

## General Terms and Conditions of Business and Working Regulations

- AGBO -

of

**North Sea Terminal Bremerhaven GmbH & Co.**

(Translation for purposes of convenience, only the German wording being authentic)

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### **I. General Provisions**

#### **1. Bases of contract**

- 1.1 North Sea Terminal Bremerhaven GmbH & Co. (NTB) conducts handling, interim storage and storage of goods in areas rented or leased within the Bremerhaven port as well as in handling, storage or other operative facilities owned or rented by NTB. Relating to the aforementioned and all other connected activities, NTB contracts with enterprisers, legal entities of public law and public fortunes („customers“) exclusively on the basis of the present Terms and Conditions of Business and Working Regulations (AGBO) as well as on the basis of NTB's latest version of its tariff.
- 1.2 Any agreements deviating from No. 1.1 have to be made in writing. Any customer's general terms and conditions of trade conflicting with AGBO or the tariff shall be considered as waived.
- 1.3 In addition, legal provisions, in particular the „Bremisches Hafengesetz“ (Bremen port statute) and the „Bremische Hafenordnung“ (Bremen port regulations) shall be applied to the use of NTB's facilities.

#### **2. Purpose of facilities; transit goods and storage goods**

- 2.1 Those sheds and free storage areas to which access is granted to the parties authorized to dispose of the goods, serve the purpose of handling the goods and the treatment of goods customary in the Bremen ports as well of the interim storage connected to the handling of transit goods.
- 2.2 Goods accepted by NTB for storage (storage goods) are - unless otherwise agreed in an individual case - stored in premises not generally accessible to the parties authorized to dispose of the goods.

### **3. Forwarding services rendered by NTB**

- 3.1 In the event that NTB assumes in an individual case forwarding services, the General German Forwarders' Conditions (Allgemeine Deutsche Spediteurbedingungen - ADSp) shall take priority over the provisions set forth in the present AGBO.
- 3.2 NTB may have forwarding services carried out by a third party. If damages occur without NTB's own fault negligence or if these are caused by such third party, NTB's liability towards the customer shall be restricted to the assignment of its claims against such third party.

### **4. Orders in the normal course of business**

- 4.1 As a matter of principle, NTB shall act exclusively on the basis of orders placed by means of provided order forms.
- 4.2 NTB may, generally or for special services, permit or request that orders or any other declarations essential for the execution of orders be transmitted by electronic data transfer under observance of the relevant terms and conditions of use drawn-up for such purpose.
- 4.3 The details of the goods to be handled must be completed in all order forms and other types of forms. Furthermore, in the event of dangerous goods, it shall be incumbent upon the customer to furnish, besides information legally required, also special details in accordance with No. 5, namely as provided by Bremische Hafenordnung.
- 4.4 In the event of orders having been accepted orally by way of exception, NTB shall not be liable for any consequences resulting of the missing of a written order.
- 4.5 Apart from information provided in the respective order forms or models, orders shall contain only those declarations and indications by the customer which are generally accepted by NTB or which have been specially agreed. Declarations other than those aforementioned shall be deemed as not having been made even if NTB did accept an order containing such other declarations without objecting.
- 4.6 NTB executes the orders placed in a certain order of succession, determined according to its due discretion. Unless special agreement made in writing with NTB, the customer shall not be entitled to the execution of orders within a certain period of time, not even if NTB did accept, without any objection, an order containing fixing a time-limit.
- 4.7 All orders must be presented in due time in order to grant execution in the normal course of business.
- 4.8 Dangerous goods within the scope of the relevant legal provisions in force will be accepted at the NTB facilities only as transit goods (No. 2.1).
- 4.9 For import goods having been conventionally shipped, the loading list to be submitted by the vessel in accordance with No. 14.2 must include indications as to marks, number, dangerous properties, type of packaging as well as quality, condition and weight of the goods, and, for measuring goods, also the cubical contents.
- 4.10 The loading list pursuant to No. 4.9 shall be considered as a discharging order for acceptance of goods as transit goods. NTB, in its own discretion, shall effect storage either in sheds or in open storage areas.

