



## **LOADING and TRANSPORT CONDITIONS (Conditions of Bills of Lading dated 2007)**

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

- 1. International Loading and Transport Conditions  
for Inland Waterway Transport (IVTB) of VBW  
Status: 22 February 2007  
subject to the special conditions**

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- 2. Budapest Convention  
on the Contract on the Transport of Goods  
in Inland Waterway Transport (CMNI)  
subject to IVTB**

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- 3. Decree on Loading and Discharging Times  
as well as Demurrage in Inland Waterway Transport  
(Decree on Loading and Discharging Times – BinSchLV)  
Status: 23 November 1999**

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Only the original German version is legally binding.

(Certified Translation from the German Language)



***Loading and Transport Conditions  
(Conditions of Bills of Lading dated 2007)***

**1. International Loading and Transport Conditions  
for Inland Waterway Transport (IVTB) of VBW  
subject to the special conditions**

**§ 1  
Definitions**

1. "Contract of carriage" shall mean any contract however designated in which a carrier undertakes to transport goods on inland waterways against payment of the freightage.
2. "Carrier" shall mean any person by whom or on whose behalf a contract of carriage was concluded with a sender.
3. "Executing carrier" shall mean any person actually independently carrying out the transport of goods wholly or in part.
4. "Sender" shall mean a person by whom or on whose behalf or for whom a contract of carriage was concluded with a carrier.
5. "Addressee" shall mean any person entitled to receive the goods.
6. "Waybill" shall mean a document by which a contract of carriage of the inland waterway transport and the taking on board or loading of the goods by a carrier is proven and which is established in the form of a bill of lading or bill of carriage or any document in use in commerce.
7. "Goods" shall not mean trailed or pushed ships and do not include any luggage and vehicles of the persons transported; if the goods are loaded together in a container, on a pallet or on a similar transport device or if they are wrapped, then the term "goods" also includes these transport devices or the packaging in case they are provided by the sender.
8. "In writing" shall include, unless otherwise agreed upon by the parties concerned, the case that the information is contained in electronic, optical or similar media of communication, including, but not limited to telegram, teletype, telex, electronic mail or electronic data interchange (EDI), provided that the information is available in a manner that it can be used for later reference.

**§ 2  
Legal basis**

1. All inland water transports undertaken by us shall be based on the conditions mentioned below, to which the participants in the cargo (sender and addressee or their agents) as well as any person who stakes claims vis-à-vis the carrier on the grounds of the contract of carriage or transport documents shall submit.
2. The loading and transport conditions shall equally be valid for the ship owner, the crew as well as other servants and other persons whose service the enterprises called in for the execution of the transport avail themselves of or who cooperate in the execution of the transport.
3. Insofar as these conditions do not adopt any rules, are not applicable or violate cogent law:
  - a) the Budapest Convention on the Contract on the Transport of Goods in Inland Waterway Transport (CMNI).
  - b) the national laws in the domain of the inland waterway transport as well as the laws, decrees, directives, customs of the trade and mercantile usage for the individual waterway.

- c) for transports whose execution is transferred to third parties, the latter's conditions, as far as they are customary and not eliminated by agreement, shall apply.
4. Agreements deviating from these conditions need to be in writing to become effective. This shall be valid likewise for the waiver of the written form.
5. All provisions shall also be declared an integral part of the bill of lading or the bill of carriage.

### **§ 3**

#### **Bill of carriage and bill of lading (shipping note)**

1. A bill of carriage or a bill of lading may be issued for each consignment.

Bills of carriage are no securities. They can neither be transferred nor pledged. In this case, the carrier shall be entitled to deliver the goods to the addressee designated in the bill of carriage.

Bills of lading are securities made out to the name or to order. The goods shall only be delivered to the carrier or his agents against return of duly transferred original bills of lading. An original bill of lading and, at the same time, certified copies of the bill of lading shall be issued. If, by exception, several original bills of lading are issued, then the other originals shall be settled and ineffective by returning only one original to the carrier or his agents.

If a bill of lading is made out to order, the carrier shall be able to require that a registration address be indicated.

2. The carrier shall be entitled to include reservations in the waybill.
- a) regarding dimension, number or weight of the goods, if he has a reason to assume that the sender's information is incorrect, or if he has no sufficient possibility to verify this information, in particular as the goods were not counted, measured or weighed in his presence, or if the dimension or weight was determined by way of gauging without an express agreement;
- b) regarding identification marks which are not clearly and durably indicated on the

goods themselves or, in the case of the packing, on the containers and packing items;

- c) regarding the external condition of the goods.
3. If the carrier fails to note the external condition of the goods or to make reservations in this respect, it shall be assumed that he had noted in the waybill that the goods had an externally good condition.
4. If the goods were stowed in a container or in the storage areas of the ship according to the information on the waybill, which had been sealed by a different person than the carrier, his servants or agents, and if neither the containers nor the seals are damaged until reaching the dock of discharge or delivery location, there shall be assumed that a loss or damage of the goods did not occur during transport.

### **§ 4**

#### **Loading berth, loading and stevedore, deck cargo**

1. The sender shall define the loading berth. If the ship cannot berth at a loading berth for reasons which the former is not responsible for or if it can only berth at the expenditure of special costs or if the ship has to leave the loading berth for these reasons, then the carrier shall be able to require a different loading berth and a different kind of loading. The costs and other additional expenditure for the ship and the cargo incurred by this shall be borne by the participants in the cargo, who shall be jointly and severally liable for this. The claim to demurrage shall remain unaffected by this.
2. The sender has to deliver the goods into the ship and to stow, to trim and to secure them according to the carrier's instructions.
3. The carrier has the right to embark the goods wholly or in part on the deck of the ships or, as far as usual, into open ships with the necessary care.

### **§ 5**

#### **Identification and handing over of the cargo**

1. The sender has to make the indications necessary for the transport, to exactly designate the merchandise and its packaging, class, condition and quality in

the customary manner and to hand over all accompanying documents necessary especially on the grounds of dock, customs, health and other provisions, with the merchandise at the placing of the order, at the latest before the beginning of the loading of the means of transport.

2. Inflammable, environmentally harmful, combustible, poisonous, caustic, radiating, radioactive and similar goods have to be designated as such, subject to the relevant directives, especially according to their danger class. The sender is obliged to point out in writing the nature of the risk and the precautionary measures to be taken for each individual case at the placing of the order. At the taking on board of the merchandise, the written instructions according to the Decree ADNR and other documents according to the provisions applicable each time shall have to be handed over to the carrier or his agents. Commercial designations of such materials or other information shall not suffice.
3. The sender shall be obliged to communicate to the carrier all characteristics of the freight relevant for the proper execution of the transport already at the placing of the order, as far as they may involve dangers for the ship or the rest of the cargo. He shall be liable for all direct or indirect losses, damage and other disadvantages resulting from incorrect, incomplete or omitted notifications as well as for all costs incurred by this.  
In all these cases, the carrier shall be able to discharge, land, retransport or in urgent cases even destroy the goods to be complained about at the expense of the participants in the cargo, without becoming liable for damages himself.
4. The sender warrants the correctness of the description of the goods according to section 2 as well as of the indications regarding marks, number, quantity, weight and/or volume according to section 1 at the time of the taking on board. He shall be liable for all direct or indirect losses, damage and other disadvantages resulting from incorrectness as well as for all costs incurred by this.  
With regard to the sender's secondary obligation as well as to the carrier's rights, the regulations in section 3 shall apply.

5. If the ship is held or prevented from putting into a dock or from sailing out of a dock or if the goods are confiscated due to missing, inexact or incorrect indications or accompanying documents or due to disregard of any directives on the part of the principal, sender or addressee, then the fallible principal, sender or addressee shall be liable vis-à-vis the carrier and the other participants in the cargo for all delays, damage, costs, administrative fines and disadvantages as well as demurrages due.
6. If the carrier has to make declarations, issue, treat or sign documents vis-à-vis authorities, customs offices, public servants, railway managements, public or private business undertakings, then he shall only act on behalf, for account and at the risk of the participants in the cargo. He shall also be liable for this in case of default, loss or non-delivery, only in case of gross negligence. If third party entrepreneurs, e.g. transit agents, are called in, then the carrier shall only be liable for their selection.

