

# Terms and Conditions for Carriage by Air of Cargo

by

**DSV Air & Sea Sp. z o.o.**

## Definitions

**Convention** means Convention for the Unification of Certain Rules for International Carriage by Air; done at Montreal on 28 May 1999 (Montreal Convention).

**Consignor** or shipper means the person or body corporate whose name is entered as contracting party in the provided space on the House Air Waybill, upon conclusion of the contract of carriage.

**Agent** means the person or body corporate who/which is expressly or tacitly authorized to act in the name or on behalf of the carrier and/or the consignor with regard to the carriage, unless otherwise provided for in the contract of carriage.

**Performing (Actual) Carrier** means the airfreight carrier which on the basis of authorization of the contractual carrier performs the carriage as a whole or in part.

**Contractual Carrier** means DSV Air & Sea Sp. z o.o. with registered office in Duchnice, Poland, issuing its House Air Waybill.

**Carrier** is the airfreight carrier stated on the air waybill or Air Waybill (an actual carrier).

**Carriage** means the carriage of cargo by air or by land with or without charge on the basis of a contract of carriage by air.

**Contract of Carriage** means the oral or written agreement between the consignor and the carrier relating to the carriage to be performed by the carrier, including the freight rates.

**Consignee** is the person or company or other body corporate whose name is entered in the space provided therefore in the air waybill and to whom the carrier has to hand over the goods, unless instructed otherwise.

**Freight Rates / Tariffs** means those weight- or value-related remunerations and fees of the carrier which apply to the carriage and kind of carriage chosen by the

consignor on the date of the issuance of the air waybill or which are agreed between the parties to the contract.

**Cargo** means all items carried or to be carried in an aircraft, insofar as the Terms and Conditions of Carriage are applicable due to the valid international conventions.

**Air Waybill** means the deed named "Air Waybill" as completed by the consignor or on its behalf. It constitutes the proof of the contract between the consignor and the carrier on the carriage of cargo.

**Days** means full calendar days, including Sundays and public holidays; upon establishment of a term of validity, the day of issuance of the carriage document or the day of flight departure is not counted.

**Delivery Service** means the overland carriage of inbound consignments from the airport of destination to the address of the consignee or that of its designated agent or to the custody of the competent authorities, if required.

## **Article 1**

### **Governing Law**

Any carriage performed by the carrier either itself or through third parties, including all services relating thereto which are either performed by itself or by such third party, are subject to:

- a) the convention applicable to the carriage, unless it is not an international carriage within the meaning of the definition of the convention,
- b) the Polish law insofar as applicable to the carriage,
- c) any other national and international governmental regulations, orders and requirements insofar as applicable to the carriage,
- d) these Terms and Conditions of Carriage and other conditions, rules, regulations including but not limited to IATA TACT rules. These Terms and Conditions of Carriage can also be inspected on the carrier's website,
- e) Terms and Conditions of Carriage established by the carrier (an actual carrier) which can be inspected on the carrier's website and the shipper covenants to make itself familiar therewith.

## **Article 2**

### **Scope of Application of the Terms and Conditions of Carriage**

#### **1. Basis**

None of the provisions of these Terms and Conditions of Carriage deviates from any mandatory or prevailing law to the detriment of the consignor or consignee, unless such deviations are permissible.

## **2. General**

Any carriage of cargo, including all services relating thereto, is in consideration of Article 1 subject to these Terms and Conditions of Carriage. The carrier may appoint third parties to perform the owed carriage services.

## **3. Contract on Forwarding**

The Contractual Carrier being also a freight forwarder to the consignor or consignee are entitled to refer to clauses of contract on forwarding which are also applicable to the contract for carriage unless they are not contradictory to the Convention.

## **4. Change without Notice**

Unless otherwise provided for under applicable laws, governmental regulations, orders and requirements, these Terms and Conditions of Carriage are subject to change without prior notice.

## **5. Obligation of Consignor**

The Consignor is responsible for making Consignee - or other person entitled to the goods - familiar with these Terms and Conditions of Carriage.