- 4.11 If a discharging order provided with the ship's agent's release note has been submitted to and accepted by NTB, the customer shall be considered as the only party authorized towards NTB to dispose of the goods specified in the order, even if the goods have been already discharged and stored in NTB's facilities on the basis of a loading list submitted by the vessel. By submission of an order in accordance with phrase 1, the customer shall commit itself towards NTB to bear the discharging costs for the goods mentioned in the order form as well as costs of acceptance at the NTB facilities, notwithstanding the continued liability of the party having ordered such services in accordance with No. 4.10 to bear the costs involved.
- 4.12 Orders shall contain the complete name of the customer respectively the customer's complete corporate name, printed or stamped business names being admissible. Cargo releases for import goods made out in writing shall, however, bear the signature of the person authorized for such purpose.
- 4.13 NTB shall not be obliged to verify the genuineness of the signatures on order forms or the authority of signatories or bearers of orders unless the signatures obviously give rise to doubts.
- 4.14 If, upon request of the customer, orders are made out by staff members of NTB or if such staff members make statements or give information in respect of such orders, the staff members shall in this respect be considered as assistants of the ordering party.
- 4.15 Collateral agreements with regard to orders accepted by NTB shall only be binding if confirmed in writing.

## **5. Dangerous goods**

- 5.1 In the event of dangerous goods, the ordering party shall check, whether or not their acceptance and handling are admissible in accordance with the relevant legal provisions and official regulations and, whether there are any special impositions in connection therewith. If so, in the order form, the ordering party shall draw NTB's attention to the fact that particular supervision is being required for the cargo handling in accordance with legal provisions or official regulations.
- 5.2 The customer shall commit itself to deliver the packages with the required identification marks.
- 5.3 In respect of dangerous goods, particular order forms required by NTB shall be used for the purpose. The said order forms shall encompass the required details in accordance with legal provisions and official regulations then effective, in particular a description of the material substance, risk class and properties of the goods. An order form shall only contain goods of a single risk class. The customer shall make sure that the required copies of the order form are made available timely to the ship's management.
- 5.4 If, in the case of import goods, these are accepted on the basis of a vessel's loading list, such list shall contain the details mentioned in No. 5.3 above. Dangerous goods as specified in the list shall be underlined in red. In addition, if such lists are transmitted by telefax or electronic data transfer, a separate list stating all dangerous goods enlisted in such manifest shall be transmitted at the same time.

- 5.5 In respect of goods not being subject to the provisions concerning transport of dangerous goods but which, due to their specific properties, might give rise to risks during handling operations or storage, special statements as to the respective properties shall be made in the order forms.
- 5.6 If, in the framework of inland traffic and particularly with regard to consolidated transports, orders are placed with NTB for the handling of goods on the basis of waybills, packing or loading lists, such documents shall contain the details mentioned in Nos. 5.3 to 5.5 .

## **6. Exclusions from acceptance; handling restrictions**

### 6.1 Goods

- a) the whereabouts, handling and carriage of which are prohibited in the port area in accordance with legal provisions and official regulations or the quantities of which exceed possibly stipulated maximum quantities,
- b) which due to their properties, their condition or their packaging are unsuitable in NTB's opinion for acceptance in its facilities or which might endanger the handling safety,

shall be excluded from acceptance.

### 6.2 Goods

- a) which according to the relevant legal provisions or official regulations are admitted only for direct handling,
- b) which, in NTB's opinion, are unsuitable for acceptance in NTB's facilities on account of their volume, weight or any other condition,

are admitted for direct transshipment from common carrier to common carrier (direct handling) only.

- 6.3 For valuables, works of art, precious metals, money and securities, fragile goods as well as living animals or goods the handling of which requires special precautionary measures throughout NTB's operations, the terms and conditions for acceptance and handling shall be separately agreed between the customer and NTB.
- 6.4 If no agreement as mentioned in No. 6.3 failing has been made, NTB shall not be liable for any damages resulting from the specific nature of such goods.
- 6.5 On accepting and handling temperature-sensitive or goods otherwise subject to inherent deterioration, the ordering party shall be responsible for taking the appropriate measures required in view of the handling safety of the goods, and this timely prior to delivery respectively to acceptance of the goods or for coming to an agreement with NTB in respect of the performance of such measures.
- 6.6 Goods which have been salvaged from fire or goods which, in the opinion of NTB, might on account of their nature negatively affect other goods or NTB's facilities, particularly as a result of the damages suffered, may be excluded from handling respectively acceptance at the NTB facilities or shall be handled only on terms as NTB may determine in the individual case.