## **§ 6**

### **Selection of vehicles and transport routes, transshipment and lighter right**

1. The transport shall be executed with vehicles determined by the carrier. The carrier shall be able to entrust other carriers with the execution of the transport.
2. The carrier does not assume any obligation to transport the goods in a certain order, on a certain way, a certain ship or within a certain deadline. He shall not be liable for delays in executing the contract, especially not if the connection to a sea-going vessel is not caught, unless the delay is due to grossly negligent behaviour.
3. The carrier shall be entitled to tranship, lighter, or discharge the goods wholly or in part to other ships and/or stock them in warehouses or onshore, as far as it seems to be necessary according to the circumstances or the interests of the ship or the cargo. The participants in the cargo shall be liable jointly and severally vis-à-vis the carrier for the extra cost incurred by this.
4. The transshipment, lightering, or discharge into ships or warehouses shall be effectuated on behalf, for account and at the risk of the participants in the cargo.

5. In the cases of sections 3 and 4, the maintenance of a permanent insurance coverage shall be incumbent on the participants in the cargo.

### **§ 7**

#### **Unloading berth, discharging**

1. The sender or the addressee shall define the appropriate unloading berth. The stipulations contained in § 4, section 1 concerning the change of the loading berth shall be valid accordingly for the change of the discharging berth.
2. The sender or the addressee shall be obliged to give instructions to the carrier concerning the discharging and the customs clearance before the arrival of the ship in the dock of discharge; otherwise the carrier shall be entitled to take all measures which seem necessary to him on behalf, for account and at the risk of the participants in the cargo.
3. In case of optional batches, the dock of destination has to be notified to the carrier or the shipper in writing at least twelve hours before the arrival of the ship in the first optional dock. The participants in the cargo shall be liable jointly and severally vis-à-vis the carrier for extra cost incurred because the optional dock has not been communicated in time.

### **§ 8**

#### **Loading and unloading time as well as demurrage**

Except for special agreements, the respective national regulations on loading and discharging times as well as the calculation of demurrage shall be valid.

The right to further claims for damages shall be expressly reserved.

### **§ 9**

#### **Obstacles precluding delivery, consignment, and emergency sale**

1. If the agreed addressee refuses to accept the goods or to pay the claims attached to the goods or if another obstacle precluding delivery arises or if the addressee does not come forward, then the carrier shall have to inform the sender and obtain the latter's instruction. If this is not suitable under the circumstances on hand or if the sender is tardy/in default in giving the instruction or if

the execution of this instruction cannot be reasonably expected from the carrier, then the latter shall be authorised to hand over the goods to a public or private warehouse, discharge them into lighters or to put them ashore or hand them over to a freight forwarder on behalf, for account and at the risk of the participants in the cargo.

2. If the addressee delays the discharging, then the carrier shall be entitled to discharge the goods himself or cause them to be discharged or have them consigned or hand them over according to section 1 after announcement to the sender and the addressee on behalf, for account and at the risk of the addressee or the sender, irrespectively of the claims for demurrage incurred.
3. The above-mentioned rights shall also exist before the expiration of any idle periods.
4. The consignment or the lighterage of the goods or their discharge ashore or the handing-over to a freight forwarder shall be considered due delivery. The carrier's right to retain or pledge goods shall remain reserved.
5. If delivery is not taken of the goods within three months of their consignment, the carrier shall be entitled, without previous notification or warning and without administrative/judicial authorisation, to sell them by private contract or publicly or have them sold at auction. If the goods are quickly perishable or if they are subject to maintenance or considerable storage costs or if their value does not cover the costs attached to it according to the carrier's estimation, then the carrier shall be entitled to an immediate sale or sale at auction without observing the three months' notice.

### **§ 10**

#### **Freight**

1. For want of special agreement, the freightage shall include transport from free in and out stowed inland waterway craft (dock of loading) to free arrival inland waterway craft (dock of discharging). It shall be calculated at least according to the gross weights, quantities, or dimensions of the goods declared in the ship's papers. If in other documents, higher weights or quantities are revealed or if they are established through weight checks or controls, then these shall be valid for the

calculation of the freightage. The freightage shall become due at the delivery of the goods.

2. The loading, stowage, securing and discharging costs as well as all other costs, expenditures and charges shall have to be reimbursed in addition to the freightage, as far as they have not expressly been included in the rate of freightage or taking on board agreed upon.
3. The contract of carriage presupposes an open and unimpeded navigation. All extra costs and expenditures incurred in comparison to a normal course of a voyage shall be borne by the merchandise.
4. The freightage rates shall be based on the operating costs, rates of exchange and rates and taxes existing on the date of the conclusion. Any exceptional increase, especially of the fuel costs, crew wages, and taxes and rates during the duration of the contract of carriage shall entitle the carrier to adapt the freightage rate to the changed situation or to rescind the contract in case of batches not yet loaded.
5. The addressee and the sender shall be liable jointly and severally vis-à-vis the carrier for freight, dead freight, freight surcharges, costs, expenditures, charges, and other claims attached to the goods as well as for all demurrages, no matter whether the goods travel freely or unfreely. The sender shall not be released from this liability if the goods are delivered without payment or if an existing pledge is not exercised. The addressee shall assume the joint and several liability by requiring the supply of the goods or by disposing of them otherwise.

#### **§ 11 Full freight, dead freight**

1. The carrier shall be entitled to the full freight, even if:
  - a) the cargo is only delivered in part;
  - b) the sender or the addressee require the discharge of the goods in the dock of loading or in an intermediate dock;
  - c) the continuation of the voyage is prevented permanently or temporarily;

d) the voyage is only executed partly, the ship sinks, or otherwise does not reach its destination;

- e) the goods were destroyed, sunk, seized, confiscated, damaged, reduced, or otherwise became worthless.
2. The carrier shall be entitled to half the freight, if:
  - a) no cargo is delivered;
  - b) the sender rescinds the contract before the start of the voyage;
  - c) the start of the voyage is permanently or provisionally prevented.
3. The prerequisite for action to enforce these claims shall be neither that the sender or the addressee is responsible for the insufficient performance of the contract nor that the vehicle intended for the transport is submitted ready for loading. These claims also exist if the obstacle arose as a consequence of one of the causes mentioned in § 15, section 3. The claims for damages and demurrers and freight surcharges as well as general-average contributions shall remain reserved.
4. The sender and the addressee shall not be able to rescind the contract in case of temporary hindrance of the voyage. The carrier, however, shall be obliged to unload the goods again in the dock of loading against payment of all costs and additional expenditures associated with the unloading on the part of the participants in the cargo.

The discharge in an intermediate dock can only be required if the goods are handy and if there is a possibility of unloading without danger or disadvantage for the ship and the rest of the cargo. In these cases, the carrier shall additionally be entitled to the costs incurred by the renewed unloading or discharging as well as to the other additional expenditure.

#### **§ 12 Supplemental charges for small waters**

The following supplemental charges for small waters may be agreed upon individually:

## 1. Rhine

- a) The freightage agreed upon shall be increased without further ado by the supplemental charges for small waters according to the following progressive rates:

- aa) In the shipping traffic below Duisburg (including) at a Ruhrort water level of

3.00 – 2.91 m	10 %
2.90 – 2.81 m	20 %
2.80 – 2.71 m	30 %
2.70 – 2.61 m	40 %
2.60 – 2.51 m	50 %
2.50 – 2.41 m	60 %
2.40 – 2.31 m	70 %
2.30 – 2.21 m	80 %
2.20 – 2.11 m	90 %
2.10 – 2.01 m	100 %
2.00 – 1.91 m	110 %
1.90 – 1.81 m	120 %

- bb) In the shipping traffic above Duisburg to Koblenz (including) including Mosel and Saar at a Cologne water level of

2.40 – 2.21 m	20%
2.20 – 2.01 m	30 %
2.00 – 1.81 m	40 %
1.80 – 1.61 m	60 %
1.60 – 1.41 m	80 %

Date of reference for the voyage up the river:

from the beginning of the loading time until the arrival at the destination, in the shipping traffic to locations at canalised trades until the entry into the first sluice-gate

for the voyage down the river:  
date of the completion in the dock of loading

- cc) In the shipping traffic above Koblenz upon Rhine as well as to locations on the Main, the Main-Danube-Canal and the Neckar at a Kaub water level of

1.50 – 1.36 m	20 %
1.35 – 1.21 m	30 %
1.20 – 1.01 m	50 %
1.00 – 0.91 m	60 %
0.90 – 0.81 m	70 %

Date of reference for the voyage up the river:

from the beginning of the loading time until the arrival at the destination, in the shipping traffic to locations on canalised trades until the entry into the first sluice-gate

for the voyage down the river:  
date of the completion in the dock of loading

- dd) In the shipping traffic within the area on the Danube, the Main-Danube-Canal, the Main, the Neckar and Mainz to Mannheim (including) at a Mainz water level of

2.30 – 2.11 m	20 %
2.10 – 1.91 m	40 %
1.90 – 1.71 m	60 %
1.70 – 1.51 m	80 %

Date of reference: date of the completion in the dock of loading

- ee) In the shipping traffic from locations on the Danube, the Main-Danube-Canal, the Neckar and Mainz to Mannheim to locations above Mannheim und in reverse order at a Maxau water level of

4.40 – 4.21 m	20 %
4.20 – 4.01 m	40 %
4.00 – 3.81 m	60 %
3.80 – 3.61 m	80 %

Date of reference: date of the completion in the dock of loading

- b) At a water level of Ruhrort of 1.80 m, a water level of Cologne of 1.40 m, a water level of Kaub of 0.80 m, a water level of Mainz of 1.50 m and a water level of Maxau of 3.60 m and below, the obligation to transport shall lapse. As for the rest, the carrier shall have the rights from § 13.