## **Article 3**

### **Completion of the Air Waybill**

#### **1. Air Waybill**

The consignor shall complete the air waybill, or have it completed in his name, in the manner prescribed by the carrier and with the required number of copies. The consignor shall deliver the air waybill to the carrier upon handing over the cargo, or provide it to the carrier in electronic form. The carrier may request the consignor to complete, or have on its behalf completed, separate air waybills if there is more than one packing unit or if the cargo cannot be carried as one packing unit in one aircraft or if it cannot be carried under one single air waybill without violation of governmental requirements or regulations of the carrier.

#### **2. Electronic Air Waybill**

If the carrier provides for such possibility, the air waybill may be made out and/or stored in electronic form and signed by electronic signature as provided for this

purpose by the carrier. Upon handing over of the cargo the air waybill must be physically available.

### **3. Visible Condition and State of the Cargo**

If the condition and state of the cargo and/or the packaging is visibly defective, the consignor shall make a relevant note in the air waybill or other corresponding document. If the consignor fails to do so or if the note is unclear, the carrier may make a corresponding note or correction in the air waybill.

### **4. Preparation, Completion or Correction by the Carrier**

Upon express or implied request of the consignor, the carrier may complete the air waybill itself; in such case it is assumed until proved to the contrary that the carrier has acted on behalf of the consignor. If the Air Way Bill does not contain all required particulars or is incorrect and in case of imminent danger or after unsuccessfully obtaining instructions, the carrier shall be entitled, but not obliged to complete or correct it to the best of its knowledge.

### **5. Responsibility for Particulars**

The consignor is liable towards the carrier and third parties for the correctness and completeness of all particulars inserted in the air waybill by it or any of its agents or by the carrier in accordance with clauses 3 and 4; the same applies with regard to any particulars or declarations made by the consignor or its agents towards the carrier on the cargo or its value. The consignor is liable for any damage incurred by the carrier or third parties from any incorrectness, inaccuracy or incompleteness of the said particulars.

### **6. Form, Changes**

The carrier's signature as well as the consignor's signature may be printed or replaced by a stamp. The carrier is not obliged to accept any air waybills whose entries were changed or erased. Insofar as declarations require written form the signature provided for within the meaning of clause 2 shall have equal standing if it allows the identification of the originator.

## **Article 4**

### **Freight Charges**

#### **1. Applicable Freight Rates and Charges**

The freight rates and charges applicable under these Terms and Conditions have been agreed between the contracting parties. The freight rates and charges apply to the chosen route of carriage.

## **2. Basis of Freight Charges**

Freight charges and carriage fees depend on the higher of the total weight or total volume and, if applicable, on the surcharge on the form of carriage chosen by the consignor.

## **3. Services not Covered by the Freight Rates and Charges**

The freight rates and charges apply to the carriage of cargo by air or by substitute land transportation between airports or other airfields at or near the designated locations. Unless expressly otherwise provided for in the tariffs or carrier's offer, the freight rates and charges do not cover the following services:

- a) pick-up, delivery and city terminal services to and from the airports from which the carrier performs its services,
- b) storage fees,
- c) insurance fees,
- d) cash on delivery charges,
- e) advanced charges,
- f) costs incurred by the carrier upon customs clearing of the cargo, or incurred by third parties irrespective of whether these act as agents of the consignor, the consignee, the owner of the cargo, or the carrier,
- g) charges or fines imposed or collected by competent authorities, including duties or taxes,
- h) costs incurred by the carrier for repairing defective packaging,
- i) freight charges for the carriage, reloading or return carriage of cargo with other means of transportation, as well as the freight charges for return carriage to the place of departure,
- j) surcharges,
- k) any other similar services or charges.