- 6.7 If, in the opinion of NTB, goods on account of their nature or their condition turn out to endanger NTB's facilities or other goods, such goods have to be repaired immediately upon NTB's request by technically qualified and authorized persons or to be transferred into other containers or to be removed from NTB's facilities.

## **7. Inspection of goods**

- 7.1 NTB may, at any time, check and establish whether weight, dimensions, type and nature of the goods delivered are in line with the details specified in the respective order forms. NTB may, however, request the customer to produce evidence as to the correctness of the statements made. Cost of such inspection shall be borne by the customer if the statements made turn out to be incorrect.
- 7.2 NTB may refuse to control marks or number of the goods delivered to its facilities . This similarly applies to large units of goods, in particular to lots delivered and transhipped in containers.

## **8. Obligations to declare towards third parties**

- 8.1 The customer shall commit itself to observe any provisions related to customs, tax, railroad or any other official regulations as well as the provisions referring to the statistics compiled on the movement of goods. In this framework, the customer shall be particularly committed to personally fill in or complete the forms required for the purpose as well as to provide for the required clearance of the goods or the accompanying documents.
- 8.2 To the extent as NTB performs the abovementioned activities, it shall exclusively act as a representative of the ordering party without, however, assuming any liability whatsoever with regard to the correctness of performance.

## **9. Prohibition of set-off**

Set-off against NTB's claims shall be admissible only in the event of undisputed counterclaims or counterclaims ascertained by non-appealable judgment.

## **10. Invoicing of waiting periods**

The customer respectively the vessel shall pay to NTB remunerations in accordance with the tariff in force and this also for waiting periods resulting from the fact that operational facilities or manpower provided by NTB could not be used or not be used in the appropriate way because of measures taken by the ordering party or as a result of particular conditions aboard the vessel or due to the fact that the required order had not been available timely.

## **11. Prevention of accidents; NTB's power of control**

- 11.1 Persons operating vehicles in areas belonging to NTB's facilities or otherwise using such facilities or staying there have to observe any instructions or prohibitions made public on signboards as well as to comply with directions received from NTB staff members assigned with supervision. Furthermore, such persons shall comply with the Grosshandels- und

Lagerei-Berufsgenossenschaft (occupational accidents insurance association for wholesale trade and warehousing) regulations for the prevention of accidents.

- 11.2 During the handling operations, nobody may stay under the lifting gears respectively within their boom swivelling ranges.
- 11.3 If facts are known against persons justifying the presumption that their staying on the NTB premises might endanger safety or order of operation, NTB may forbid such persons to set foot on the operation areas, either permanently or for a limited period of time.

## **12. Smoking ban; welding and oxygen cutting works**

- 12.1 Smoking is prohibited outside the offices, the canteens and the recreation rooms for the employees, in the entire area of NTB's operation facilities.
- 12.2 Irrespective of possibly existing permits granted by the authorities, the use of fire or of open light and, in particular, the execution of welding and oxygen cutting require NTB's prior consent in writing.

## **II. Special Provisions for Handling of Goods**

### **13. Berths**

- 13.1 The berths used for loading and discharging of the vessels are assigned by the port authorities in agreement with NTB. For this purpose all vessels intending to use the berths at the NTB facilities shall previously be reported to NTB. At the same time, the ship's agent shall provide the information required in respect of the handling measures to be taken.
- 13.2 Irrespective of the assignment of a berth in accordance with No. 13.1, any vessel, at the berth assigned, shall permanently comply with the provisions under public law, particularly those of Bremisches Hafengesetz and Bremische Hafenordnung.
- 13.3 In the interest of best possible utilization of the NTB facilities as well as in order to guarantee smooth operation, NTB may request a vessel to move to another berth or to leave the berth assigned to it immediately after completion of the handling operations. In the event of a vessel not complying with the directions given by NTB in accordance with phrase 1, NTB may upon agreement with the port authorities have the ordered measures carried out by third parties for the vessel's account and risk.