## 2. Danube

- a) The shipping costs agreed upon shall be increased without further ado by the supplemental charges for small waters according to the following scale:

In the shipping traffic from and to Danube docks at a Pfelling water level of

3.70 – 3.61 m	10 %
3.60 – 3.51 m	20 %
3.50 – 3.41 m	30 %
3.40 – 3.31 m	40 %
3.30 – 3.21 m	50 %
3.20 – 3.11 m	60 %

Besides, the standard water levels mentioned under cipher 1 have to be observed according to the total trade in case of these shipping traffics. For the assessment of the KWZ (supplemental charges for small waters), the best KWZ scale for the inland waterway craft shall be applicable.

Date of reference:

- aa) for shipping traffics starting from stations on the Danube:  
from the beginning of the loading time to the arrival at the destination, in the shipping traffic to locations on canalised trades until the entry into the first sluice-gate.
  - bb) for shipping traffics to stations on the Danube:  
from the beginning of the loading time to the passage of the sluice-gate of Kelheim; in case of lighterage in a Danube dock: day of the lighterage.
- b) The carrier's obligation to accept and transport the goods shall lapse at a water level of Pfelling of 3.10 m and below.
3. For shipping traffics in the other areas of waterways, the regulations which are customary there shall apply.

### § 13

#### **Lapse of the obligation to accept and transport the goods**

1. The obligation to accept and transport the goods shall lapse on any waterway without further ado, no matter whether the goods have already been taken on board or loaded or whether the ship has already set out or not, if the following events or circumstances have arisen generally or only with reference to the ship which has the goods on board:
- a) Force majeure, war, civil war, mobilisation, military undertakings, riot, sabotage, strike, lock-out, blockade, civil commotion;

- b) official measures and interventions, import, export, and transit restrictions or interdictions, seizures or requisitions;
- c) barrages to navigation of any kind or accidents of navigation, interferences or terminations of operation in sluice-gates, canals, docks, or other institutions of navigation, disruptions of traffic, obstructions of traffic in seaports, or closure of the navigation;
- d) Acts of God, floods, inundations, ice and danger of ice;

2. During the whole duration of one of these cases and a further fortnight past it, the carrier shall be entitled to charge demurrages plus costs for extra expenditure for all delays in the shipping turnaround as well as, at his option:

- a) either to execute the transport and to impose a freight surcharge for the whole trade agreed upon and to take all extra expenditures incurred to the carrier compared to a normal order processing at the expense of the goods, the participants in the cargo being liable jointly and severally for the extra expenditure,
- b) or to rescind the contract totally and to charge dead freight pursuant to § 11 and to discharge goods already loaded at the place he thinks appropriate on behalf, for account and at the risk of the participants in the cargo or to have them discharged and to put them into storage or re-forward them by other means. All additional costs, the extra freightage and the expenditure incurred through the discharge in the intermediate dock, storage, or re-forwarding shall be borne by the participants in the cargo.

The carrier possesses the above-mentioned rights even if he should fail to notify sender and addressee of the occurrence of the event.

3. The sender shall be able to rescind the contract in the cases of section 1 a) to d), provided that he pays the costs of the renewed unloading and the full freightage according to § 11, section 1 c).
4. The sender and the addressee shall be liable jointly and severally vis-à-vis the carrier for any daily freightage charged

additionally, freight surcharges, demurrages, and other extra expenditure.

5. If the start of the voyage is permanently impeded by an accident or a circumstance which the carrier is not responsible for pursuant to these Loading and Transport Conditions, then the contract of carriage shall be suspended without one party being obliged to indemnify the other.

In particular, the following situations shall have to be considered a permanent impediment:

- if the ship by which the transport had to be effectuated is lost or damaged to such an extent that it cannot set out without extensive repair of the ship; particularly such a repair which necessitates the complete discharge of the cargo shall be deemed a repair of this kind;
  - if the goods to be transported are lost, provided that they are designated not only as to the class and the line of goods but especially in the contract of carriage or have already been loaded or in any case taken on board by the carrier.
6. If after the start of the voyage its continuation is prevented by accident or circumstances which the carrier is not responsible for pursuant to these Loading and Transport Conditions, then the contract of carriage shall be suspended. The costs for the renewed unloading and the freightage for the part of the trade already covered (distance freightage) shall be borne by the sender.

#### **§ 14**

##### **Carrier's retention of goods and pledge**

1. On account of all claims substantiated by the contract of carriage as well as on account of unchallenged rights from other contracts of carriage, shipping or warehousing contracts, the carrier shall have a pledge to the goods. The pledge shall also extend to the accompanying documents.
2. The pledge shall exist as long as the carrier has the merchandise in his possession, particularly as long as he can dispose of it by means of the bill of lading or warehouse warrant.

3. In exercising the pledge, the carrier shall be entitled to discharge the goods on behalf, for account and at the risk of sender and addressee and to put them into storage at an appropriate place or to request security for his claims.
4. Third parties who lay claim to the merchandise on grounds of the bill of lading, shall acknowledge the carrier's retention of goods or pledge in terms of the above stipulations by taking delivery of the bill of lading or by disposing of such documents only because of any and all claims justified on the grounds of the contract of carriage.
5. The retention of goods and the pledge shall exist if the goods have to be surrendered freely, with regard to the claims incurred only after the start of the voyage, especially demurrages, freight surcharges, extra expenditure, customs as well as other costs and expenses. For further claims, the retention of goods and pledge shall exist to those goods which belong to the sender.
6. The sale of pledged security shall be admissible within one week.
7. For the sale of pledged security and the self-help sale, the carrier shall be able to charge a sales commission of the gross proceeds to the amount of the rates customary in the locality.

#### **§ 15**

##### **Carrier's liability**

1. The carrier shall be liable for damage which occurs through loss or damage of the goods in the period of time between taking-over the transport and delivery or through exceeding the delivery time, if he does not prove that the damage was caused by circumstances which a prudent carrier would not have been able to avoid and the consequences of which he would not have been able to prevent.
2. As far as no international law or additionally applicable national law provisions cogently preclude this, the carrier shall not be liable
  - a) for the loss or damage of the goods on whose nature or value the sender, the principal or the addressee made false or incomplete indications or which he marked insufficiently or inadequately or

for other disadvantages, regardless of the cause of loss or the fault;

