prevent their loss or damage between the time they are taken over by the carrier and their delivery and so as to ensure that they do not cause damage to the vessel or to other goods. According to what has been agreed with a view to carriage, the shipper shall also make provision for appropriate marking in conformity with the applicable international or national regulations or, in the absence of such regulations, in accordance with rules and practices generally recognized in inland navigation.
4. Subject to the obligations to be borne by the carrier, the shipper shall load and stow the goods and secure them in accordance with inland navigation practice unless the contract of carriage specifies otherwise.

## Article 7

### Dangerous and polluting goods

1. If dangerous or polluting goods are to be carried, the shipper shall, before handing over the goods, and in addition to the particulars referred to in article 6, paragraph 2, inform the carrier clearly and in writing of the danger and the risks of pollution inherent in the goods and of the precautions to be taken.
2. Where the carriage of the dangerous or polluting goods requires an authorization, the shipper shall hand over the necessary documents at the latest when handing over the goods.
3. Where the continuation of the carriage, the discharge or the delivery of the dangerous or polluting goods are rendered impossible owing to the absence of an administrative authorization, the shipper shall bear the costs for the return of the goods to the port of loading or a nearer place, where they may be discharged and delivered or disposed of.
4. In the event of immediate danger to life, property or the environment, the carrier shall be entitled to unload the goods, to render them innocuous or, provided that such a measure is not disproportionate to the danger they represent, to destroy them, even if, before they were taken over, he was informed or was apprised by other means of the nature of the danger or the risks of pollution inherent in the goods.
5. Where the carrier is entitled to take the measures referred to in paragraphs 3 or 4 above, he may claim compensation for damages.

## Article 8

### Liability of the shipper

1. The shipper shall, even if no fault can be attributed to him, be liable for all the damages and costs incurred by the carrier or the actual carrier by reason of the fact that:
  - a) the particulars or information referred to in articles 6, paragraph 2, or 7, paragraph 1, are missing, inaccurate or incomplete;

curate or incomplete;

- b) the dangerous or polluting goods are not marked or labelled in accordance with the applicable international or national regulations or, if no such regulations exist, in accordance with rules and practices generally recognized in inland navigation;
- c) the necessary accompanying documents are missing, inaccurate or incomplete.

The carrier may not avail himself of the liability of the shipper if it is proven that the fault is attributable to the carrier himself, his servants or agents. The same applies to the actual carrier.

2. The shipper shall be responsible for the acts and omissions of persons of whose services he makes use to perform the tasks and meet the obligations referred to in articles 6 and 7, when such persons are acting within the scope of their employment, as if such acts or omissions were his own.

## Article 9

### Termination of the contract of carriage by the carrier

1. The carrier may terminate the contract of carriage if the shipper has failed to perform the obligations set out in article 6, paragraph 2, or article 7, paragraphs 1 and 2.
2. If the carrier makes use of his right of termination, he may unload the goods at the shipper's expense and claim optionally the payment of any of the following amounts:

- a) one third of the agreed freight; or
- b) in addition to any demurrage charge, a compensation equal to the amount of costs incurred and the loss caused, as well as, should the voyage have already begun, a proportional freight for the part of the voyage already performed.

## Article 10

### Delivery of the goods

1. Notwithstanding the obligation of the shipper under article 6, paragraph 1, the consignee who, following the arrival of the goods at the place of delivery, requests their delivery, shall, in accordance with the contract of carriage, be liable for the freight and other charges due on the goods, as well as for his contribution to any general average. In the absence of a transport document, or if such document has not been presented, the consignee shall be liable for the freight agreed with the shipper if it corresponds to market practice.
2. The placing of the goods at the disposal of the consignee in accordance with the contract of carriage or with the usage of the particular trade or with the statutory regulations applicable at the port of discharge shall be considered a delivery. The imposed handing over of the goods to an authority or a third party shall also be considered a delivery.