### **14. Dispatch of vessels**

- 14.1 The order of dispatch of vessels shall be determined by NTB in its own discretion after due consideration of all facts and circumstances.
- 14.2 Manifests (loading lists etc.) shall be submitted in due time thus enabling NTB to make the necessary handling arrangements. Loading or discharging vessels shall arrange their operations in the hatches or on deck in such a manner as to avoid any delay or interruption of works carried out on the quay. NTB may request the vessels to work without interruption until completion of the loading or discharging operations.

- 14.3 NTB may suspend the handling of cargo and request the vessel to move to another berth if this proves to be necessary on account of reasons related to the nature of the goods or in the event of the stevedores employed by the vessel not duly complying with their obligations whatever the reason may be. NTB shall not be liable for any disadvantage arising thereof for the vessel.
- 14.4 Loading and discharging of the vessel by means of the vessel's own lifting gear requires NTB's explicit consent .

## **15. Ship's agents**

Agreements entered upon with the ship's agent (the ship broker acting for the vessel, the owner or the carrier) shall be similarly binding for the vessel as agreements made with the master.

## **16. Railroad traffic**

- 16.1 To the extent as NTB arranges for the procurement of railway wagons, NTB shall not be liable for timely provision of such wagons. The customer itself has to obtain information from the operating units as to timely provision of the wagons.
- 16.2 In the event of railway wagons being demanded on the part of NTB and the customer having failed to specify the type of wagons required, such choice shall be made at NTB's discretion and at the customer's risk.
- 16.3 Loading and discharging at the NTB facilities shall be effected exclusively by NTB or by subcontractors assigned by NTB in accordance with the details specified in the orders placed with NTB.
- 16.4 When loading goods on railway wagons, NTB shall carry out those securing operations for the goods which are required on grounds of safety at work in accordance with the loading regulations of the respective railway operator. Any additional securing measures in view of the protection of the goods shall be carried out by NTB only if it has been explicitly requested to do so; the costs of such securing measures shall be invoiced separately to the customer.
- 16.5 In respect of goods discharged by NTB from railway wagons, NTB does not notify the consignee mentioned in the waybill of the arrival of the goods or of differences between statements made in the waybill and the facts actually prevailing.

## **17. Road traffic**

- 17.1 Goods arriving or to be dispatched with road vehicles are generally discharged or loaded by NTB in accordance with the details stated in the orders received.
- 17.2 Securing of loaded goods in view of their protection and the road vehicle's operational safety are deemed not to form part of the shipping order. If securing of the goods on road vehicles is effected by NTB on the basis of a separate order, such securing shall be carried out in accordance with directions received from the responsible driver; costs of such securing shall be invoiced separately to the customer.

17.3 No. 16.5 shall apply mutatis mutandis.

## **18. Acceptance of goods from inland**

- 18.1 If not otherwise agreed in an individual case, goods arriving from inland shall be discharged by NTB from the means of transportation at places to be determined by NTB, and be accepted for further handling. Discharging and acceptance of the goods delivered to NTB shall be carried out by NTB continuously according to its operational possibilities.
- 18.2 NTB may refuse acceptance of goods for which there is no evidence as to their onward transport having been definitely directed.
- 18.3 For operational reasons NTB may make the acceptance of certain goods subject to prior agreement. This shall particularly apply to big consignments.
- 18.4 If containers are being delivered for a certain carrier or ship owner, NTB shall accept such containers on behalf of the aforementioned carrier or owner. In such case, any onward disposals in respect of such containers will, however, be possible only upon prior consent of the carrier or owner concerned. If containers are delivered without denomination of the carrier or owner, such containers shall be kept in custody for the supplying party until NTB receives directions to the contrary. In this respect, every shipping order shall be considered as a direction to the contrary.

## **19. Packing of containers, flats and trailers**

If NTB upon the order of a ship's agent undertakes packing of conventionally supplied goods into containers, onto flats or trailers, the loading of every single package into container, onto flat or trailer shall be deemed as delivery to the vessel; however, from this moment NTB will keep custody of the respective package for the vessel, until the packed container, flat or trailer is deposited on board of the vessel.