**§ 16**  
**Extent of liability**

- b) for loss, damage or tardiness during the transport of the goods on dock or in open ships, if this type of transport had been agreed upon with the sender, if it had been made in accordance with the customs of the respective trade or if it had been necessary due to valid provisions;
- c) in case of initial incapability of operating or loading a ship, if a valid ship certificate of an investigation committee for ships or a valid certificate of a recognised classification society is available and the ship's condition of incapability of operating or loading could not be noticed by applying the care of a decent carrier;
- d) for loss or damage of the goods, stay or tardiness or other costs, expenditures or gross average contributions due to an event of average as a result of nautical blame, especially collision, hitting, running aground, shipwreck, bursting, capsizing, beaching, or sinking of the ship as well as fire, explosion, and wash of the waves, as far as no intention or gross negligence on the part of one of his officers is on hand;
- e) for the treatment, loading, trimming or unloading of the merchandise by sender and addressee or the persons acting on their behalf;
- f) for the natural quality of certain goods, as a consequence of which they are exposed to total or partial loss or damage, especially through breaking, rust, inner spoilage, drying, leakage, normal shrinkage (in tonnage or weight) or the effect of vermin or rodents;
- g) in case of through-bills of lading for the transport routes not covered by him;
3. If behaviour of the sender or the addressee or a special flaw of the goods played its part in the origin of the damage, then the secondary obligation as well as the extent of the replacement depend on to what extent these circumstances contributed to the damage.
1. The carrier's indemnification in case of loss or damage of the goods as well as in case of damage due to delayed performance and damage to property shall be determined on the grounds of the stipulations mentioned below, as far as no cogent statutory provisions preclude this. For the national shipping traffic, the respective statutory provisions shall be valid with regard to loss or damage, damage due to delayed performance and damage to property.
- In case the contract of carriage is governed by German law, then the compensation to be paid by the carrier on account of loss or damage of the merchandise shall be limited to two units of account. The unit of account per kilogram shall be the Special Drawing Right fixed by the International Monetary Fund.*
2. Subject to deviating commercial customs, there shall be no liability for shortage or deficiency in weight or dimension not exceeding 2% of the total weight or dimension of the lot concerned.
3. If an agreed deadline is not met, the indemnification shall be limited to the amount of the freightage agreed for the shipment.
4. If on the grounds of the applicable law, further exemptions from liability or limitations of liability are possible, these shall be valid.
5. If loose goods of the same kind are loaded together in the same ship or shipping space, then the individual owners of the cargo, senders or addressees have to divide up a possible deficiency in weight, damage, or average as well as excess weight or excess dimension between them proportionately.
6. The provisions concerning the exemptions from liability, limitations of liability or limited liability of the carrier shall extend to all contractual or non-contractual claims, including claims from damage to property for any cause in law whatsoever.
7. If the carrier's liability vis-à-vis a third party cannot be excluded or limited, then the sender shall be obliged to hold the carrier harmless of claims of the participants in the

cargo or third parties, except for cases of intention and gross negligence.

**§ 17  
Insurance**

The carrier shall not be obliged to insure the goods against any dangers and risks without express written order.

**§ 18  
Gross average**

1. In case of gross average, the "Rhine Rules IVR" shall be valid as amended. The text is available upon request.
2. The sender, principal, and addressee shall be jointly and severally liable vis-à-vis the carrier for all contributions to gross average apportionable to their goods on account of an average adjustment. The carrier shall be entitled to claim a letter of indemnity and to request a deposit for these contributions. A right of retention of contributions to gross average and a reclaim right to gross average contributions paid shall be excluded, even in the event that the gross average was brought about in a faulty manner, unless the case of gross average is due to an action or omission committed by the carrier himself or a person within the meaning of § 2, section 2 with the intention of bringing about such a case or recklessly, consciously of the probability of the occurrence of such an event.

**§ 19  
Offsetting/Covenant against assignment**

1. Sender and addressee shall not be entitled to offset claims contested by the carrier – for whatever legal reasons – against claims of the carrier.
2. Sender and addressee shall not be entitled, without the carrier's written consent, to assign to third parties claims from the contract of carriage against the carrier, his ancillary workers, or vicarious agents within the meaning of § 2, section 2 – except for transport insurers.

**§ 20  
Prescription**

All claims against the carrier, his ancillary workers and vicarious agents shall become statute-barred within one year as of the point of

time at which the claim arises, at the latest, however, starting from the point of time of the surrender of the merchandise. In case of loss, the prescription shall begin with the end of the day on which the surrender should have been effectuated.

**§ 21  
Regulations of liability in favour of the carrier**

The carrier shall be able to demand exemptions from liability, limitations of liability, abridgement of time or waivers of recourse agreed upon between sender and addressee to the full extent equally for himself.

**§ 22  
Venue**

The venue for all litigations shall be the registered office of the carrier. The carrier shall be entitled to seek redress also in another court competent according to the statutory provisions.

**§ 23  
Safeguarding clause**

Should one of the above clauses be ineffective, then the efficiency of the rest of the conditions shall not be affected by this.

The parties are obliged to replace the ineffective provision with an effective one, which comes as close as possible to the economic result of the ineffective provision.

**§ 24  
Applicable law**

Should a regulation of the "lex contractus" not be determined between the parties to the contract, then

- (a) for all transports with the beginning and the end on the same national territory, the intra-state laws valid there, with the exclusion of private international law, shall be applicable;
- (b) for all other transports, the law of the country in which the executing carrier has his registered office, with the exclusion of private international law, shall be applicable.

### **Special conditions**

- § 1 If the statutory/agreed discharging time is exceeded by more than 3 calendar days and if in spite of request, the eligible person does not issue any instruction or issues the instruction to continue to wait for the discharging, then the carrier shall receive the 2.5-fold demurrage compensation for this period of time until the complete unloading of the ship, according to BinSchLV.  
The assertion of other damages and other expenditures within the meaning of § 418, section 1 of HGB (German Commercial Code) shall not be affected by this.
- § 2 In order to clarify § 4 of BinSchLV, it is deemed agreed that whole days after expiration of the loading or discharging time have to be estimated at 24 hours.  
This is likewise without influence on the calculation of the loading and discharging time and the regulation according to § 4, section 2 of BinSchLV.
- § 3 Within the meaning of § 22 of VTB, the court competent for Aschaffenburg is chosen as venue.



**Loading and Transport Conditions  
(Conditions of Bills of Lading dated 2007)**

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

The States Parties to this Convention,

Considering the recommendations of the Final Act of the Conference on Security and Cooperation in Europe of 1 August 1975 for the harmonization of legal regimes with a view to the development of transport by member States of the Central Commission for the Navigation of the Rhine and the Danube Commission in collaboration with the United Nations Economic Commission for Europe,

Having recognized the necessity and desirability of establishing by common agreement certain uniform rules concerning contracts for the carriage of goods by inland waterway,

Have decided to conclude a Convention for this purpose and have thereto agreed as follows:

**CHAPTER I**

**GENERAL PROVISIONS**

**Article 1**

**Definitions**

In this Convention,

1. "Contract of carriage" means any contract, of any kind, whereby a carrier undertakes against payment of freight to carry goods by inland waterway;

2. "Carrier" means any person by whom or in whose name a contract of carriage has been concluded with a shipper;

3. "Actual carrier" means any person, other than a servant or an agent of the carrier, to whom the performance of the carriage or of part of such carriage has been entrusted by the carrier;

4. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage has been concluded with a carrier;

5. "Consignee" means the person entitled to take delivery of the goods;

6. "Transport document" means a document which evidences a contract of carriage and the taking over or loading of goods by a carrier, made out in the form of a bill of lading or consignment note or of any other document used in trade;

7. "Goods" does not include either towed or pushed vessels or the luggage or vehicles of passengers; where the goods are consolidated in a container, on a pallet or in or on a similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper;

8. "In writing" includes, unless otherwise agreed between the parties concerned, the transmission of information by electronic, optical or similar means of communication,

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

including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI), provided the information is accessible so as to be usable for subsequent reference.

9. The law of a State applicable in accordance with this Convention means the rules of law in force in that State other than its rules of private international law.

## **Article 2**

### **Scope of application**

1. This Convention is applicable to any contract of carriage according to which the port of loading or the place of taking over of the goods and the port of discharge or the place of delivery of the goods are located in two different States of which at least one is a State Party to this Convention. If the contract stipulates a choice of several ports of discharge or places of delivery, the port of discharge or the place of delivery to which the goods have actually been delivered shall determine the choice.

2. This Convention is applicable if the purpose of the contract of carriage is the carriage of goods, without transshipment, both on inland waterways and in waters to which maritime regulations apply, under the conditions set out in paragraph 1, unless:

- a) a maritime bill of lading has been issued in accordance with the maritime law applicable, or
- b) the distance to be travelled in waters to which maritime regulations apply is the greater.

3. This Convention is applicable regardless of the nationality, place of registration or home port of the vessel or whether the vessel is a maritime or inland navigation vessel and regardless of the nationality, domicile, registered office or place of residence of the carrier, the shipper or the consignee.

## **CHAPTER II**

### **RIGHTS AND OBLIGATIONS OF THE CONTRACTING PARTIES**

#### **Article 3**

##### **Taking over, carriage and delivery of the goods**

1. The carrier shall carry the goods to the place of delivery within the specified time and deliver them to the consignee in the condition in which they were handed over to him.