## CHAPTER III TRANSPORT DOCUMENTS

## Article 11

### Nature and content

1. For each carriage of goods governed by this Convention the carrier shall issue a transport document; he shall issue a bill of lading only if the shipper so requests and if it has been so agreed before the goods were loaded or before they were taken over for carriage. The lack of a transport document or the fact that it is incomplete shall not affect the validity of the contract of carriage.
2. The original of the transport document must be signed by the carrier, the master of the vessel or a person authorized by the carrier. The carrier may require the shipper to countersign the original or a copy. The signature may be in handwriting, printed in facsimile, perforated, stamped, in symbols or made by any other mechanical or electronic means, if this is not prohibited by the law of the State where the transport document was issued.

3. The transport document shall be prima facie evidence, save proof to the contrary, of the conclusion and content of the contract of carriage and of the taking over of the goods by the carrier. In particular, it shall provide a basis for the presumption that the goods have been taken over for carriage as they are described in the transport document.
4. When the transport document is a bill of lading, it alone shall determine the relations between the carrier and the consignee. The conditions of the contract of carriage shall continue to determine the relations between carrier and shipper.
5. The transport document, in addition to its denomination, contains the following particulars:
  - a) the name, domicile, registered office or place of residence of the carrier and of the shipper;
  - b) the consignee of the goods;
  - c) the name or number of the vessel, where the goods have been taken on board, or particulars in the transport document stating that the goods have been taken over by the carrier but not yet loaded on the vessel;
  - d) the port of loading or the place where the goods were taken over and the port of discharge or the place of delivery;
  - e) the usual name of the type of goods and their method of packaging and, for dangerous or polluting goods, their name according to the requirements in force or, if there is no such name, their general name;
  - f) the dimensions, number or weight as well as the identification marks of the goods taken on board or taken over for the purpose of carriage;
  - g) the statement, if applicable, that the goods shall or may be carried on deck or on board open vessels;

- h) the agreed provisions concerning freight;
- i) in the case of a consignment note, the specification as to whether it is an original or a copy; in the case of a bill of lading, the number of originals;
- j) the place and date of issue.

The legal character of a transport document in the sense of article 1, paragraph 6, of this Convention is not affected by the absence of one or more of the particulars referred to in this paragraph.

## **Article 12**

### **Reservations in transport documents**

1. The carrier is entitled to include in the transport document reservations concerning:
  - a) The dimensions, number or weight of the goods, if he has grounds to suspect that the particulars supplied by the shipper are inaccurate or if he had no reasonable means of checking such particulars, especially because the goods have not been counted, measured or weighed in his presence or because, without explicit agreement, the dimensions or weights have been determined by draught measurement;
  - b) Identification marks which are not clearly and durably affixed on the goods themselves or, if the goods are packed, on the receptacles or packagings;
  - c) The apparent condition of the goods.
2. If the carrier fails to note the apparent condition of the goods or does not enter reservations in that respect, he is deemed to have noted in the transport document that the goods were in apparent good condition.
3. If, in accordance with the particulars set out in the transport document, the goods are placed in a container or in the holds of the vessel and sealed by other persons than the carrier, his servants or his agents, and if

neither the container nor the seals are damaged or broken when they reach the port of discharge or the place of delivery, it shall be presumed that the loss or damage to the goods did not occur during carriage.

## **Article 13**

### **Bill of lading**

1. The originals of a bill of lading shall be documents of title issued in the name of the consignee, to order or to bearer.
2. At the place of destination, the goods shall be delivered only in exchange for the original of the bill of lading submitted initially; thereafter, further delivery cannot be claimed against other originals.
3. When the goods are taken over by the carrier, handing over the bill of lading to a person entitled thereby to receive the goods has the same effects as the handing over of the goods as far as the acquisition of rights to the goods is concerned.
4. If the bill of lading has been transferred to a third party, including the consignee, who has acted in good faith in reliance on the description of the goods therein, proof to the contrary of the presumption set out in article 11, paragraph 3, and article 12, paragraph 2, shall not be admissible.

## **CHAPTER IV RIGHT TO DISPOSE OF THE GOODS**

### **Article 14**

#### **Holder of the right of disposal**

1. The shipper shall be authorized to dispose of the goods; in particular, he may require the carrier to discontinue the carriage of the goods, to change the place of delivery or to deliver the goods to a consignee other than the consignee indicated in the transport document.
2. The shipper's right of disposal shall cease to exist once the consignee, following the arrival of the goods at the scheduled place of delivery, has requested delivery of the goods and,
  - a) where carriage is under a consignment note, once the original has been handed over to the consignee;
  - b) where carriage is under a bill of lading, once the shipper has relinquished all the originals in his possession by handing them over to another person.
3. By an appropriate entry in the consignment note, the shipper may, when the consignment note is issued, waive his right of disposal to the consignee.