## **20. Loading of vessels**

- 20.1 Empty or loaded containers, flats and trailers are moved by NTB by means of its own equipment to the stowage place stipulated by the vessel. This shall similarly apply to loading units moving by their own power. NTB shall, upon separate order, furthermore assume lashing of containers, flats, trailers or other cargo units loaded by NTB.
- 20.2 Conventionally transported goods shall be lifted on board the vessel by NTB's own lifting gear. Upon complete passing of the ship's rail, each heave shall be considered as taken over by the vessel. Any activities carried out by NTB after this moment and serving the purpose of moving the goods to their final stowage place, including the use of additional equipment, shall be effected on behalf of the vessel. Within the vessel's area, NTB's lifting gears shall operate from and up to the ship's rail in accordance with instructions received from the vessel's crew. Accordingly, the vessel has to provide a signal man responsible for competent signalling. Furthermore, possibly required supporting measures as, for instance, leading of the goods' movements while being veered and detaching of the goods from the crane hook shall be incumbent upon the vessel at her sole responsibility.

- 20.3 Upon NTB's request access to such areas of the vessel where NTB operates its lifting gears shall be granted to its employees. The responsibility of the staff employed by the vessel for tasks incumbent upon them as, for instance, signalling shall remain unaffected thereby.

## **21. Discharging of vessels**

- 21.1 Containers, flats or trailers shall be discharged by NTB and brought ashore by means of its own equipment. As soon as deposited on the first interim storage place ashore such containers, flats or trailers shall be deemed as taken over by NTB. The same shall apply mutatis mutandis for cargo units moving by their own power.
- 21.2 If NTB does not unpack goods stowed in containers, on flats or trailers, NTB shall continue to keep such goods in its custody for the discharging vessel, until delivery to the consignee respectively until subsequent transshipment of such containers, flats or trailers onto connecting means of transportation. NTB shall continue to keep in its custody goods stowed in containers, on flats or trailers which are to be unpacked by NTB upon the order of a ship's agent until completion of the unpacking procedures for the vessel. After this moment, the goods unpacked shall be deemed as taken over by NTB; from then onwards they will be given the same treatment as goods conventionally carried and taken over by NTB from a vessel.
- 21.3 For discharging purposes, conventionally carried goods shall be attached by the vessel's stevedores to the lifting gear of NTB in the hatches or on deck of the vessel in such a manner as to make sure that the crane hook and the crane cable be in a vertical position during the heaving procedures. The single consignments shall be separated as per bills of lading, and the vessel shall deliver them self-contained and, if possible, in equal heaves.
- 21.4 Upon passing of ship's rail, the goods shall - more detailed statements as to the respective number of pieces, condition etc. being reserved - be deemed as having been taken over by NTB. Besides that, No. 20.2 phrase 4 shall apply mutatis mutandis.
- 21.5 No. 20.3 shall apply mutatis mutandis. When handling conventionally carried goods during discharging operations, the vessel shall furthermore always remain responsible for continued supervision of the handling gear.
- 21.6 In respect of goods taken over from sea-going vessels, NTB shall not notify the consignee - a task incumbent upon the carrier - of the arrival of goods or of differences between declarations made in the shipping documents and the actually prevailing facts.

## **22. Shore-side delivery and loading**

- 22.1 In respect of goods to be landed by vessels, NTB may, until final completion of the discharging operations of the vessel concerned, refuse delivery and handling of the goods to the extent as otherwise, in its own discretion, proper performance of the discharging operations and the required control of the consignments to be delivered might be impaired.
- 22.2 NTB shall deliver the goods to the party submitting, besides a delivery order or shipping order to be filed, a release note on the part of the ship's agent identifying the ordering party as the legitimate consignee.

22.3 Delivery of goods shall be effected only against payment of the entirety of remunerations incurred for these by NTB.

22.4 The goods to be delivered shall be loaded by NTB onto means of land transportation at places to be determined by NTB in accordance with the details set forth in Nos. 16 and 17.

### **23. Direct and indirect handling**

23.1 Unless otherwise agreed, the goods to be handled shall be placed into interim storage by NTB. NTB may put goods which are generally suitable for such kind of storage into interim storage in the open.

