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INLAND TRANSPORT COMMITTEE

Principal Working Party on
Inland Water Transport
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**DRAFTING A COMPENDIUM OF EXISTING PRINCIPAL STANDARD
TERMS AND CONDITIONS FOR INTERNATIONAL CARRIAGE OF
GOODS BY INLAND WATERWAYS**

Addendum 3

Note: The secretariat reproduces below the text of the Shipping and Transport Conditions (Verlade und Transportbedingungen (VTB)) widely used since the 1960s by different inland navigation carriers involved in the transport of goods on the Rhine. The publication of the VTB conditions is undertaken in agreement with Stinnes Reederei AG (Germany) who expect to undertake a revision of these rules in the near future.

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SHIPPING AND TRANSPORT CONDITIONS

1. Legal basis

(1) Transport of goods by waterway shall be conducted according to these Conditions and, in matter not covered hereby, according to the provisions of the German Inland Waterways Shipping Act and other regulations, customs and trading practices applicable to inland shipping.

(2) These transport regulations shall apply to all parties involved in transport and to their agents.

(3) These shipping regulations shall apply not only to freight carriers but also to their employees and all other persons to whom they may resort in the conduct of their transport activities.

2. Bill of Lading

(1) The carrier shall issue a bill of lading for each consignment.

(2) The bill of lading is a document issued in the name or to the order of or to the bearer. The goods will be delivered only on the proper return of the original (first) copy.

(3) Where a bill of lading is issued to order, the carrier may require that a notification address be given.

(4) The bill of lading shall govern relations between the carrier and the consignee.

(5) Should the goods be accepted by the carrier before being loaded on to the ship, the consignor may require that the carrier issue a preliminary acceptance docket or an acceptance loading docket. Once the goods have been loaded, the acceptance loading docket shall be properly validated by appending to it the comment "Loaded" unless it be exchanged for a bill of lading confirming the loading of the goods.

3. Designation of the goods on the bill of lading

(1) The carrier shall not be held responsible for the correctness, the quantity, volume or weight of the loaded goods as indicated in the bill of lading.

(2) Should the consignor require that the quantity, volume or weight of the goods be jointly checked at his cost, clause 1 above shall not apply unless several loading operations are conducted simultaneously. Graduation recording, running counters or other measuring devices shall not be considered means of jointly checking quantities, volumes or weights.

(3) The carrier shall not be liable for the accuracy of other data given on the bill of lading or for numbers, marks, distinguishing marks, types, sorts, quality, state, value, finish and packaging of the loaded goods or for the proper designation of the contents if the goods are made over to the carrier prepacked or in closed recipients (including containers).

4. Shipper's liabilities

(1) Under these provisions, the carrier shall assume liability for carrying the goods with all due care by inland waterway to the port of discharge and for holding them ready there for collection.

(2) The carrier shall ensure that when the goods are loaded on to the ship, the ship be fit to sail. The ship, with all its necessary equipment and fittings, shall be deemed fit to sail on presentation of a valid, official ship's certificate issued by an inspection commission or of a classification certificate issued by a recognized entity.

5. Selection of vehicle and further transport

- Transshipping and lightening rights

(1) Goods shall be transported in such vehicles as the carrier may determine. He may, wholly or partly, subcontract the carriage of the goods to other carriers.

(2) The carrier shall be entitled to transport various goods in the same vehicles and the same stowage compartments. He shall determine the order in which and route by which the accepted goods are to be transported.

(3) The carrier may, in the interest of the goods or the ship, without prior notification of the other parties to the consignment, transship all or part of the consignment on to another vessel, lighten or discharge the ship and store the goods in warehouses or elsewhere on land. Any additional cost thereby incurred shall be charged to the goods.

(4) It shall be assumed that when a shipping office makes an inland water vessel available for the transport of goods, that vessel will comply with the necessary or desirable standards of cleanliness. The consignor shall, in any case, be liable for ensuring that, prior to loading, the vessel be fit to carry the goods to be transported and with special regard to dirt, dampness and vermin.

