

Minimum conditions for forwarding insurance (SpV)

I. General remarks

1. Object of the insurance

1.1. Transportation contracts

Object of the insurance shall be the transportation contracts of the forwarder as receiver of orders for all types of services provided by the forwarder, irrespective of whether they concern forwarding, freight, storage or other activities that customarily form part of the forwarding profession. They are to include also the customary logistical services whenever these are connected with the transport or storage of goods.

1.2. Policy holder

The insurance shall cover the transportation contracts of the forwarder as a juridical person and include both his main and branch establishments. Other establishments may be included in the insurance by special agreement.

2. Twofold function of the insurance

Beneficiaries of the insurance cover shall be

2.1. the forwarder (policy holder), who shall be insured against his liability arising out of transportation contracts (see II. Liability insurance), and

2.2. the party interested in the goods (insured), who shall be insured against material loss or damage, consequential loss or damage caused thereby and pure pecuniary losses (see III. Damage insurance); the insured shall be entitled to dispose of his insurance claims.

II. Forwarder's liability insurance

3. Function and contents of the insurance

3.1. Object of the insurance shall be the liability of the forwarder as receiver of orders under transportation contracts in accordance with the ADSp Conditions, when and to the extent to which these are applicable, otherwise the liability that law associates with transportation contracts.

3.2. The insurance shall embrace the satisfaction of justified claims and defence against unjustified indemnity claims that may be made against the forwarder as receiver of orders under a transportation contract.

3.3. The insurers shall reimburse the forwarder for costs sustained in averting or minimizing any loss or damage otherwise liable for compensation, insofar as such expenditure was appropriate in the prevailing circumstances.

The insurers shall reimburse the forwarder the contribution that he has to make to substantial sea damage (average) on the basis of a claims adjustment opened in accordance with law or the York-Antwerp Rules or the Rhine Rules IVR 1979 insofar as the average (salvage) measures were intended to avert loss or damage that would have had to be borne by the insurers.

3.4. The insurers shall reimburse the forwarder for misrouting costs up to 50% of the value of the goods, but subject to a maximum of € 5,000.– for each shipment.

4. Geographical validity

The forwarder's liability insurance shall cover transportation contracts in all parts of the world. But storage effected by the forwarder on the orders of the customer shall be insured only in the European territories of the countries listed in paragraph 12.1 hereunder.

5. Mandatory insurance / Direct claims

- 5.1. Within the limits of the mandatory insurance requirements that law imposes on the forwarder, the regulations relating to mandatory insurance (Articles 158 c if VVG*) shall be applied either directly or as appropriate (performance obligation of the insurers vis-à-vis damaged parties even when they have no obligations vis-à-vis the forwarder, for example: when he has violated his premium payment or other obligations).
- 5.2. The damaged party shall have the right to claim reimbursement also directly from the insurers (direct claim).

6. Insurance exclusions and/or limitations

Excluded from insurance cover shall be liability claims

- 6.1. deriving from war or warlike events, civil war, riots, strikes or atomic energy;
- 6.2. that are customarily the object of an environmental, product, motor vehicle or general liability insurance;
- 6.3. based on contractual provisions that do not form part of the general practice of the forwarding business, such as contractual penalties, guaranteed delivery deadlines, etc., or agreements that go beyond the attitude of the ADSp Conditions or the attitude of law in relation to transportation contracts, a case in point being value or interest agreements in accordance with Articles 24, 26 CMR;
- 6.4. deriving from damage having a character similar to penalties, e.g. pecuniary penalties, administrative fines, repentance money, etc;
- 6.5. deriving from damage caused directly by the fact that advance payments, reimbursement contributions and similar are not used for their proper purpose, transferred or repaid, though without prejudice to claims for further damage that may thereby be caused;
- 6.6. deriving from situations in which the insurance case was intentionally brought about by the forwarder or one of his representatives; as also liability claims arising out of transportation contracts concerning services contrary to law and liability claims in connection with the carrying out of services contrary to law by the forwarder or one of his representatives;
- 6.7. relating to personal injuries.