23.2 NTB may refuse direct transshipment operations applied for to the extent as these would unreasonably impair for NTB the handling of the goods concerned or any other handling operations.

23.3 If NTB effects direct transshipment in accordance with an order placed, NTB shall be responsible for verification of the identification marks on the goods only when such procedure proves to be feasible in the ordinary course of handling operations without particular difficulty.

### **24. Insurance of goods**

With the exception of cases described more in detail in No. 32.7, NTB shall not, without having received explicit order, have an insurance concluded for goods delivered to it. This shall similarly apply to goods for which direct transshipment has been ordered but which for operational reasons had to be put into interim storage and, furthermore, also to goods mentioned in No. 27.1 .

### **25. Treatment and processing of goods**

25.1 In the sheds and open storage areas serving the purpose of interim storage, NTB shall grant permission to the persons authorized to dispose of the goods or to their representative agents to treat their goods to the extent customary in the Bremen ports. This shall, however, not apply to goods delivered to NTB facilities where such treatment is being exclusively effected by NTB.

25.2 After inspection or treatment of the goods, the persons authorized to dispose of the goods shall make sure that the goods be properly compiled or stockpiled again as well as to perform the required clearance work. In case of failure to do so, such work will be arranged for by NTB on account of the party entitled to dispose of the goods.

25.3 Preparatory handling operations, especially the compilation of goods to units on or inside means of loading or transport as for, instance, pallets, containers, flats or trailers as well as the splitting up of such loading or transport units including any related secondary activities (for instance lashing or unlashng) shall be carried out by NTB.

25.4 To the extent as, in the opinion of NTB, goods delivered would require repairs or other measures in respect of their conservation or securing, NTB may effect or have effected such services on account of the party entitled to dispose of the goods, provided that the

customer or the person entitled to dispose of the goods has not been available in due time and therefore been unable to personally arrange for such measures.

## **26. Assignment**

The person entitled to dispose of the goods may assign its rights to the goods put in NTB's custody to a third party (assignment).

## **III. Compulsory Measures**

### **27. Goods which cannot be delivered or exclusion of goods**

- 27.1 Goods the acceptance of which is refused or cannot be effected in time or for which no party authorized to dispose of can be identified, or goods the acceptance of which is not possible for any other reason whatsoever, may be stored by NTB, at its own discretion, on account and risk of the customer or of the person authorized to dispose of the goods.
- 27.2 NTB shall be entitled to sell the goods described in No. 27.1 at the best price without any further formalities, if such goods are inherent to deterioration or if, due to given local circumstances, such goods cannot be stored or if their value, on grounds of prolonged storage or due to costs resulting thereof, would be disproportionately diminished. NTB may also sell without further formalities goods for which no party authorized to dispose of can be identified.
- 27.3 Goods delivered to NTB's facilities without prior notice or which have been delivered non observing the provisions set forth in No. 8, as well as goods which in the opinion of NTB are to be considered as deteriorated, must be removed at NTB's request. If such request is not immediately complied with, NTB shall, at its own discretion, be entitled to store such goods somewhere else on account and risk of the party authorized to dispose of the goods, to sell such goods without further formalities or, if these alternatives turn out to be unfeasible, destroy or have such goods destroyed on account and risk of the party authorized to dispose of such goods.
- 27.4 Where the party authorized to dispose of the goods is known, NTB shall notify the said party of the measures intended to be taken in accordance with Nos. 27.2 and 27.3 .
- 27.5 The proceeds of the sale effected pursuant to Nos. 27.2 and 27.3 shall be made available to the party authorized to dispose of the goods, deduction made of the costs incurred. The claim to the proceeds shall become forfeited for the benefit of NTB two years thereafter.

### **28. NTB's lien and right of detention**

- 28.1 NTB has a lien and a right of detention in respect of the goods delivered to NTB for all claims becoming due to NTB and resulting from any remuneration, emoluments or expenses in connection with the goods concerned, or otherwise against any person on whose account the goods are being stored. The rights hereinabove mentioned also encompass amounts deposited in lieu of goods as well as claims substituting goods by way of compensation for fire damage or for any other reasons. Claims of the pattern described in the preceding phrase shall, as from the date of their incurrence, be considered as assigned to NTB.