### **Article 15**

#### **Conditions for the exercise of the right of disposal**

1. The shipper or, in the case of article 14, paragraphs 2 and 3, the consignee, must, if he wishes to exercise his right of disposal:
  - a) where a bill of lading is used, submit all originals prior to the arrival of the goods at the scheduled place of delivery;
  - b) where a transport document other than a bill of lading is used, submit this document, which shall include the new instructions given to the carrier;

- c) compensate the carrier for all costs and damage incurred in carrying out instructions;
- d) pay all the agreed freight in the event of the discharge of the goods before arrival at the scheduled place of delivery, unless the contract of carriage provides otherwise.

## **CHAPTER V LIABILITY OF THE CARRIER**

### **Article 16**

#### **Liability for loss**

1. The carrier shall be liable for loss resulting from loss or damage to the goods caused between the time when he took them over for carriage and the time of their delivery, or resulting from delay in delivery, unless he can show that the loss was due to circumstances which a diligent carrier could not have prevented and the consequences of which he could not have averted.
2. The carrier's liability for loss resulting from loss or damage to the goods caused during the time before the goods are loaded on the vessel or the time after they have been discharged from the vessel shall be governed by the law of the State applicable to the contract of carriage.

### **Article 17**

#### **Servants and agents**

1. The carrier shall be responsible for the acts and omissions of his servants and agents of whose services he makes use during the performance of the contract of carriage, when such persons are acting within the scope of their employment, as if such acts or omissions were his own.
2. When the carriage is performed by an actual carrier in accordance with article 4, the carrier is also responsible for the acts and omissions of the actual carrier and of the servants and agents of the actual carrier acting within the scope of their employment.
3. If an action is brought against the servants and agents of the carrier or the actual carrier,

such persons, if they prove that they acted within the scope of their employment, are entitled to avail themselves of the exonerations and limits of liability which the carrier or the actual carrier is entitled to invoke under this Convention.

4. A pilot designated by an authority and who cannot be freely selected shall not be considered to be a servant or agent within the meaning of paragraph 1.

### **Article 18 Special exonerations from liability**

1. The carrier and the actual carrier shall be exonerated from their liability when the loss, damage or delay are the result of one of the circumstances or risks listed below:
  - a) acts or omissions of the shipper, the consignee or the person entitled to dispose of the goods;
  - b) handling, loading, stowage or discharge of the goods by the shipper, the consignee or third parties acting on behalf of the shipper or the consignee;
  - c) carriage of the goods on deck or in open vessels, where such carriage has been agreed with the shipper or is in accordance with the practice of the particular trade, or if it is required by the regulations in force;
  - d) nature of the goods which exposes them to total or partial loss or damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage (in volume or weight), or the action of vermin or rodents;
  - e) lack of or defective condition of packaging in the case of goods which, by their nature, are exposed to loss or damage when not packed or when the packaging is defective;
  - f) insufficiency or inadequacy of marks identifying the goods;

- g) rescue or salvage operations or attempted rescue or salvage operations on inland waterways;
- h) carriage of live animals, unless the carrier has not taken the measures or observed the instructions agreed upon in the contract of carriage.

2. When, in the circumstances of the case, damage could be attributed to one or more of the circumstances or risks listed in paragraph 1 of the present article, it is presumed to have been caused by such a circumstance or risk. This presumption does not apply if the injured party proves that the loss suffered does not result, or does not result exclusively, from one of the circumstances or risks listed in paragraph 1 of this article.