7. Obligations

The forwarder shall be obliged

- 7.1. before the insurance case occurs
 - 7.1.1. to equip vehicles of his own establishment that are to be used in cross-border road transport operations with two mutually independent anti-theft devices (door locks shall not be reckoned as such);
 - 7.1.2. to make sure that loaded vehicles, containers, transfer platforms and other receptacles are rendered safe against theft and/or robbery, especially when they are parked at night, weekends, public holidays and rest periods in general;
 - 7.1.3. to carry out the interface checks agreed in the ADSp Conditions in his own establishment and duly document them;
- 7.2. after the insurance case has occurred
 - 7.2.1. to notify the insurer without delay, and in any case within not more than a month, of all cases of loss or damage and liability claims made against him and to submit all the documentation needed to assess the case;
 - 7.2.2. to endeavour to avert and minimize the damage, provide the insurer with all necessary information and comply with any instructions he may be given;
 - 7.2.3. to inform the insurer without delay whenever the courts take any action against him in connection with an insured activity and to take all appropriate defensive steps, especially in opposition to decisions requiring payments;

- 7.2.4. not to accept or satisfy any claim without the consent of the insurer, except when the circumstances are such that he could not fail to accept or satisfy the claims without being obviously unreasonable;
- 7.2.5. upon the request and at the expense of the insurer, to engage in a law suit with the claimants and to authorize the insurer to conduct the case;
- 7.2.6. to immediately report all thefts and robberies, as also all road accidents that could have caused damage to the load, to the competent police station and to inform the insurer without delay; and further, in case of accidents or damage exceeding € 5,000.– or whenever the value of the damage may be doubtful, to report the matter to the nearest competent average adjuster and to follow his instructions;
- 7.2.7. to reserve the right to file claims against whoever has caused the damage, especially sub-contractors and other transport operators employed by him.
- 7.3. Performance relief in case of violation of obligations.

Whenever the forwarder or one of his representatives violate any obligation, the insurer shall be relieved of their obligation to perform the insurance provisions, except when the said violation was neither intentional nor due to gross negligence. In the case of really gross negligence the insurer shall be required to perform his obligations to the extent to which the violation exerted no influence on either the occurrence or the ascertainment of the insurance case or on the magnitude of the obligation of the insurers.

When the obligation is among those that have to be complied with before the insurance case occurs, the insurer shall be relieved of his obligations even in the absence of notice of termination of the insurance contract.

7.4. Additional inventories

The insurer shall be entitled, always in agreement with the forwarder, to request inventories of the forwarder's distribution depots over and above the annual ones.

8. Limitation of liability of insurers

- 8.1. The insurance protection per case of loss or damage shall be limited:
 - 8.1.1. when authorized storage forms part of the order, to € 1.0 million;
 - 8.1.2. in case of other transportation contracts to € 1.0 million or an amount of two special drawing rights within the meaning of Article 431 HGB per kg, whichever of the two is greater.
- 8.2. The insurers shall not be required to pay more than € 7.5 million per loss or damage event. When a single event damages several parties and their joint claims exceed the said limit, each of these claims shall be satisfied in due proportion.

9. Participation in loss or damage

An agreement envisaging the participation of the forwarder in making good damage or loss shall be permissible.

III. Damage insurance of the party interested in the goods

10. Stipulation of the damage insurance

The damage insurance shall be stipulated by the first forwarder who works in accordance with the ADSp Conditions. It shall come into force upon stipulation of the transportation contract.

11. Insured / Party interested in the goods

The insured in this case shall be the customer of the forwarder as the party interested in the goods, as well as any other party who has to bear the risk of the transport or storage or has some other interest – capable of being expressed in money terms – in seeing that the goods survive the risk of the journey or the authorized storage and that the transportation contracts concluded with the forwarder and the other transport operators are duly carried out. Forwarders, warehousemen, reshipping agents, freight handlers and other transport operators shall not as such be considered to be parties interested in the goods.

12. Geographical validity

- 12.1. The damage policy shall cover transportation contracts in which the place at which the goods are collected, the place to which they are delivered and the place of authorized storage all lie within the European territories of the following countries: Andorra, Belgium, Denmark (without Greenland), Germany, Finland, France, Greece, Great Britain (with Northern Ireland, Channel Islands and Gibraltar), Ireland, Italy with San Marino, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Austria, Portugal (without the Azores and Madeira), Sweden, Switzerland, Spain (without the Canary Islands), Vatican City.
- 12.2. Subject to prior agreement, the geographical area of validity as set out above may be enlarged.