2. Unless otherwise agreed, the taking over and delivery of the goods shall take place on board the vessel.

3. The carrier shall decide which vessel is to be used. He shall be bound, before and at the beginning of the voyage, to exercise due diligence to ensure that, taking into account the goods to be carried, the vessel is in a state to receive the cargo, is seaworthy and is manned and equipped as prescribed by the regulations in force and is furnished with the necessary national and international authorizations for the carriage of the goods in question.

4. Where it has been agreed that the carriage shall be performed by a specific vessel or type of vessel, the carrier shall be entitled to load or transship the goods in whole or in part on to another vessel or on to another type of vessel without the consent of the shipper, only:

- a) in circumstances, such as low water or collision or any other obstacle to navigation, which were unforeseeable at the time when the contract of carriage was concluded and in which the loading or transshipment of the goods is necessary in order to perform the contract of carriage, and when the carrier is unable to obtain within an appropriate period of time instructions from the shipper, or
- b) when it is in accordance with the practice prevailing in the port where the vessel is located.

5. Except as provided by the obligations incumbent on the shipper, the carrier shall ensure that the loading, stowage and securing of the goods do not affect the safety of the vessel.

6. The carrier is entitled to carry the goods on deck or in open vessels only if it has been agreed with the shipper or if it is in accordance with the usage of the particular trade or is required by the statutory regulations.

#### **Article 4**

##### **Actual carrier**

1. A contract complying with the definition set out in article 1, paragraph 1, concluded between a carrier and an actual carrier constitutes a contract of carriage within the meaning of this Convention. For the purpose of such contract, all the provisions of this Convention concerning the shipper shall apply to the carrier and those concerning the carrier to the actual carrier.

2. Where the carrier has entrusted the performance of the carriage or part thereof to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him.

3. The carrier shall in all cases inform the shipper when he entrusts the performance of the carriage or part thereof to an actual carrier.

4. Any agreement with the shipper or the consignee extending the carrier's responsibility according to the provisions of this Convention affects the actual carrier only to the extent that he has agreed to it expressly and in writing. The actual carrier may avail himself of all the objections invocable by the carrier under the contract of carriage.

5. If and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several. Nothing in this article shall prejudice any right of recourse as between them.

#### **Article 5**

##### **Delivery time**

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

#### **Article 6**

##### **Obligations of the shipper**

1. The shipper shall be required to pay the amounts due under the contract of carriage.

2. The shipper shall furnish the carrier in writing, before the goods are handed over, with the following particulars concerning the goods to be carried:

- a) dimensions, number or weight and stowage factor of the goods;
- b) marks necessary for identification of the goods;
- c) nature, characteristics and properties of the goods;
- d) instructions concerning the Customs or administrative regulations applying to the goods;
- e) other necessary particulars to be entered in the transport document.

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

3. If the nature of the goods so requires, the shipper shall, bearing in mind the agreed transport operation, pack the goods in such a way as to prevent their loss or damage between the time they are taken over by the carrier and their delivery and so as to ensure

that they do not cause damage to the vessel or to other goods. According to what has been agreed with a view to carriage, the shipper shall also make provision for appropriate marking in conformity with the applicable international or national regulations or, in the absence of such regulations, in accordance with rules and practices generally recognized in inland navigation.

4. Subject to the obligations to be borne by the carrier, the shipper shall load and stow the goods and secure them in accordance with inland navigation practice unless the contract of carriage specifies otherwise.

### **Article 7**

#### **Dangerous and polluting goods**

1. If dangerous or polluting goods are to be carried, the shipper shall, before handing over the goods, and in addition to the particulars referred to in article 6, paragraph 2, inform the carrier clearly and in writing of the danger and the risks of pollution inherent in the goods and of the precautions to be taken.

2. Where the carriage of the dangerous or polluting goods requires an authorization, the shipper shall hand over the necessary documents at the latest when handing over the goods.

3. Where the continuation of the carriage, the discharge or the delivery of the dangerous or polluting goods are rendered impossible owing to the absence of an administrative authorization, the shipper shall bear the costs for the return of the goods to the port of loading or a nearer place, where they may be discharged and delivered or disposed of.

4. In the event of immediate danger to life, property or the environment, the carrier shall be entitled to unload the goods, to render them innocuous or, provided that such a measure is not disproportionate to the danger they represent, to destroy them, even if, before they were taken over, he was informed or was apprised by other means of

the nature of the danger or the risks of pollution inherent in the goods.

5. Where the carrier is entitled to take the measures referred to in paragraphs 3 or 4 above, he may claim compensation for damages.

### **Article 8**

#### **Liability of the shipper**

1. The shipper shall, even if no fault can be attributed to him, be liable for all the damages and costs incurred by the carrier or the actual carrier by reason of the fact that:

- a) the particulars or information referred to in articles 6, paragraph 2, or 7, paragraph 1, are missing, inaccurate or incomplete;
- b) the dangerous or polluting goods are not marked or labelled in accordance with the applicable international or national regulations or, if no such regulations exist, in accordance with rules and practices generally recognized in inland navigation;
- c) the necessary accompanying documents are missing, inaccurate or incomplete.

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

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

### **Article 9**

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

1. The carrier may terminate the contract of carriage if the shipper has failed to perform the obligations set out in article 6, paragraph 2, or article 7, paragraphs 1 and 2.

2. If the carrier makes use of his right of termination, he may unload the goods at the shipper's expense and claim optionally the payment of any of the following amounts:

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

### **Article 10**

#### **Delivery of the goods**

1. Notwithstanding the obligation of the shipper under article 6, paragraph 1, the consignee who, following the arrival of the goods at the place of delivery, requests their delivery, shall, in accordance with the contract of carriage, be liable for the freight and other charges due on the goods, as well as for his contribution to any general average. In the absence of a transport document, or if such document has not been presented, the consignee shall be liable for the freight agreed with the shipper if it corresponds to market practice.

2. The placing of the goods at the disposal of the consignee in accordance with the contract of carriage or with the usage of the particular trade or with the statutory regulations applicable at the port of discharge shall be considered a delivery. The imposed handing over of the goods to an authority or a third party shall also be considered a delivery.

### **CHAPTER III**

#### **TRANSPORT DOCUMENTS**

### **Article 11**

#### **Nature and content**

1. For each carriage of goods governed by this Convention the carrier shall issue a transport document; he shall issue a bill of lading only if the shipper so requests and if it has been so agreed before the goods were

loaded or before they were taken over for carriage. The lack of a transport document or the fact that it is incomplete shall not affect the validity of the contract of carriage.

2. The original of the transport document must be signed by the carrier, the master of the vessel or a person authorized by the carrier. The carrier may require the shipper to countersign the original or a copy. The signature may be in handwriting, printed in facsimile, perforated, stamped, in symbols or made by any other mechanical or electronic means, if this is not prohibited by the law of the State where the transport document was issued.

3. The transport document shall be prima facie evidence, save proof to the contrary, of the conclusion and content of the contract of carriage and of the taking over of the goods by the carrier. In particular, it shall provide a basis for the presumption that the goods have been taken over for carriage as they are described in the transport document.

4. When the transport document is a bill of lading, it alone shall determine the relations between the carrier and the consignee. The conditions of the contract of carriage shall continue to determine the relations between carrier and shipper.

5. The transport document, in addition to its denomination, contains the following particulars:

- a) the name, domicile, registered office or place of residence of the carrier and of the shipper;
- b) the consignee of the goods;
- c) the name or number of the vessel, where the goods have been taken on board, or particulars in the transport document stating that the goods have been taken over by the carrier but not yet loaded on the vessel;
- d) the port of loading or the place where the goods were taken over and the port of discharge or the place of delivery;
- e) the usual name of the type of goods and their method of packaging and, for

dangerous or polluting goods, their name according to the requirements in force or, if there is no such name, their general name;

- f) the dimensions, number or weight as well as the identification marks of the goods taken on board or taken over for the purpose of carriage;
- g) the statement, if applicable, that the goods shall or may be carried on deck or on board open vessels;
- h) the agreed provisions concerning freight;
- i) in the case of a consignment note, the specification as to whether it is an original or a copy; in the case of a bill of lading, the number of originals;
- j) the place and date of issue.

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

#### **Article 12**

##### **Reservations in transport documents**

1. The carrier is entitled to include in the transport document reservations concerning:

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

2. If the carrier fails to note the apparent condition of the goods or does not enter reservations in that respect, he is deemed to have noted in the transport document that the goods were in apparent good condition.