- 28.2 If the debtor is in default, NTB shall be entitled - after one demand for payment made in vain - to sell such quantity of the goods which, in NTB's discretion, is required to satisfy its claims. A sale without further formalities may also be made if the debtor cannot be identified.

#### **IV. Dealing with Loss or Damage**

##### **29. Ascertainment of loss or damage**

- 29.1 Upon acceptance and delivery as well as upon direct transshipment of the goods, NTB shall ascertain only such defects which can be easily detected by external inspection. The result shall be recorded in writing or collected on electronic data media whereof the party authorized to dispose of the goods will be informed upon request.
- 29.2 In the event of loss or shortage of or damage to the goods accepted by NTB being notified by the party authorized to dispose of the goods, NTB shall ascertain the condition of the goods and, if possible, also the cause of and the date when the damage occurred and shall inform in writing the party authorized to dispose of the goods about the result.
- 29.3 Upon acceptance of goods from a vessel, NTB shall not avail itself towards the carrier of any rights of the consignee arising from the bills of lading or shipping notes. In particular, the filing of the notice of loss or damage pursuant to Art. 611 German Commercial Code (HGB) or participation in inspection of the goods induced by the vessel shall not be incumbent upon NTB.

##### **30. Notice of loss or damage**

- 30.1 Any loss of or damages to the goods shall be notified in writing to NTB not later than upon delivery of the goods to the legitimate consignee or its authorized agent. If the loss or the damage are not externally discernible, it shall be sufficient to dispatch such notice within three days as from that moment. Such notice shall contain a general description of the loss or the damage. A description of the loss or damage by way of a printed form shall not be considered as satisfactory.
- 30.2 Delivery to the legitimate consignee shall be considered as equivalent to the loading of goods into railway wagons or containers, flats or trailers as well as to the delivery of the goods to the vessel.
- 30.3 Notice in accordance with No. 30.1 shall not be required if the condition of the goods or their dimensions, number or weight have been ascertained and recorded in writing not later than at the moment mentioned in No. 30.1 phrase 1 enlisting the services of a NTB employee competent for surveying damages.
- 30.4 In the event of a loss or damage to the goods having neither been notified nor been ascertained in the manner described in No. 30.3, it shall be presumed that the goods have been delivered in their entirety and in the condition stated in NTB's handling documents, and that, in case that evidence of loss of or damage to the goods should be given, such loss or damage has to be attributed to circumstances beyond NTB's control.

## V. Liability; Prescription of Claims

### 31. Customer's liability

The customer shall be liable for any loss or damage resulting from incorrect, inaccurate, insufficient or delayed statements, particularly in respect of the number of pieces, weight, nature (for instance dangerous properties) or due to inherent vices of the goods or their packing, to NTB's facilities, to goods stored or handled within NTB's facilities or to a third party. Art. 278 phrase 1 German Civil Code (BGB) shall remain unaffected thereby.

### 32. NTB's liability

32.1 NTB shall be liable for damage of any nature whatsoever only in the event of gross negligence (wrongful intent or gross negligence) of its executive bodies, its managerial employees or other persons employed in performing an obligation for which NTB is vicariously liable, unless such loss or damage would be due to an infringement on the part of NTB of an essential contractual obligation.

32.2 NTB shall, except in cases of gross negligence of its executive bodies or managerial employees, not be liable in cases of

- a) loss or damage caused by fire, water, storm or explosion,
- b) loss or damage caused by robbery or theft,
- c) loss of or damage to goods which, by agreement made or customarily, have been stored in open storage areas, in open warehouses only spanned by a roof or within premises in which the parties authorized to dispose of the goods or their authorized agents have been granted the permission to process their goods in accordance with No. 25,
- d) loss or damage resulting from the rendering of gratuitous assistance to which NTB is not contractually obliged.