6. Loading and discharging

(1) The consignor shall make over the goods properly stowed on board at the place of loading as instructed by the carrier. The consignee shall discharge the goods from the vessel at the port of discharge in the order determined by the carrier.

The carrier may insist on loading or discharging the goods personally or may have an agent do it. In such a case, the goods shall be delivered to the loading point or accepted from the discharge point in an appropriate manner.

(2) Goods shall be loaded and discharged immediately on arrival of the vessel or after the start of the set loading/discharge time.

(3) Where the contract indicates a number of optional discharge ports, the goods shall be carried to the last optional port mentioned unless the carrier be given at least 24 hours' written notice of the arrival of the vessel at the desired port.

(4) If transshipment from a seagoing vessel is stipulated, the carrier shall not - without a special agreement - be obliged to bring more than one inland waterway vessel alongside at any one time.

7. Consignor's duties

(1) The packing of the goods shall be such as to preclude any harm being done by the goods or the packing to persons, the vessel, other cargo or any other object.

(2) The consignor shall, together with the goods and before loading begins, provide the carrier with all information necessary for the carriage of the goods and especially mark the goods and packing with all customary indications for their transport to their final destination by means that will remain legible throughout the journey. He shall furthermore state the nature, condition, finish and degree of danger of the goods as well as their weight, content, volume, number or quantity otherwise expressed and shall provide all accompanying documentation especially as required under port, customs, health or other regulations.

(3) Easily ignitable, inflammable, explosive, poisonous, caustic, radiating, radioactive and similarly dangerous goods shall all be declared as required under the relevant regulations and especially with respect to their danger classification. On consigning dangerous goods to a carrier, the consignor shall, in each case when placing the transport order, provide written indication of the exact nature of the danger and, where necessary, inform him what precautionary measures have to be taken. If this information does not appear in the waybill, it shall be incumbent on the consignor or the consignee to ensure that the carrier receive the written information referred to in clause 2 above.

(4) The consignor shall be liable for any damage caused and costs incurred by the carrier as a result of incorrect or incomplete information in the waybill or other accompanying documents or the belated provision of such information or of insufficient packaging or marking of the goods.

(5) The consignor shall indemnify the carrier or shall take measures to ensure that he be indemnified for any damages that the carrier or his staff

may incur by Law in connection with the legal implications of transporting the substances referred to in clause 3 above. This shall apply accordingly to any personal injury, material damage or financial loss resulting from the transport of mineral oils or mineral oil products in respect of which the Law provides a special danger liability.

This indemnification shall not apply in cases of criminal intent or gross negligence on the part of the carrier.

8. Measures in special cases of danger

(1) Goods, the dangerous nature of which is not, in breach of section 7(4) above, brought to the notice of the carrier may at any time and in any place be discharged or rendered harmless without rendering the carrier liable for damages.

(2) The carrier shall be entitled to have any goods that endanger persons or property destroyed where necessary without being liable for damages.

(3) The consignor shall be liable for any expenses or damage resulting from the consignment for carriage of the goods mentioned in clauses 1 and 2 above. At the request of the carrier, the consignor shall have such goods discharged or rendered harmless.

9. Loading and discharging times

(1) The day on which the vessel is notified as ready to load or discharge shall be the notification day.

(2) Readiness to load or discharge may be notified on any day other than Sundays and public holidays, during normal office hours, but in any case between 8 a.m. and 6 p.m.

Notification shall also be effective if the vessel has not yet reached the port of loading or discharge. In that case, notification shall be deemed not given if the vessel is not ready to load or discharge by the start of the following (loading or discharge) day. Should the vessel not be ready to load or discharge in time, the carrier shall reimburse the cost of preparing for loading or discharging the vessel.

(3) Loading or discharge time shall commence on the day following that on which notification was given. Should the loading or the discharge of the vessel commence on the day notification was given, that day shall be counted in the loading or discharge time.

(4) A loading or discharge day shall run from 6 a.m. to 8 p.m. If goods are loaded or discharged between 8 p.m. and 6 a.m., that time shall count as a further loading or discharge day. The same shall apply if the vessel is loaded or discharged on Sundays or public holidays.