3. If, in accordance with the particulars set out in the transport document, the goods are placed in a container or in the holds of the vessel and sealed by other persons than the carrier, his servants or his agents, and if neither the container nor the seals are damaged or broken when they reach the port of discharge or the place of delivery, it shall be presumed that the loss or damage to the goods did not occur during carriage.

#### **Article 13**

##### **Bill of lading**

1. The originals of a bill of lading shall be documents of title issued in the name of the consignee, to order or to bearer.

2. At the place of destination, the goods shall be delivered only in exchange for the original of the bill of lading submitted initially; thereafter, further delivery cannot be claimed against other originals.

3. When the goods are taken over by the carrier, handing over the bill of lading to a person entitled thereby to receive the goods has the same effects as the handing over of the goods as far as the acquisition of rights to the goods is concerned.

4. If the bill of lading has been transferred to a third party, including the consignee, who has acted in good faith in reliance on the description of the goods therein, proof to the contrary of the presumption set out in article 11, paragraph 3, and article 12, paragraph 2, shall not be admissible.

#### **CHAPTER IV**

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

#### **Article 14**

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

1. The shipper shall be authorized to dispose of the goods; in particular, he may require the carrier to discontinue the carriage of the goods, to change the place of delivery or to deliver the goods to a consignee other than the consignee indicated in the transport document.

2. The shipper's right of disposal shall cease to exist once the consignee, following the arrival of the goods at the scheduled place of delivery, has requested delivery of the goods and,

- a) where carriage is under a consignment note, once the original has been handed over to the consignee;
- b) where carriage is under a bill of lading, once the shipper has relinquished all the originals in his possession by handing them over to another person.

3. By an appropriate entry in the consignment note, the shipper may, when the consignment note is issued, waive his right of disposal to the consignee.

#### **Article 15**

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

The shipper or, in the case of article 14, paragraphs 2 and 3, the consignee, must, if he wishes to exercise his right of disposal:

- a) where a bill of lading is used, submit all originals prior to the arrival of the goods at the scheduled place of delivery;
- b) where a transport document other than a bill of lading is used, submit this document, which shall include the new instructions given to the carrier;
- c) compensate the carrier for all costs and damage incurred in carrying out instructions;
- d) pay all the agreed freight in the event of the discharge of the goods before arrival at the scheduled place of delivery, unless the contract of carriage provides otherwise.

## **CHAPTER V**

### **LIABILITY OF THE CARRIER**

#### **Article 16**

##### **Liability for loss**

1. The carrier shall be liable for loss resulting from loss or damage to the goods caused between the time when he took them over for carriage and the time of their delivery, or resulting from delay in delivery, unless he can show that the loss was due to circumstances which a diligent carrier could not have prevented and the consequences of which he could not have averted.

2. The carrier's liability for loss resulting from loss or damage to the goods caused during the time before the goods are loaded on the vessel or the time after they have been discharged from the vessel shall be governed by the law of the State applicable to the contract of carriage.

#### **Article 17**

##### **Servants and agents**

1. The carrier shall be responsible for the acts and omissions of his servants and agents of whose services he makes use during the performance of the contract of carriage, when such persons are acting within the scope of their employment, as if such acts or omissions were his own.

2. When the carriage is performed by an actual carrier in accordance with article 4, the carrier is also responsible for the acts and omissions of the actual carrier and of the servants and agents of the actual carrier acting within the scope of their employment.

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

4. A pilot designated by an authority and who cannot be freely selected shall not be

considered to be a servant or agent within the meaning of paragraph 1.

## **Article 18**

### **Special exonerations from liability**

1. The carrier and the actual carrier shall be exonerated from their liability when the loss, damage or delay are the result of one of the circumstances or risks listed below:

- a) acts or omissions of the shipper, the consignee or the person entitled to dispose of the goods;
- b) handling, loading, stowage or discharge of the goods by the shipper, the consignee or third parties acting on behalf of the shipper or the consignee;
- c) carriage of the goods on deck or in open vessels, where such carriage has been agreed with the shipper or is in accordance with the practice of the particular trade, or if it is required by the regulations in force;
- d) nature of the goods which exposes them to total or partial loss or damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage (in volume or weight), or the action of vermin or rodents;
- e) lack of or defective condition of packaging in the case of goods which, by their nature, are exposed to loss or damage when not packed or when the packaging is defective;
- f) insufficiency or inadequacy of marks identifying the goods;
- g) rescue or salvage operations or attempted rescue or salvage operations on inland waterways;
- h) carriage of live animals, unless the carrier has not taken the measures or observed the instructions agreed upon in the contract of carriage.

2. When, in the circumstances of the case, damage could be attributed to one or more of the circumstances or risks listed in

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

## **Article 19**

### **Calculation of compensation**

1. Where the carrier is liable for total loss of goods, the compensation payable by him shall be equal to the value of the goods at the place and on the day of delivery according to the contract of carriage. Delivery to a person other than the person entitled is deemed to be a loss.

2. In the event of partial loss or damage to goods, the carrier shall be liable only to the extent of the loss in value.

3. The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of goods of the same kind and quality at the place of delivery.

4. In respect of goods which by reason of their nature are exposed to wastage during carriage, the carrier shall be held liable, whatever the length of the carriage, only for that part of the wastage which exceeds normal wastage (in volume or weight) as determined by the parties to the contract of carriage or, if not, by the regulations or established practice at the place of destination.

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

## **Article 20**

### **Maximum limits of liability**

1. Subject to article 21 and paragraph 4 of the present article, and regardless of the action brought against him, the carrier shall under no circumstances be liable for amounts exceeding 666.67 units of account per package or other shipping unit, or 2 units of account per kilogram of weight, specified in the transport document, of the goods lost or damaged, whichever is the higher. If the package or other shipping unit is a container and if there is no mention in the transport document of any package or shipping unit consolidated in the container, the amount of 666.67 units of account shall be replaced by the amount of 1,500 units of account for the container without the goods it contains and, in addition, the amount of 25,000 units of account for the goods which are in the container.

2. Where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the transport document as packed in or on such article of transport are deemed packages or shipping units. Except as aforesaid, the goods in or on such article of transport are deemed one shipping unit. In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

3. In the event of loss due to delay in delivery, the carrier's liability shall not exceed the amount of the freight. However, the aggregate liability under paragraph 1 and the first sentence of the present paragraph shall not exceed the limitation which would be established under paragraph 1 for total loss of the goods with respect to which such liability was incurred.

4. The maximum limits of liability mentioned in paragraph 1 do not apply:

- a) where the nature and higher value of the goods or articles of transport have been expressly specified in the transport document and the carrier has not refuted those specifications, or
- b) where the parties have expressly agreed to higher maximum limits of liability.

5. The aggregate of the amounts of compensation recoverable from the carrier, the actual carrier and their servants and agents for the same loss shall not exceed overall the limits of liability provided for in this article.

## **Article 21**

### **Loss of right to limit liability**

1. The carrier or the actual carrier is not entitled to the exonerations and limits of liability provided for in this Convention or in the contract of carriage if it is proved that he himself caused the damage by an act or omission, either with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result.

2. Similarly, the servants and agents acting on behalf of the carrier or the actual carrier are not entitled to the exonerations and limits of liability provided for in this Convention or in the contract of carriage, if it is proved that they caused the damage in the manner described in paragraph 1.

## **Article 22**

### **Application of the exonerations and limits of liability**

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

## **CHAPTER VI**

### **CLAIMS PERIOD**

## **Article 23**

### **Notice of damage**

1. The acceptance without reservation of the goods by the consignee is prima facie evidence of the delivery by the carrier of the goods in the same condition and quantity as when they were handed over to him for carriage.

2. The carrier and the consignee may require an inspection of the condition and quantity of the goods on delivery in the presence of the two parties.

3. Where the loss or damage to the goods is apparent, any reservation on the part of the consignee must be formulated in writing specifying the general nature of the damage, no later than the time of delivery, unless the consignee and the carrier have jointly checked the condition of the goods.

4. Where the loss or damage to the goods is not apparent, any reservation on the part of the consignee must be notified in writing specifying the general nature of the damage, no later than 7 consecutive days from the time of delivery; in such case, the injured party shall show that the damage was caused while the goods were in the charge of the carrier.

5. No compensation shall be payable for damage resulting from delay in delivery except when the consignee can prove that he gave notice of the delay to the carrier within 21 consecutive days following delivery of the goods and that this notice reached the carrier.

#### **Article 24**

##### **Limitation of actions**

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

2. The person against whom an action is instituted may at any time during the limitation period extend that period by a declaration in writing to the injured party. This period may be further extended by one or more further declarations.