### **Article 19 Calculation of compensation**

1. Where the carrier is liable for total loss of goods, the compensation payable by him shall be equal to the value of the goods at the place and on the day of delivery according to the contract of carriage. Delivery to a person other than the person entitled is deemed to be a loss.
2. In the event of partial loss or damage to goods, the carrier shall be liable only to the extent of the loss in value.
3. The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of goods of the same kind and quality at the place of delivery.
4. In respect of goods which by reason of their nature are exposed to wastage during carriage, the carrier shall be held liable, whatever the length of the carriage, only for that part of the wastage which exceeds normal wastage (in volume or weight) as determined by the parties to the contract of carriage or, if not, by the regulations or established practice at the place of destination.

5. The provisions of this article shall not affect the carrier's right concerning the freight as provided by the contract of carriage or, in the absence of special agreements in this regard, by the applicable national regulations or practices.

**Article 20**  
**Maximum limits of liability**

1. Subject to article 21 and paragraph 4 of the present article, and regardless of the action brought against him, the carrier shall under no circumstances be liable for amounts exceeding 666.67 units of account per package or other shipping unit, or 2 units of account per kilogram of weight, specified in the transport document, of the goods lost or damaged, whichever is the higher. If the package or other shipping unit is a container and if there is no mention in the transport document of any package or shipping unit consolidated in the container, the amount of 666.67 units of account shall be replaced by the amount of 1,500 units of account for the container without the goods it contains and, in addition, the amount of 25,000 units of account for the goods which are in the container.
2. Where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the transport document as packed in or on such article of transport are deemed packages or shipping units. Except as aforesaid, the goods in or on such article of transport are deemed one shipping unit. In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.
3. In the event of loss due to delay in delivery, the carrier's liability shall not exceed the amount of the freight. However, the aggregate liability under paragraph 1 and the first sentence of the present paragraph shall not exceed the limitation which would be established under paragraph 1 for total loss of the goods with respect to which such liability was incurred.

4. The maximum limits of liability mentioned in paragraph 1 do not apply:
  - a) where the nature and higher value of the goods or articles of transport have been expressly specified in the transport document and the carrier has not refuted those specifications, or
  - b) where the parties have expressly agreed to higher maximum limits of liability.
5. The aggregate of the amounts of compensation recoverable from the carrier, the actual carrier and their servants and agents for the same loss shall not exceed overall the limits of liability provided for in this article.

**Article 21**  
**Loss of right to limit liability**

1. The carrier or the actual carrier is not entitled to the exonerations and limits of liability provided for in this Convention or in the contract of carriage if it is proved that he himself caused the damage by an act or omission, either with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result.
2. Similarly, the servants and agents acting on behalf of the carrier or the actual carrier are not entitled to the exonerations and limits of liability provided for in this Convention or in the contract of carriage, if it is proved that they caused the damage in the manner described in paragraph 1.

**Article 22**  
**Application of the exonerations and limits of liability**

The exonerations and limits of liability provided for in this Convention or in the contract of carriage apply in any action in respect of loss or damage to or delay in delivery of the goods covered by the contract of carriage, whether the action is founded in contract, in tort or on some other legal ground.



## CHAPTER VI CLAIMS PERIOD

### Article 23 Notice of damage

1. The acceptance without reservation of the goods by the consignee is prima facie evidence of the delivery by the carrier of the goods in the same condition and quantity as when they were handed over to him for carriage.
2. The carrier and the consignee may require an inspection of the condition and quantity of the goods on delivery in the presence of the two parties.
3. Where the loss or damage to the goods is apparent, any reservation on the part of the consignee must be formulated in writing specifying the general nature of the damage, no later than the time of delivery, unless the consignee and the carrier have jointly checked the condition of the goods.
4. Where the loss or damage to the goods is not apparent, any reservation on the part of the consignee must be notified in writing specifying the general nature of the damage, no later than 7 consecutive days from the time of delivery; in such case, the injured party shall show that the damage was caused while the goods were in the charge of the carrier.
5. No compensation shall be payable for damage resulting from delay in delivery except when the consignee can prove that he gave notice of the delay to the carrier within 21 consecutive days following delivery of the goods and that this notice reached the carrier.

### Article 24 Limitation of actions

1. All actions arising out of a contract governed by this Convention shall be timebarred after one year commencing from the day when the goods were, or should have been, delivered to the consignee. The day on which the limitation period commences is not included in the period.