(5) The following quantities shall be loaded or discharged per day:

- in the case of heavy bulk goods that can be handled by clamshell grab, at least 400 tonnes;

- in the case of light bulk goods that can be handled by clamshell grab, at least 300 tonnes;
- in the case of any other bulk goods, even if packed, at least 200 tonnes;
- in the case of piece goods, at least 150 tonnes and, in the case of fractions of that amount, 20 tonnes per hour,

unless otherwise provided by binding legal provisions or agreement.

(6) In the case of part consignments, the individual consignors and consignees shall be charged for the loading or discharging times pro rata according to the quantities loaded or discharged for each. In such cases, time taken to travel from one place or point of loading or discharge to another shall not be taken into account in the deadlines. In the case of partial consignments, there shall be only one notification day for the entire consignment and that shall be that at the first point of loading or discharge. The carrier shall, wherever practicable, indicate the next loading or discharge point.

The notification day shall not apply to piece goods.

(7) Once the loading time has expired, the carrier shall no longer be obliged to wait any longer to load.

(8) Once the discharge time or any agreed demurrage has expired and provided that a further waiting time of up to one-half of the discharge time has elapsed, the carrier shall, even without prior notice or warning, not be obliged to wait any longer to discharge. He shall, in such cases, be entitled to proceed, at the consignor's cost, to have the goods unloaded himself and have them placed in store.

10. Demurrage

(1) Should the loading or discharge of a vessel not be completed until after expiry of the loading or discharge time, the carrier shall, without further warning, be entitled to a penalty (demurrage) calculated on the basis of the German Inland Tanker Carriage Tariff (FTB).

11. Payment of freight charges and additional payments

(1) Freight charges, including FOB, shall include actual transport from and to the vacant inland water vessel and presumes open and unhindered water transport. Freight charges shall fall due on arrival at the point of destination or, where sent FOB, at the start of the journey. All costs, charges, levies and additional payments and, to the extent that the carrier is also charged with the reception and/or consignment of the goods, any other costs resulting therefrom, shall be payable as incurred or presented

by the carrier.

(2) Low-water surcharges shall, unless otherwise agreed, be levied as follows:

(a) For carriage operations down-river of Cologne and including Cologne with a Cologne water-level reading of:

from 1.20 m to 1.01 m 30% of the freight
from 1.00 m to 0.81 m 40% of the freight
from 0.80 m to 0.61 m 50% of the freight

(b) For carriage operations from or to points up-river of Cologne and to points on the Moselle, Main and Neckar with a Kaub water-level reading of:

from 1.50 m to 1.36 m 20% of the freight
from 1.35 m to 1.21 m 30% of the freight
from 1.20 m to 1.06 m 40% of the freight
from 1.05 m to 1.01 m 50% of the freight
from 1.00 m to 0.81 m 60% of the freight.

The lowest of the above water levels affecting the goods from the start of loading time until arrival at the point of destination or, in the case of journeys to points on the canalized tributaries, up to the moment they enter the first locks, shall determine the low-water charge.

Where the Cologne water level is 0.60 m or less or the Kaub water level is 0.80 m or less, the low-water level surcharge shall be determined case by case. Should no agreement be reached in time on the low-water level, the transport commitment shall lapse. In that case the provisions of section 12, clauses 1a and 1b shall apply.

In the case of transport to or from points up-river of Mannheim-Rheinau, the shipowner's commitment to carry the goods shall lapse as soon as there is no longer a navigable depth of 1.50 m at the lowest point.

(3) The freight cost shall, in the absence of any agreement or practice to the contrary, be calculate according to the gross weight, quantity or volume indicated in the freight documents.

This shall equally apply to goods that are lost, destroyed or fall short of their stated volume or weight. Clauses referring to approximate or unknown quantities shall not affect the calculation of freight charges. Should the volume, gross weight or quantity of the goods delivered be higher than stated in the freight documents, the higher figure shall be used to calculate freight charges.