13. Insured loss or damage

Insured shall be the following:

- 13.1. damage of goods, i.e. loss of or damage of the goods forming the object of the transportation contract;
- 13.2. consequential damage, i.e. pecuniary loss deriving from loss of or damage to the goods;
- 13.3. pure pecuniary loss, i.e. losses that are not connected with loss of or damage to the goods or other material damage, insofar as the German legal regulations applicable to the transportation contract regard the cause as coming within the responsibility of the forwarder.
- 13.4. loss or damage as in paragraphs 13.1 to 13.3 above shall be insured even when they have been caused either intentionally or by gross negligence of the forwarder or one of his representatives.

14. Cost reimbursement

- 14.1. The insurers shall reimburse the contribution that the insured is required to make to substantial sea damage (average) on the basis of a claims adjustment opened in accordance with law or the York-Antwerp Rules or on the basis of the Rhine Rules IVR 1979, insofar as the average (salvage) measure was intended to avert loss or damage that would have had to be borne by the insurers. When the amount of the contribution exceeds the insured value, the insurer will provide full reimbursement right up to the insured value. This shall not in any way affect the regulations relating to underinsurance, except when the insurable value exceeds an insured amount of € 1.0 million.
- 14.2. The insurer shall reimburse the costs the forwarder and/or the insured have sustained in the endeavour of averting or reducing the damage or loss that would have had to be borne by the insurers, insofar as this may have been reasonable in the prevailing circumstances. In the event of an underinsurance, these costs shall be reimbursed in the ratio that the insured amount bears to the insurable value, except when the insurable value exceeds an insured amount of € 1.0 million.

15. Beginning and end of the damage insurance of the goods

- 15.1. The damage insurance of the goods shall commence as soon as the goods as part of the execution of the transportation contract are removed from the place in which they were previously preserved. The insurance shall terminate as soon as the goods as part of the execution of the transportation contract have been deposited in the position designated by the consignee at the place of delivery. But the insurance, nevertheless, shall also cover earlier and later services connected with the transportation contract.
Loading and unloading shall be insured only when they form part of the object of the transportation contract.
- 15.2. In the case of customer-authorized storage, the damage insurance of the goods shall commence as soon as the warehouseman has taken the goods to be stored into his charge and terminate as soon as the goods have left the warehouseman's charge for contractual delivery.
- 15.3. Transport-conditioned storage before, during and after transport stages shall also be included in the insurance.

16. Excluded goods, risks and losses

Always provided that no separate agreements have been made, the insurance shall not cover

- 16.1. goods transported for moving house, paintings, art objects, precious stones, real pearls, money, securities, documents and certificates, live animals and plants;
- 16.2. damage caused by internal decay, natural composition of the goods, normal atmospheric moisture, normal temperature fluctuations;
- 16.3. losses or differences of quantity, measure and weight that are customary in commerce;
- 16.4. damage due to lack or defects of the packaging customary in commerce, except where the forwarder or some other third party (a packaging firm, for example) are required to provide the packaging;
- 16.5. damage due to war, civil war, warlike events and damage that, independently of the state of war, derives from the hostile use of the means of war and the presence of such means of war;
- 16.6. damage due to strikes, lock-outs, labour unrest, political or terrorist acts of force, independently of the number of people who may take part therein, insurrection and other forms of civil unrest;
- 16.7. damage due to confiscation, abstraction or other interventions by authority;
- 16.8. damage due to nuclear energy;
- 16.9. damage of a penalty-like character, e.g. monetary penalties, administrative fines, repentance money, etc;
- 16.10. damage due to the inability to pay or payment delay of the owner, charterer or operator of a seagoing ship or other financial conflicts with these parties;
- 16.11. damage caused directly by the fact that advance payments, reimbursements and similar are not used for their proper purpose, transferred or repaid, though without prejudice to claims for further damage that may thereby be caused;
- 16.12. damage deriving from contractual provisions that do not form part of the general practice of the forwarding business, such as contractual penalties, guaranteed delivery deadlines of a transport operator;
- 16.13. damage of a character that is covered by some other damage or loss insurance;
- 16.14. damage caused intentionally or by gross negligence of the insured or one of his representatives;
- 16.15. personal injuries.