2. The person against whom an action is instituted may at any time during the limitation period extend that period by a declaration in writing to the injured party. This period may be further extended by one or more further declarations.
3. The suspension and interruption of the limitation period are governed by the law of the State applicable to the contract of carriage. The filing of a claim in proceedings to apportion limited liability for all claims arising from an event having led to damage shall interrupt the limitation.
4. Any action for indemnity by a person held liable under this Convention may be instituted even after the expiry of the limitation period provided for in paragraphs 1 and 2 of the present article, if proceedings are instituted within a period of 90 days commencing from the day on which the person instituting the action has settled the claim or has been served with process, or if proceedings are instituted within a longer period as provided by the law of the State where proceedings are instituted.
5. A right of action which has become barred by lapse of time may not be exercised by way of counter-claim or set-off.

## CHAPTER VII LIMITS OF CONTRACTUAL FREEDOM

### Article 25 Nullity of contractual stipulations

1. Any contractual stipulation intended to exclude or to limit or, subject to the provisions of article 20, paragraph 4, to increase the liability, within the meaning of this Convention, of the carrier, the actual carrier or their servants or agents, to shift the burden of proof or to reduce the periods for claims or limitations referred to in articles 23 and 24 shall be null and void. Any stipulation assigning a benefit of insurance of the goods in favour of the carrier is also null and void.
2. Notwithstanding the provisions of paragraph 1 of the present article and without prejudice to article 21, contractual stipulations shall be authorized specifying that the carrier or the actual carrier is not liable for losses arising from:

- a) an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the carrier complied with the obligations set out for the crew in article 3, paragraph 3, unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result;
- b) fire or an explosion on board the vessel, where it is not possible to prove that the fire or explosion resulted from a fault of the carrier or the actual carrier or their servants or agents or a defect of the vessel;
- c) the defects existing prior to the voyage of his vessel or of a rented or chartered vessel if he can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.

## CHAPTER VIII SUPPLEMENTARY PROVISIONS

### Article 26 General average

Nothing in this Convention shall prevent the application of provisions in the contract of carriage or national law regarding the calculation of the amount of damages and contributions payable in the event of general average.

### Article 27 Other applicable provisions and nuclear damage

1. This Convention does not modify the rights or duties of the carrier provided for in international conventions or national law relating to the limitation of liability of owners of inland navigation or maritime vessels.
2. The carrier shall be relieved of liability under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation or other authorized person is liable for such damage pursuant to the laws

and regulations of a State governing liability in the field of nuclear energy.

### Article 28 Unit of account

The unit of account referred to in article 20 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 20 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value, in terms of the Special Drawing Rights, of a national currency of a Contracting State is to be calculated in accordance with the method of evaluation applied by the International Monetary Fund in effect at the date in question for its operations and transactions.

### Article 29 Additional national provisions

1. In cases not provided for in this Convention, the contract of carriage is governed by the law of the State agreed by the Parties.
2. In the absence of such agreement, the law of the State with which the contract of carriage is most closely connected is to be applied.
3. It is to be presumed that the contract of carriage is most closely connected with the State in which the principal place of business of the carrier is located at the time when the contract was concluded, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State. Where the carrier has no place of business on land and concludes the contract of carriage on board his vessel, it is to be presumed that the contract is most closely connected with the State in which the vessel is registered or whose flag it flies, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State.
4. The law of the State where the goods are located governs the real guarantee granted to the carrier for claims set out in article 10, paragraph 1.