(4) The consignor and the consignee shall be jointly liable for meeting all freight, FOB freight, shortfall, laytime and low-water charges, upper-Rhine surcharges, canal, lock, bridge and port fees as well as any additional costs and claims resulting from the freight contract. The consigner shall in no way be released from this obligation if the goods are released without payment. The consignee shall assume full liability for such debts if he demands that the goods be handed over or in other way disposes of them.

(5) Should the currency in which the freight charges and additional payments were stipulated be devalued, the carrier shall be entitled either to demand a higher payment or, if the goods have not yet been loaded, withdraw from the freight contract. The same shall apply if the carrier's operating costs have risen significantly since the freight contract was concluded.

12. Impediments to the performance or continuation of transport

(1) The following conditions shall apply if the performance or continuation of a journey should be permanently or temporarily impeded and where a formal notice of default is not necessary:

(a) Should the start of the journey be permanently impeded by an accident, the freight contract shall lapse without either party owing the other damages.

The following shall, in particular, be considered permanent impediment:

- if the vessel in which the transport is to be conducted is lost or in such a way damaged as to make the journey impossible without the vessel being thoroughly repaired; a repair of this nature shall be such as would necessitate the complete discharge and reloading of the vessel;
- if the goods to be transported are lost, provided that they are not mentioned in the waybill simply by type and sort but in specific terms or that they have been specifically accepted by the carrier.

The consignor shall have any goods already loaded unloaded again at his own expense within a reasonable time. The carrier shall be entitled to compensation for any costs incurred in preparing for the journey up to the moment the permanent impediment arose.

(b) Should the continuation of the journey be permanently impeded by an accident, the freight contract shall lapse although a freight charge calculated by distance shall be due for the part of the journey completed. The provisions of (a) above shall also apply accordingly.

(c) Should the start or continuation of the journey be temporarily impeded by an accident, laytime money shall be due as stipulated in section 10 above for each day's delay from the time the impediment arose until the journey resumes. The carrier and the consignor shall - other than in the case of winter lay-up - be entitled, within seven days of the start of the temporary impediment but before the removal thereof, to declare their withdrawal from the freight contract. Notwithstanding any lay-time money thus far incurred, the carrier shall upon withdrawal, be credited with any costs incurred in preparing for the journey, the cost of unloading any goods already loaded and the freight charge for any distance already covered. The carrier may not, for the duration of the temporary

impediment, take on any other goods.

(d) Should no goods be presented for loading before the loading time elapses, for any reason other than an accident, or should the consignor withdraw from the freight contract before the start of the journey, the carrier shall be entitled to one-half of the stipulated freight charge to the place of destination. The provisions of (a) above shall also apply accordingly.

(e) Should only part of the goods be delivered up to the starting time of the journey, the carrier shall be entitled to the full stipulated freight charge to the place of destination.

(2) An accident shall, for the purpose of this paragraph, be any event for which neither the carrier nor the consignor or consignee are responsible.

(3) For the purpose of clause 1 above, withdrawal from a freight contract or the cancellation thereof shall, where there exist consecutive contracts, be limited to the single journey concerned.

(4) Should the discharge of goods be required after the start of the journey but before arrival at the point of destination, the carrier shall be entitled to the full stipulated freight charge to that point of destination.

(5) The carrier shall tolerate the goods being unloaded again at the port of loading or at some intermediate port only if the goods are easily accessible and provided that their discharge can be effected without endangering or prejudicing the vessel and its remaining cargo. The carrier shall, notwithstanding any other claims, be entitled to claim compensation for all costs and expenditure incurred in connection with any case in which discharge is effected before reaching the port of destination,

(6) In cases of flood or ice danger, the carrier shall determine whether - and on what conditions - the journey is to be commenced or continued.

13. Right of retention and lien

(1) The carrier shall have a right of retention, withholding or lien over the goods, freight documents and all other documents pertaining to the goods in respect of all claims arising from the freight contract and especially in respect of freight and laytime charges, customs duties and other levies and any advances made on the goods. Such rights shall similarly extend to commitments of the freight debtor which have arisen also from other or earlier legal transactions.