3. The suspension and interruption of the limitation period are governed by the law of the State applicable to the contract of carriage. The filing of a claim in proceedings to apportion limited liability for all claims

arising from an event having led to damage shall interrupt the limitation.

4. Any action for indemnity by a person held liable under this Convention may be instituted even after the expiry of the limitation period provided for in paragraphs 1 and 2 of the present article, if proceedings are instituted within a period of 90 days commencing from the day on which the person instituting the action has settled the claim or has been served with process, or if proceedings are instituted within a longer period as provided by the law of the State where proceedings are instituted.

5. A right of action which has become barred by lapse of time may not be exercised by way of counter-claim or set-off.

## **CHAPTER VII**

### **LIMITS OF CONTRACTUAL FREEDOM**

#### **Article 25**

##### **Nullity of contractual stipulations**

1. Any contractual stipulation intended to exclude or to limit or, subject to the provisions of article 20, paragraph 4, to increase the liability, within the meaning of this Convention, of the carrier, the actual carrier or their servants or agents, to shift the burden of proof or to reduce the periods for claims or limitations referred to in articles 23 and 24 shall be null and void. Any stipulation assigning a benefit of insurance of the goods in favour of the carrier is also null and void.

2. Notwithstanding the provisions of paragraph 1 of the present article and without prejudice to article 21, contractual stipulations shall be authorized specifying that the carrier or the actual carrier is not liable for losses arising from:

a) an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or towed vessel during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the carrier complied with the obligations set out for the crew in article 3, paragraph 3, unless the act or omission

results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result;

- b) fire or an explosion on board the vessel, where it is not possible to prove that the fire or explosion resulted from a fault of the carrier or the actual carrier or their servants or agents or a defect of the vessel;
- c) the defects existing prior to the voyage of his vessel or of a rented or chartered vessel if he can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.

## CHAPTER VIII

### SUPPLEMENTARY PROVISIONS

#### **Article 26**

##### **General average**

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

#### **Article 27**

##### **Other applicable provisions and nuclear damage**

1. This Convention does not modify the rights or duties of the carrier provided for in international conventions or national law relating to the limitation of liability of owners of inland navigation or maritime vessels.

2. The carrier shall be relieved of liability under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation or other authorized person is liable for such damage pursuant to the laws and regulations of a State governing liability in the field of nuclear energy.

#### **Article 28**

##### **Unit of account**

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

#### **Article 29**

##### **Additional national provisions**

1. In cases not provided for in this Convention, the contract of carriage is governed by the law of the State agreed by the Parties.

2. In the absence of such agreement, the law of the State with which the contract of carriage is most closely connected is to be applied.

3. It is to be presumed that the contract of carriage is most closely connected with the State in which the principal place of business of the carrier is located at the time when the contract was concluded, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State. Where the carrier has no place of business on land and concludes the contract of carriage on board his vessel, it is to be presumed that the contract is most closely connected with the State in which the vessel is registered or whose flag it flies, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State.

4. The law of the State where the goods are located governs the real guarantee granted to the carrier for claims set out in article 10, paragraph 1.

## CHAPTER IX

### DECLARATIONS CONCERNING THE SCOPE OF APPLICATION

#### Article 30

##### **Carriage by way of specific inland waterways**

1. Each State may, at the time of signing this Convention or of ratification, acceptance, approval or accession, declare that it will not apply this Convention to contracts relating to carriage by way of specific inland waterways situated on its territory and to which international rules of navigation do not apply and which do not constitute a link between such international waterways. However, such a declaration may not mention all main waterways of that State.

2. Where the purpose of the contract of carriage is the carriage of goods without transshipment both on waterways not mentioned in the declaration referred to in paragraph 1 of this article and on waterways mentioned in this declaration, this Convention equally applies to this contract, unless the distance to be travelled on the latter waterways is the longer.

3. When a declaration has been made according to paragraph 1, any other Contracting State may declare that it will not apply either the provisions of this Convention to the contracts referred to in this declaration. The declaration made in accordance with the present paragraph shall take effect at the time of entry into force of the Convention for the State which has made a declaration according to paragraph 1, but at the earliest at the time of entry into force of the Convention for the State which has made a declaration according to the present paragraph.

4. The declarations referred to in paragraphs 1 and 3 of this article may be

withdrawn in whole or in part, at any time, by notification to the depositary to that effect, indicating the date on which they shall cease to have effect. The withdrawal of these declarations shall not have any effect on contracts already concluded.

#### Article 31

##### **National transport or transport free of charge**

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

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

#### Article 32

##### **Regional provisions concerning liability**

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

2. The provision concerning liability referred to in paragraph 1 shall enter into

force between two Contracting States when this Convention enters into force in the second State which has made the same declaration. If a State has made this declaration following the entry into force of the Convention for that State, the provision concerning liability referred to in paragraph 1 shall enter into force on the first day of the month following a period of three months as from the notification of the declaration to the depositary. The provision concerning liability shall be applicable only to contracts of carriage signed after its entry into force.

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

## CHAPTER X

### FINAL PROVISIONS

#### Article 33

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

1. This Convention shall be open for signature by all States for one year at the headquarters of the depositary. The period for signature shall start on the day when the depositary states that all authentic texts of this Convention are available.

2. States may become Parties to this Convention:

- a) by signature without reservation as to ratification, acceptance or approval;
- b) by signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval;
- c) by accession after the deadline set for signature.

3. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

#### Article 34

##### **Entry into force**

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

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

#### Article 35

##### **Denunciation**

1. This Convention may be denounced by a State Party on the expiration of a period of one year following the date on which it entered into force for that State.

2. Notification of denunciation shall be deposited with the depositary.

3. The denunciation shall take effect on the first day of the month following the expiration of a period of one year as from the date of deposit of the notification of denunciation or after a longer period referred to in the notification of denunciation.

#### Article 36

##### **Review and amendment**

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

### **Article 37**

#### **Revision of the amounts for limitation of liability and unit of account**

1. Notwithstanding the provisions of article 36, when a revision of the amount specified in article 20, paragraph 1, or the substitution of the unit defined in article 28 by another unit is proposed, the depositary shall, when not less than one fourth of the States Parties to this Convention so request, submit the proposal to all members of the United Nations Economic Commission for Europe, the Central Commission for the Navigation of the Rhine and the Danube Commission and to all Contracting States and shall convene a conference for the sole purpose of altering the amount specified in article 20, paragraph 1, or of substituting the unit defined in article 28 by another unit.

2. The conference shall be convened at the earliest six months after the day on which the proposal was transmitted.

3. All Contracting States to this Convention are entitled to participate in the conference, whether or not they are members of the organizations referred to in paragraph 1.

4. The amendments shall be adopted by a majority of two thirds of the Contracting States to the Convention represented at the conference and taking part in the vote, provided that not less than one half of the Contracting States to this Convention are represented when the vote is taken.

5. During the consultation concerning the amendment of the amount specified in article 20, paragraph 1, the conference shall take account of the lessons drawn from the events having led to damage and in particular the amount of damage resulting therefrom, changes in monetary values and the effect of the proposed amendment on the cost of insurance.

6.

a) The amendment of the amount in accordance with this article may take effect at the earliest five years after the day on which this Convention was opened for signature and at the earliest five years after the day on which an amendment made previously in accordance with this article entered into force.

b) An amount may not be so increased as to exceed the amount of the maximum limits of liability specified by this Convention, increased by six per cent per annum, calculated according to the principle of compound interest as from the day on which this Convention was opened for signature.

c) An amount may not be so increased as to exceed the triple of the maximum limits of liability specified by this Convention.

7. The depositary shall notify all Contracting States of any amendment adopted in accordance with paragraph 4. The amendment is deemed to have been accepted after a period of eighteen months following the day of notification, unless during such period not less than one fourth of the States which were Contracting States at the time of the decision concerning the amendment have informed the depositary that they will not accept that amendment; in such case, the amendment is rejected and does not enter into force.

8. An amendment which is deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States are bound by the amendment unless they denounce this Convention in accordance with article 35 not later than six months before the amendment enters into force. The denunciation takes effect when the amendment enters into force.

10. When an amendment has been adopted but the scheduled eighteen-month period for acceptance has not elapsed, a State which becomes a Contracting State during that period is bound by the amendment if it enters into force. A State which becomes

a Contracting State after that period is bound by an amendment accepted in accordance with paragraph 7. In the cases cited in the present paragraph, a State is bound by an amendment as soon as it enters into force or as soon as this Convention enters into force for that State if this takes place subsequently.