## **4. Payment of the Freight Rates**

a) Freight rates and charges are stated in the currency resulting from the relevant freight tariffs. They can be paid in any currency acceptable to the carrier. If payment is made in any currency other than published by the carrier, it shall be made at the

exchange rate fixed by the Polish National Bank at the date of issuance of the air waybill.

b) The full relevant freight rate, whether advanced or charged forward, as well as costs, duties, taxes, fees, expenses or other payments effected by the carrier or accrued or accruing to it as well as any other amounts to be paid to the carrier are considered as fully earned upon conclusion of the contract of carriage.

c) All freight rates, charges and other amounts are due and payable at the time when the cargo is handed over to the carrier. However, the carrier may also charge them over on the occasion of any service based on the air waybill.

d) With regard to all charges, expenses and costs which cannot be finally determined at the time when the cargo is handed over for carriage, the carrier may request the consignor to deposit an amount which the carrier regards as adequate for covering these charges, expenses and costs. Any residual amount owed by the carrier to the consignor or by the consignor to the carrier in connection with this depositions shall be settled after performance of the contract of carriage and after determination of the exact amount of these costs and expenses.

e) The consignor undertakes to pay all unpaid charges, costs and expenses of the carrier. The consignor furthermore undertakes to pay all costs, expenses, fines, penalties, default and other damage possibly accruing to or incurred by the carrier due to the fact that the cargo comprises items whose carriage is prohibited by law or due to the fact of unlawful, incorrect or insufficient description, labeling, numbering, addressing or packaging of the cargo without the damage being caused by the absence, delay or incorrectness of an export or import permit, other incorrect certificates or documents or by wrong customs valuation or incorrect statements as to weight or volume. By accepting the consignment or exercising any other rights under the contract of carriage, the consignee undertakes to pay the charges, fees and expenses, unless paid in advance; however, this does not release the consignor from its corresponding payment obligations. In respect of the foregoing, the carrier has a retention right relating to the cargo handed over to it for carriage by the consignor or by any third party acting on its behalf. If payment is not effected, the carrier will be entitled to dispose of the cargo by public sale or sale in the open market, provided the carrier has informed the consignor or consignee accordingly prior to such sale by written notification sent by mail to the address stated in the air waybill; the carrier is entitled to satisfy itself from the proceeds of such sale as to all amounts owed.

However, such sale does not constitute a release from the obligation to pay any shortfall amounts for which the consignor and the consignee remain liable. The carrier's right to retention, sale and collection of the owed amounts is not forfeited or affected by acknowledgement of the payment obligation, unless payment has actually been made or, insofar as the carrier's right to collect the owed amounts is concerned, unless the cargo has been delivered or possession thereof has been transferred.

f) If the gross weight, measurements, number of items or declared value of the cargo exceed the figures taken as a basis for the calculation of the freight rates and charges, the carrier will be entitled to subsequently request payment of the freight rates and charges corresponding to the exceedence.

g) Consignments subject to carriage forward are taken on for carriage to such countries specified in the tariffs and in accordance with the provisions set forth therein. In any event the carrier is entitled to deny consignments subject to carriage forward to a country whose regulations do not permit the exchange of money into other currencies or the transfer of money to other countries, or deny carriage forward consignments for other reasons.

## **Article 5**

### **Acceptance of Cargo for Carriage**

#### **1. Value Limits for One Aircraft**

The Performing Carrier determines the limit of the value of a consignment or a group of consignments which may be carried in one single aircraft. If any individual consignment exceeds such limit, it may not be carried in one aircraft but may be apportioned to two or several aircrafts at the Performing Carrier's due discretion. The carrier is entitled to deny the carriage of consignments in one aircraft if the declared total value would lead to a violation of this principle.

#### **2. Packaging and Labeling of the Cargo; Declaration of Value**

a) The consignor shall package the cargo for safe carriage by air in a manner suitable to protect it against loss, damage or deterioration and preventing personal injury or damage to property. Consignments at risk from robbery or theft shall be neutrally packaged without indication of their contents. Each packing unit must bear the name and full postal address of both consignor and consignee in a legible and

permanent manner and it must be marked with the necessary information for the carriage.

b) Hazardous materials must be marked as such in accordance with applicable laws and regulations. If accepted for carriage, the consignor shall send hazardous materials as well as valuable cargo or live animals by the carriage form provided for the carriage of such cargo by the Performing Carrier, including the surcharge published for such case.

c) Temperature-sensitive cargo – including but not limited to pharmaceuticals – must be packaged in accordance with the special characteristics of the cargo and in a way that guarantees adequate protection against heat, which could potentially damage the cargo. This includes sending the cargo in sufficient transport containers (e.g. cool containers) – where appropriate for an additional fee – and in sufficient means of transportation.