17. Obligations

- 17.1. The forwarder and the insured shall have the following obligations after an insurance case has occurred:
 - 17.1.1. to notify the insurers without delay, and in any case within not more than a month, of all cases of loss or damage; the insured shall be deemed to comply with this obligation also by notifying the forwarder, who is obliged to pass the insured's notification on to the insurers;
 - 17.1.2. to endeavour to avert or reduce the damage, preserve the possibility of laying claims against third parties, provide the insurers with all necessary information, submit supporting documentations and comply with the instructions of the insurers.
- 17.2. Whenever the insured or one of his representatives violates an obligation either intentionally or by gross negligence, the provisions of Article 6 VVG shall relieve the insurers of their own obligations under the contract.
- 17.3. Whenever the forwarder or one of his representatives violates an obligation either intentionally or by gross negligence, the insurers shall become entitled to seek redress from the forwarder; Article 6, para. 3, second sentence, shall apply as appropriate.
- 17.4. Subject to agreement, the insurers shall be entitled to request inventories of the distribution depots of the forwarder and the insured over and above the annual ones.

18. Extent and limitation of the insurance cover

- 18.1. In each case of damage or loss the compensation to be provided by the insurers shall be limited as follows:

- 18.1.1. material damage: by the selling price of the goods if the goods were sold, otherwise by the common value that the goods had at the place and time of the commencement of the insurance, in each case with the addition of costs sustained in connection with the journey and deduction of any saved costs, and in any case by the insured amount;
- 18.1.2. consequential damage: over and above the material damage sustained by the goods, by twice the insurable value and, in any case, not more than twice the insured amount;
- 18.1.3. pure pecuniary damage: by twice the insurable value and, in any case, not more than twice the insured amount;
- 18.1.4. to not more than € 1.0 million.
- 18.2. In the event of an underinsurance, the insurers shall reimburse the damage in the ratio that the insured amount bears to the insurable value. Underinsurance shall be excluded whenever the insurable value exceeds the insured amount of € 1.0 million.
- 18.3. The insurers shall not pay more than € 5.0 million in respect of any one damage event. When a single event damages several parties and their joint claims exceed the said limit, each of these claims, quite independently of the number of parties and transportation contracts, shall be satisfied in due proportion.

19. Insurance waiver

Damage insurance shall be provided without any special request having to be made therefor. But the customer shall be entitled, by submitting a written declaration to the forwarder not later than the conclusion of the transportation contract, to forego this damage insurance.

20. Extinction term

Claims arising out of this damage insurance shall become extinct unless legal proceedings are commenced against the insurers within 2 years of the date on which the damage was notified. This term may be extended by agreement.

21. General regulations

- 21.1. Insofar as any given damage is covered by the damage insurance, the insurers shall also compensate the forwarder whenever the insured calls upon the forwarder to reimburse him for loss or damage sustained under a transportation contract.
- 21.2. Insofar as the damage insurance provides compensation, the position of the forwarder shall be deemed to be settled.

IV. Premium, insurance filing, payment and contract revision

22. Premium distinction according to function

The premium component relating to liability insurance (II) shall be due from the forwarder, while the component relating to damage insurance (III), at least in the relations between forwarder and customer, shall be due from the customer.

The forwarder, as the insured party, shall owe the entire premium to the insurers, but in accordance with the provisions of the ADSp Conditions he may treat the component due from the customer as a cost he has sustained and ask for its reimbursement.

23. Premium for the liability insurance (II)

The premium shall be determined by means of a special agreement between the insurer and the forwarder. It shall be supplemented in each case by the applicable insurance tax.

24. Premium for the damage insurance (III)

The premium shall be determined by means of a special agreement between the insurer and the forwarder. It shall be supplemented in each case by the applicable insurance tax.

25. Insurable value and insured amount in the case of damage insurance (III)

- 25.1. The insurable value is the selling price of the goods, otherwise the common value that the goods had at the place and time of the commencement of the insurance, in each case with the addition of freight and other costs sustained in connection with the journey.
- 25.2. The maximum insured amount of this damage insurance shall not exceed € 1.0 million. Goods of greater value may be insured on the basis of appropriate prior agreements.
- 25.3. The objection of underinsurance shall be excluded whenever the insurable value exceeds the insured amount of € 1.0 million.