(2) The rights referred to in clause 1 above also arise in those cases where the goods are to be delivered FOB until such time as the consignor has paid the sums due on the goods or if the entitlements first arose after arrival of the goods as especially is the case with laytime money, freight supplements, additional costs, customs duties, sundry costs, out-of-pocket expenses, etc.

14. Carrier's liability

The carrier shall bear no liability for any loss of or damage to the goods that occurs between his accepting the goods aboard the vessel and the moment discharge begins unless the fault lies with himself or with malice

aforethought on the part of the servants of his company or any other persons whose services he uses in meeting his commitments under the freight contract.

15. Exclusion of liability

(1) The carrier shall not be held liable if he can prove that the loss of or damage to the goods was caused by an error in piloting or operating the vessel (including the vehicle used to tow or push it) on the part of the vessel's master or a member of the crew (including that of the tug or pusher boat) or by an error in making up tugged or pushed convoys.

(2) The carrier shall not be held liable for damage caused to the goods during rescue operations, rendering assistance or any other attempt at saving life or property.

(3) The carrier shall not be held liable if the loss of or damage to the goods be caused by any defect in the state of the vessel (including vehicles used to tow or push it) and its engines and accessories or the loading or discharging equipment, which defect was not discovered before the start of the journey despite all due diligence on the part of the carrier.

16. Special exceptions to liability

(1) The carrier shall not be liable:

(a) With respect to goods which, in agreement with the consignee or shipping practice, are loaded on deck or transported in open-topped vessels,

for any damage resulting from this method of transport;

(b) With respect to goods which, although their nature is such as to require packaging to protect them from loss or damage during transport, are delivered to the carrier without any or with insufficient packaging,

for any damage resulting from any danger to which they may be exposed because of the lack or insufficiency of the packaging;

(c) With respect to goods the loading or discharge of which is handled by the consignee or the consignor,

for any damage resulting from any danger to which they may be exposed during loading or discharge of through improper loading;

(d) With respect to goods which by their inherent nature are exposed to the special danger of loss, weight reduction, or damage - and namely breakage, bending, denting, splitting, abrasion, rust, oxidization, internal deterioration, mould, leakage, spontaneous combustion, drying, condensation, fermentation, rotting, smelling, dust, spillage or mixing,

for damage resulting from these dangers;

With respect to living animals,

for injury to these animals resulting from their transport.

- (3) The carrier shall bear no liability for damage caused by:
- (a) odours or humidity, condensation or other goods on board, resulting from rats, mice or vermin,
 - (b) the effects of fire or inclement weather (frost, heat, rain, snow, hail),
 - (c) the ripping or bursting of bags or
 - (d) breaches of customs or other official regulations.

The same shall apply to goods in sealed holds provided that the seals be intact at the time of delivery.

(4) The carrier shall also bear no liability with respect to injury to persons or damage to property and assets caused by the carriage of nuclear fuel or other radioactive materials.

(5) Should the carrier himself handle the loading or discharge of the goods, he shall not be held liable for any damage caused to the goods through the breakage or other failure of any manner of loading, discharge or other lifting device or through the breakage or tearing of the packaging or the fall of the goods from the lifting devices or any effect on the goods of the transshipment equipment.

(6) Should the carrier commission a third party with the loading and/or discharge of the goods, he shall be liable only for the careful selection of that third party.

(7) Should the carrier have the goods wholly or partly transported by some means of overland transport, he shall be liable only for the careful selection of the overland transporter.

17. Scope of carrier's liability

(1) Should the carrier be required to replace goods lost then, subject to the further limitation stipulated in clause (5) below, he shall restore the general market value of the goods or, where no such value is available, the general value that the goods would have fetched at the point of destination at the time they should have been delivered. The carrier shall not be liable for direct, indirect or subsidiary prejudice.

(2) Where the goods are damaged, compensation shall be no more than the difference between the value determined in clause (1) above and the sales value of the damaged goods.

(3) From the amount indicated in clauses (1) and (2) above shall be deducted any customs duties or other expenses or freight costs saved as a result of the damage to the goods.

(4) To the extent the carrier is liable for the loss of the goods, he shall be liable for a shortfall (short volume, short weight or short quantity) only to the extent that the shortfall exceeds the agreed or customary permissible shortfall or a reasonable percentage given the nature of the goods.