**CHAPTER IX  
DECLARATIONS CONCERNING THE  
SCOPE OF APPLICATION**

**Article 30**

**Carriage by way of specific inland waterways**

1. Each State may, at the time of signing this Convention or of ratification, acceptance, approval or accession, declare that it will not apply this Convention to contracts relating to carriage by way of specific inland waterways situated on its territory and to which international rules of navigation do not apply and which do not constitute a link between such international waterways. However, such a declaration may not mention all main waterways of that State.
2. Where the purpose of the contract of carriage is the carriage of goods without transshipment both on waterways not mentioned in the declaration referred to in paragraph 1 of this article and on waterways mentioned in this declaration, this Convention equally applies to this contract, unless the distance to be travelled on the latter waterways is the longer.
3. When a declaration has been made according to paragraph 1, any other Contracting State may declare that it will not apply either the provisions of this Convention to the contracts referred to in this declaration. The declaration made in accordance with the present paragraph shall take effect at the time of entry into force of the Convention for the State which has made a declaration according to paragraph 1, but at the earliest at the time of entry into force of the Convention for the State which has made a declaration according to the present paragraph.
4. The declarations referred to in paragraphs 1 and 3 of this article may be withdrawn in whole or in part, at any time, by notification to the depositary to that effect, indicating the date on which they shall cease to have effect. The withdrawal of these declarations shall not have any effect on contracts already concluded.

**Article 31**

**National transport or transport free of charge**

Each State may, at the time of the signature of this Convention, of its ratification, its approval, its acceptance, its accession thereto or at any time thereafter, declare that it will also apply this Convention:

- a) to contracts of carriage according to which the port of loading or the place of taking over and the port of discharge or the place of delivery are located in its own territory;
- b) by derogation from article 1, paragraph 1, to carriage free of charge.

**Article 32**

**Regional provisions concerning liability**

1. Each State may, at the time of signature of this Convention, or of its ratification, its approval, its acceptance, its accession thereto or at any time thereafter, declare that in respect of the carriage of goods between ports of loading or places where goods are taken over and ports of discharge or places of delivery, of which either both are situated on its own territory or one is situated on its own territory and the other on the territory of a State which has made the same declaration, the carrier shall not be liable for damage caused by an act or omission by the master of the vessel, pilot or any other person in the service of the vessel, pusher or tower during navigation or during the formation of a pushed or towed convoy, provided that the carrier complied with the obligations set out for the crew in article 3, paragraph 3, unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result.
2. The provision concerning liability referred to in paragraph 1 shall enter into force between two Contracting States when this Convention enters into force in the second State which has made the same declaration. If a State has made this declaration following the entry into force of the Convention for that State, the provision concerning liability referred to in paragraph 1 shall enter into force on the first day of the month following a period of three

months as from the notification of the declaration to the depositary. The provision concerning liability shall be applicable only to contracts of carriage signed after its entry into force.

3. A declaration made in accordance with paragraph 1 may be withdrawn at any time by notification to the depositary. In the event of withdrawal, the provisions concerning liability referred to in paragraph 1 shall cease to have effect on the first day of the month following the notification or at a subsequent time indicated in the notification. The withdrawal shall not apply to contracts of carriage signed before the provisions concerning liability have ceased to have effect.

## **CHAPTER X FINAL PROVISIONS**

### **Article 33 Signature, ratification, acceptance, approval, accession**

1. This Convention shall be open for signature by all States for one year at the headquarters of the depositary. The period for signature shall start on the day when the depositary states that all authentic texts of this Convention are available.
2. States may become Parties to this Convention:
  - a) by signature without reservation as to ratification, acceptance or approval;
  - b) by signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval;
  - c) by accession after the deadline set for signature.
3. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

### **Article 34 Entry into force**

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three months as from the date on which five States have signed this Convention without any reservation as to ratification, acceptance or approval or have deposited their instruments of ratification, acceptance, approval or accession with the depositary.
2. For each State which signs this Convention without any reservation as to ratification, acceptance or approval, or deposits the instruments of ratification, acceptance, approval or accession with the depositary after the entry into force of this Convention, the same shall enter into force on the first day of the month following the expiration of a period of three months as from the date of signing without any reservation as to ratification, acceptance or approval, or the deposit of the instruments of ratification, acceptance, approval or accession with the depositary.

### **Article 35 Denunciation**

1. This Convention may be denounced by a State Party on the expiration of a period of one year following the date on which it entered into force for that State.
2. Notification of denunciation shall be deposited with the depositary.
3. The denunciation shall take effect on the first day of the month following the expiration of a period of one year as from the date of deposit of the notification of denunciation or after a longer period referred to in the notification of denunciation.