26. Insurance filing and premium payment in the case of damage insurance (III)

- 26.1. It shall be up to the customer to inform the forwarder in writing and in good time of the amount he wishes to insure or, should the forwarder so request, provide all other necessary information. If he fails to do so, the forwarder shall become entitled to estimate the insurable value up to an amount not exceeding € 1.0 million.
- 26.2. The insured shall suffer no detriment when the forwarder makes some mistake in filing the insurance or fails to file the desired amount to be insured or when the forwarder fails to pay the due premium in good time or pays it only partly or not at all, always provided that the customer have made known the amount he wishes to be insured in writing and in good time.

Estimating errors of the forwarder shall not come under this provision. In all other respects the forwarder shall be obliged to rectify his errors and make good his omissions.

27. Assignment of premiums and damage

- 27.1. The insurers shall assign the premiums filed and paid by the forwarder to, respectively, liability and damage insurance according to the details filed by each forwarder.
- 27.2. When a damage insurance exists, the insurers shall assign damage payments and damage reserves to liability insurance to the extent to which – in the absence of a damage insurance – they would be covered by the liability insurance; otherwise they shall be assigned to the damage insurance. When payments, by virtue of either their nature or their amount, do not come under the forwarder's liability, the insurers shall assign them solely to the damage insurance.
- 27.3. When no damage insurance exists, the insurers shall assign damage payments and damage reserves to the liability insurance.
- 27.4. Costs sustained by the insurers in connection with the processing of damage claims, e.g. fees of damage commissioners, experts, etc., shall on completion be assigned to, respectively liability and damage insurance in the proportions in which the paid compensation is distributed between these two insurance forms.
- 27.5. After settlement has been completed, the insurers shall inform the forwarder of the amounts that have been assigned, respectively, to liability and damage insurance. If the forwarder does not agree, he may lodge an objection within two months of receiving the information, duly stating the reasons for his objection.
- 27.6. Payments obtained from claims against third parties, after due deduction of the sustained costs, shall be assigned in accordance with the provisions of the preceding paragraphs.

28. Individual revision of an insurance contract

The insurers may agree individual revision measures with the forwarder.

V. Final regulations

29. Compensation payments

- 29.1. The insurers shall be obliged to pay compensation as soon as all the inquiries necessary for defining the insurance case and the amount of the due compensation have been completed.
- 29.2. The insurers shall be entitled to pay compensation through the intermediary of the forwarder whenever the insured in damage insurance (III) and/or the damaged party in liability insurance (II)

have not specifically asked to be paid directly. This provisions shall be wholly without prejudice to the insurance claim of the insured and the general protection of damaged parties by Articles 156,157 VVG.

30. Right of recourse of insurers

- 30.1. The insurers hereby waive their right of recourse against the forwarder as policy holder and his employees.
- 30.2. But the insurers shall nevertheless be entitled to their full right of recourse against any party that has intentionally caused the damage or loss.
- 30.3. The insurers shall also be entitled to exercise their right of recourse against the forwarder when
 - 30.3.1. the forwarder has intentionally violated his filing or payment obligations in connection with liability insurance (II), but the insurers shall nevertheless be obliged to compensate the damaged party (see paragraph 5.1 above);
 - 30.3.2. the forwarder has intentionally violated his other filing or payment obligations, but the insurers shall nevertheless be obliged to compensate the damaged party (see paragraph 26.2 above);
 - 30.3.3. the insurer is required to perform his liability insurance (II) obligations even when the forwarder has violated his own obligations (paragraph 5.1).

31. Individual termination

- 31.1. The forwarder and the insurers shall be entitled to terminate an individual insurance contract by written notice that is to become effective at the end of the insurance year. The said written notice shall be received three months before the expiry of the insurance contract.
- 31.2. For all transportation contracts concluded before the termination of the insurance contract the insurance protection shall nevertheless remain in being until all the obligations arising therefrom have been duly fulfilled. In the case of authorized storage, however, the insurance protection shall terminate not later than 3 months after the termination of the insurance contract.