Regardless of any such liability incumbent on the carrier, any shortfall found on a same vessel or in a same hold carrying bulk goods of like nature for several consignors or consignees shall be shared pro rata by all such consignors or consignees.

(5) Carrier's liability in any one case shall be limited to DM 15.- per 100 kg lost or damaged goods. However, he shall in no case be liable for a total amount in respect of all the goods loaded on the vessel in excess of the value of the vessel itself with all its accessories after the occurrence of the prejudice.

Further limitations imposed by applicable legislation shall not be affected by the above.

18. Delays and other prejudices

The carrier shall be liable for any losses resulting from a delay in the delivery of the goods only when a journey or delivery deadline has been agreed upon in writing. Here, too, liability shall be excluded if the carrier can prove that the delay was due to circumstances which, according to articles 14-16 above, absolve him from liability.

Delays and other prejudices not relating to the loss or damage of the goods shall incur the carrier's liability only subject to the conditions and reservations applicable to cases of loss or damage. Moreover, liability shall be limited to the amount of the freight charge due.

19. Liability for non-contractual claims

The provisions on exclusion, restriction and limitation of carrier's liability shall similarly extend to the exercise of non-contractual claims.

20. Application of these conditions to persons other than the carrier

The provisions on exclusion, restriction and limitation of carrier's liability and the onus of proof may be invoked by

(a) all parties involved in the transport of the goods and their servants (e.g., ship-owners, fitters, charterers, sub-contracted carriers) if those parties - without being parties to the actual contract of carriage - are liable under applicable law for the fitting out of the vessel;

(b) the carrier and all his servants as well as any other persons whose services he used in the carriage of goods.

21. Timely claim for damages

(1) In no cases, can the carrier accept claims from the consignee in respect of damage to the goods unless the claims are lodged immediately after delivery in the case of externally visible damage or within three days following delivery in the case of damage not externally visible. The nature and form of the notification of damage and its determination will depend on local laws and practices at the place of destination.

(2) The carrier may not plead that the claim for damages was lodged too late or improperly if he caused the damage himself either intentionally or through gross negligence.

22. Prescription

(1) All claims on the carrier shall expire after three months.

(2) The period of prescription shall, in the case of damage or shortfall, begin at the end of the day on which the goods were delivered or, where the goods have been lost, at the end of the day on which the loss occurred.

(3) No account can be taken of expired claims.

23. Insurance

The carrier shall not be obliged to insure the goods unless he has written orders so to do indicating the goods, the insurance value and the risks to be covered. Liability for imprecise or incomplete data on the insurance order shall be borne by the party issuing the order.

24. Through-waybill and through bill of lading

In the case of a through-waybill or a through bill of lading, the carrier shall, in addition to his own carriage commitment and liability over the distance that he carries the goods, be instructed to and liable simply for handing the goods over to the next carrier - be it rail or road transport, sea-going vessel or any other transport medium or carrier - having exercised all due care in selecting the next carrier and having concluded a freight contract with that carrier. He shall be empowered to sign the conditions pertaining to the bills of lading and carriage conditions of the preceding and following carriers on behalf of the consignee, to acknowledge and to issue indemnity bonds regarding the state of the goods and also to withhold the goods to secure his own claims even in the case of FOB deliveries.

25. General average

General average shall be subject to the current version of the 1956 Antwerp-Rotterdam Rhine Rules.

The carrier may adjust the average himself or appoint an adjuster and indicate the place at which the average statement be drawn up. In all cases in which the carrier's liability is excluded or restricted, he shall not be liable, even if his assistants caused any damage, for the contribution to general average owed by the parties involved in the loading; they shall not be entitled to refuse to pay their shares or to set such amount off against any claims for damages or recovery; in such cases, the carrier's claim for reimbursement of the general average shall hold good.

26. Jurisdiction

Jurisdiction for any dispute shall lie with the courts of Dortmund as the main place of domicile of the carrier. The carrier shall nevertheless be entitled to sue the consignor or consignee at their own respective places of domicile.