### **Article 36 Review and amendment**

At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

**Article 37**  
**Revision of the amounts for limitation**  
**of liability and unit of account**

1. Notwithstanding the provisions of article 36, when a revision of the amount specified in article 20, paragraph 1, or the substitution of the unit defined in article 28 by another unit is proposed, the depositary shall, when not less than one fourth of the States Parties to this Convention so request, submit the proposal to all members of the United Nations Economic Commission for Europe, the Central Commission for the Navigation of the Rhine and the Danube Commission and to all Contracting States and shall convene a conference for the sole purpose of altering the amount specified in article 20, paragraph 1, or of substituting the unit defined in article 28 by another unit.
2. The conference shall be convened at the earliest six months after the day on which the proposal was transmitted.
3. All Contracting States to this Convention are entitled to participate in the conference, whether or not they are members of the organizations referred to in paragraph 1.
4. The amendments shall be adopted by a majority of two thirds of the Contracting States to the Convention represented at the conference and taking part in the vote, provided that not less than one half of the Contracting States to this Convention are represented when the vote is taken.
5. During the consultation concerning the amendment of the amount specified in article 20, paragraph 1, the conference shall take account of the lessons drawn from the events having led to damage and in particular the amount of damage resulting therefrom, changes in monetary values and the effect of the proposed amendment on the cost of insurance.
6.
  - a) The amendment of the amount in accordance with this article may take effect at the earliest five years after the day on which this Convention was opened for signature and at the earliest five years after the day on which an amendment made previously in accordance with this article entered into force.
  - b) An amount may not be so increased as to exceed the amount of the maximum limits of liability specified by this Convention, increased by six per cent per annum, calculated according to the principle of compound interest as from the day on which this Convention was opened for signature.
  - c) An amount may not be so increased as to exceed the triple of the maximum limits of liability specified by this Convention.
7. The depositary shall notify all Contracting States of any amendment adopted in accordance with paragraph 4. The amendment is deemed to have been accepted after a period of eighteen months following the day of notification, unless during such period not less than one fourth of the States which were Contracting States at the time of the decision concerning the amendment have informed the depositary that they will not accept that amendment; in such case, the amendment is rejected and does not enter into force.
8. An amendment which is deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.
9. All Contracting States are bound by the amendment unless they denounce this Convention in accordance with article 35 not later than six months before the amendment enters into force. The denunciation takes effect when the amendment enters into force.

10. When an amendment has been adopted but the scheduled eighteen-month period for acceptance has not elapsed, a State which becomes a Contracting State during that period is bound by the amendment if it enters into force. A State which becomes a Contracting State after that period is bound by an amendment accepted in accordance with paragraph 7. In the cases cited in the present paragraph, a State is bound by an amendment as soon as it enters into force or as soon as this Convention enters into force for that State if this takes place subsequently.

**Article 38  
Depositary**

1. This Convention shall be deposited with the Government of the Republic of Hungary.

2. The depositary shall:

- a) communicate to all States which participated in the Diplomatic Conference for the Adoption of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, for checking, the present Convention in the official language version which was not available at the time of the Conference;
- b) inform all States referred to under subparagraph (a) above of any proposal for the amendment of the text communicated in accordance with subparagraph (a) above;
- c) establish the date on which all official language versions of this Convention have been brought into conformity with each other and are to be considered authentic;
- d) communicate to all States referred to in subparagraph (a) above the date established in accordance with subparagraph (c) above;
- e) communicate to all States which were invited to the Diplomatic Conference for the Adoption of the Budapest Convention on the Contract for the Carriage of Goods by Inland Wa-

terway and to those which have signed this Convention or acceded thereto, certified true copies of this Convention;

- f) inform all States which have signed this Convention or acceded to it:
  - i) of any new signature, notification or declaration made, indicating the date of the signature, notification or declaration;
  - ii) of the date of entry into force of this Convention;
  - iii) of any denunciation of this Convention and of the date on which such denunciation is to take effect;
  - iv) of any amendment adopted in accordance with articles 36 and 37 of this Convention and of the date of entry into force of such amendment;
  - v) of any communication required under a provision of this Convention.

3. After the entry into force of this Convention, the depositary shall transmit to the Secretariat of the United Nations a certified true copy of this Convention for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

DONE AT Budapest on the twenty-second of June 2001 in a single original copy of which the Dutch, English, French, German and Russian texts are equally authentic.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.