### **Article 38**

#### **Depositary**

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

2. The depositary shall:

- a) communicate to all States which participated in the Diplomatic Conference for the Adoption of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, for checking, the present Convention in the official language version which was not available at the time of the Conference;
- b) inform all States referred to under subparagraph (a) above of any proposal for the amendment of the text communicated in accordance with subparagraph (a) above;
- c) establish the date on which all official language versions of this Convention have been brought into conformity with each other and are to be considered authentic;
- d) communicate to all States referred to in subparagraph (a) above the date established in accordance with subparagraph (c) above;
- e) communicate to all States which were invited to the Diplomatic Conference for the Adoption of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway and to those which have signed this Convention or acceded thereto, certified true copies of this Convention;
- f) inform all States which have signed this Convention or acceded to it:
  - i) of any new signature, notification or declaration made, indicating the date of the signature, notification or declaration;
  - ii) of the date of entry into force of this Convention;
  - iii) of any denunciation of this Convention and of the date on which such denunciation is to take effect;
  - iv) of any amendment adopted in accordance with articles 36 and 37 of this Convention and of the date of entry into force of such amendment;
  - v) of any communication required under a provision of this Convention.

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

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

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



**Loading and Transport Conditions  
(Conditions of Bills of Lading dated 2007)**

**3. Decree concerning Loading and Discharging Times  
as well as Demurrage in the Inland Waterway Transport  
(Decree on Loading and Unloading Times – BinSchLV)**

**dated 23 November 1999**

On the grounds of § 412, section 4 of the German Commercial Code, which was introduced by article 1, number 3 of the law dated 25 June 1998 (BGBl (Federal Law Gazette), I, page 1588), the Federal Ministry of Justice decrees in accordance with the Federal Ministry of Transport, Construction Engineering, and Housing:

**Paragraph 1**

**Dry-cargo shipping**

**§ 1**

**Beginning of the loading time**

- (1) If the subject of the contract of carriage is the transport of other merchandise than fluid or gaseous merchandise, then the loading time shall begin after the end of the day on which the carrier indicates his readiness for loading to the sender or the registration office agreed upon.
- (2) If the parties agreed upon the point of time having to be notified in advance, then the loading time shall begin two hours after the point of time mentioned in the advance notice, contrary to section 1, provided, however, that the advance notice is received by the sender or the registration office agreed upon at least eight hours before the

notified point of time and the carrier is ready for loading at the notified point of time.

- (3) If on the day on which the carrier indicates his readiness for loading or if one loads even before the expiration of two hours after the notified point of time of the readiness for loading in case of an advance notice, then the loading time shall start with the beginning of the loading.

**§ 2**

**Duration of the loading time**

- (1) The loading time is one hour for every 45 tons of gross weight of the consignment intended for a ship. A pusher or compound formation also has to be considered a ship within the meaning of sentence 1.
- (2) In assessing the loading time, the following periods of time will not be estimated:
  1. Sundays and other general Bank Holidays at the loading berth;
  2. the time between 20:00 and 06:00 on working days;

3. the period of time during which the loading of any kind of merchandise is impossible for reasons which have to be ascribed to the domain of risk of the carrier.

- (3) Section 2, numbers 1 and 2 do not have to be applied as far as the carrier is ready for loading during the periods of time mentioned there as agreed upon or on orders from the sender or the registration office.

### **§ 3**

#### **Discharging time**

For the determination of the beginning of the unloading time (discharging time) as well as its duration, §§ 1 and 2 shall have to be applied accordingly, subject to the proviso that the addressee is replaced by the sender.

### **§ 4**

#### **Demurrage**

- (1) The demurrage (demurrage charge) owed to the carrier shall amount to EUR 0.05 per ton of carrying capacity for every started hour, during which the carrier waits after the end of the loading or discharging time, in case of a ship with a carrying capacity of up to 1500 tons. In case of a ship with a carrying capacity of over 1500 tons, the demurrage to be estimated for every started hour shall amount to EUR 75 plus EUR 0.02 for every ton in excess of 1500 tons.
- (2) In calculating the demurrage, those hours do not have to be taken into consideration in which the loading or unloading of any kind of merchandise is impossible for reasons which have to be ascribed to the domain of risk of the carrier.
- (3) A pusher or compound formation has also to be considered as a ship within the meaning of section 1.

## **Paragraph 2**

### **Tanker shipping**

#### **§ 5**

#### **Beginning of the loading time**

- (1) If the subject of the contract of carriage is the transport of fluid merchandise by a tanker ship, then the loading and the discharge time shall begin each time at the point of time at which the carrier indicates his readiness for loading or discharging, provided, however, that the carrier notifies the point of time of the readiness for loading or discharging at least eight hours in advance. The advance notice and the indication must be received by the sender or the registration office agreed upon Monday to Friday from 7:00 to 16:00 or on Saturdays from 7:00 to 13:00.
- (2) If the carrier did not notify in advance the point of time of the readiness for loading or discharging or if he did not notify them in advance within the time limit fixed, then the deadline shall begin to run at the point of time mentioned in § 1, section 1, or if the ship is loaded or discharged before this point of time, at the beginning of the loading or discharging.

#### **§ 6**

#### **Duration of the loading and discharging time**

- (1) In tanker shipping, the whole loading and discharging time shall amount to  
  
24 hours in case of a weight of a consignment intended for a ship of up to 1100 tons,  
  
26 hours in case of a weight of up to 1500 tons,  
  
30 hours in case of a weight of up to 2000 tons.

In case of a consignment of over 2000 tons, the loading and discharging time shall increase by four hours per every further quantity of 500 tons started. The required heating time shall be set off against the loading and discharging time. A pusher or compound formation also has to be considered as a ship within the meaning of sentence 1.

- (2) If the minimum pump capacity of the tanker ship is less than 200 m<sup>3</sup> per hour, then the loading and discharging time to be estimated pursuant to section 1 shall be increased by the period of time which corresponds to the effective hourly performance during the loading and discharging process.
- (3) In calculating the loading and discharging time, the periods of time actually required for the loading and discharging shall have to be established separately; started hours resulting from the ascertainment of the actually required loading time and the actually required discharging time shall have to be rounded up to full hours. The following periods of time shall not be estimated:
1. in case of loading: Sundays and general Bank Holidays at the loading berth, in case of discharging: Sundays and general Bank Holidays at the discharging berth;
  2. on working days following a Sunday or a Bank Holiday at the loading or discharging berth: the period of time between 0:00 and 7:00, on a Saturday and on December 24<sup>th</sup> and 31<sup>st</sup>: additionally the period of time between 13:00 and 24:00;
  3. the period of time during which the loading and discharging of merchandise of any kind is impossible for reasons to be ascribed to the domain of risk of the carrier. Sentence 2, numbers 1 and 2 do not have to be applied as far as the carrier is ready for loading or discharging during the

periods of time mentioned there as agreed upon or on orders from the sender or the registration office.

## **Section 7**

### **Demurrage**

- (1) The demurrage (demurrage charge) owed to the carrier shall amount to
- EUR 25 for tanker ships with a carrying capacity of up to 500 tons,
- EUR 54 for tanker ships with a carrying capacity of up to 1000 tons,
- EUR 75 for tanker ships with a carrying capacity of up to 1500 tons
- for every started hour during which the carrier waits after the end of the loading or discharging time. In case of tanker ships with a carrying capacity of over 1500 tons, the demurrage to be estimated for every started hour shall amount to EUR 75 plus EUR 10 for every further beginning 500 tons.
- (2) In calculating the demurrage, those hours do not have to be taken into consideration in which the loading or unloading of any kind of merchandise is impossible for reasons which have to be ascribed to the domain of risk of the carrier.
- (3) A pusher or compound formation has also to be considered as a ship within the meaning of section 1.

### **Paragraph 3**

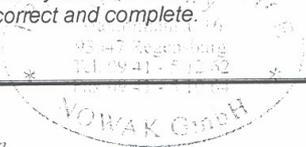
#### **Entry into effect**

This Decree shall enter into force on the day after its promulgation.

Berlin, 23 November 1999

In my capacity as a translator of the Czech, German and English languages sworn in by the President of the Regional Court Munich 1 I herewith certify that the above translation of the original document written in the German language is in every respect correct and complete.

L. Santiago de la Cruz



31. Mai 2007