32.3 If a damage has occurred which according to the circumstances might have resulted from

- a) acts of state, force majeure, terror attacks, strike, lockout or other impairments of work,
- b) acts or omissions of the parties authorized to dispose of the goods or their assistants,
- c) loading or discharging of the goods by the parties authorized to dispose of the goods, or their assistants,
- d) missing or defective packaging, insufficient or wrong labelling, identification marks, indication of measures or weights, insufficient designation with regard to the respective centres of gravity or the points earmarked for the attachment of hooks,
- e) inherent vices or the peculiar nature and condition of the goods,

it shall be presumed that the damage has arisen out of such risk.

- 32.4 **Compensation to be paid by NTB for loss of or damage to the goods shall be limited to a maximum of two units of account per kilo of the gross weight of the goods.**
- If only single parts of the lot have been lost or damaged, NTB's liability shall be limited to an amount of two units of account per kilo of the gross weight**
- a) of the total lot in case the entire lot has been depreciated,
  - b) of the part lost or damaged part of the lot if only part of the lot has been depreciated.
- 32.5 The unit of account mentioned in No. 32.4 represents the special drawing right of the International Monetary Fund. The amount shall be converted into Euro in accordance with its value as compared to the special drawing right on the date of delivery effected by NTB.
- 32.6 In case of NTB being liable for loss or damage resulting from failure to observe a time-limit agreed upon, NTB's liability to pay compensation shall be limited to a maximum amount of three times the handling remuneration.
- 32.7 In case of NTB being liable for loss or damage other than those resulting of loss of or damage to goods, NTB's obligation to render compensation shall be limited to a maximum amount of Euro 50 000 per damaging event.
- 32.8 Under no circumstances shall NTB be liable for any consequential or financial loss.
- 32.9 In the event of several persons having claims for compensation against NTB which, treated as one, exceed the maximum liability provided for in Nos. 32.4 and 32.7, the maximum amount to be asserted as principal claim by any of the claimants shall, to the extent as it exceeds such maximum liability, be first reduced to the maximum liability. The maximum liability amount to be paid by NTB shall then be proportionately allotted to the resulting total amount of the entirety of the claims. Should the amounts of the individual claims or the allotments amongst the single claimants become controversial, NTB may release itself from any liability towards the claimants in their entirety by depositing the total of the maximum liability amount.
- 32.10 The liability limitations provided hereinabove refer to claims of all patterns including claims in tort.
- 32.11 If claims are being asserted by the injured party against NTB's executive bodies or employees or persons for whom NTB, in accordance with labour law, has a duty of care and welfare maintenance, such persons may rely on all liability limitations effective for NTB.
- 32.12 The liability limitations defined hereinabove shall not be applicable if
- a) the loss or damage can be attributed to any act or omission committed by NTB or its staff in execution of their duties or by other persons employed by NTB for any services, with intent or recklessly and with knowledge that a damage would probably result, or
  - b) life, body or health have been injured.

### **33. Prescription of claims**

- 33.1 All claims against NTB for compensation of loss of or damage to goods shall become time-barred upon expiration of a period of eight months after the delivery of the goods by NTB. In case of loss of goods, the period of limitation shall start running when the goods should have been delivered by NTB.
- 33.2 Regardless of their legal basis, claims against NTB other than those mentioned in No. 33.1 will become time-barred upon expiration of a period of twelve months after occurrence of the event creating NTB's liability.
- 33.3 The periods of limitation as per Nos. 33.1 and 33.2 shall apply to contractual and non-contractual claims of any pattern, except claims caused by intent.

## **VI. Final Provisions**

### **34. Applicable law; place of performance and jurisdiction**

- 34.1 German law shall be applied to all legal relations between NTB and its customers.
- 34.2 Place of performance shall be Bremerhaven. Jurisdiction for all legal actions which may arise out of the contract or in connection therewith shall lie with the lower court (Amtsgericht) of Bremerhaven respectively the district court (Landgericht) of Bremen. These courts shall have exclusive jurisdiction for any claims asserted against NTB.

### **35. Possible partial invalidity**

- 35.1 Should any of the preceding provisions be or become invalid, such invalidity shall not affect the remaining provisions of the present Terms and Conditions of Business and Working Regulations (AGBO).
- 35.2 The invalid provision shall be replaced by way of contractual amendment by a provision implementing, as far as possible, the intended purpose of the invalid provision in a legally admissible manner.