### **3. Permissible Cargo**

Subject to the availability of suitable facilities and space, the carrier shall carry general merchandise and other goods, commodities and products of all kinds, unless carriage of the same is expressly excluded or unreasonable for the carrier, provided, however, that the respective carriage does not violate any law (e.g. any provisions regarding embargos or export control); in particular the carriage shall not be prohibited by the laws or any provision of a country from which, to which or through which the flight takes place, the necessary approvals by public authorities for the entry, exit or transit of the cargo must be issued before the beginning of carriage and must be presented to the carrier; the cargo must be packaged in a manner suitable for carriage by air, as well as must be accompanied by the required shipping documents; the cargo must not endanger the aircraft, the safety of the flight, persons or objects or cause annoyance to passengers.

### **4. Responsibility for Non-Compliance with the Conditions for Cargo Admitted Subject to Restrictions**

The consignor is contractually obliged to comply with the provisions set out in these Terms & Conditions and to refrain from handing over cargo to be carried by carrier which is not in compliance with these aforementioned provisions. He is liable to the carrier for all breaches of these obligations, in particular for damages, delays, penalties which arise from such breaches. He indemnifies and holds the carrier



harmless from any and all claims of third parties, including necessary costs for legal defense.

## **5. Cancellation of Carriage**

The carrier may without liability on its part cancel the carriage of a consignment if the consignor despite demand of payment and after unsuccessful expiry of an appropriate grace period refuses to settle the freight rate or a requested part thereof. If the consignor does not deliver cargo for carriage or cancel the booking after it is made the carrier shall have the right to charge the consignor with the cancellation fee in the amount indicated in the carrier's tariff or in the amount of fifty per cent of the freight, in case of no tariff stipulation with regard to the cancellation fee.

## **7. Carrier's Right of Inspection**

The carrier is entitled but not obliged to inspect the contents of all consignments.

## **Article 6**

### **Consignments in Transit**

#### **1. Compliance with Orders of Competent Authorities**

The consignor must comply with all applicable laws, customs and other governmental regulations of any country from, through, over or to which the cargo is carried, including those on packaging, labeling and marking, carriage or delivery of the cargo and shall furnish all statements and attach all documents to the air waybill required for the compliance with statutory requirements. The carrier is not obliged to verify the correctness or completeness of these statements or documents. The carrier is not liable toward the consignor or third parties for any loss or costs incurred due to the consignor's failure to comply with these requirements.

#### **2. Cash Expenses and Customs Formalities**

The carrier is entitled but not obliged to make advance payments on customs, taxes or charges and to make expenses with regard to the cargo. With regard to the reimbursement of such amounts, the consignor and the consignee are each liable individually and as joint and several debtors. No carrier is obliged to assume costs or make advance payments in connection with the carriage or return carriage of the cargo except against prior payment by the consignor. If cargo at any location requires import through customs, the cargo shall be deemed to be addressed to the person named in the air waybill as customs consignee or, if such person is not named therein, to the carrier carrying the cargo to such location or to the customs consignee

stated by the carrier. For any such purpose, a copy of the air waybill, certified by the carrier, shall be deemed an original.

### **3. Flight Schedules, Routing, Aircrafts, and Cancellations of Flights**

a) Unless the contracting parties expressly agreed otherwise on departure and delivery times for the cargo to be carried, no fix times are agreed for the start and performance of carriage or for the delivery of the cargo. Unless expressly agreed in accordance with sentence 1, the carrier does not assume any obligation to carry the cargo on a specific aircraft, under a specific flight number or on a specific route or to catch a connecting flight anywhere according to a specific flight schedule. The carrier is obliged to choose the route or routes for the consignment according to capacities or availabilities or to deviate therefrom even if stated in the air waybill. Thus, neither the times stated in the flight schedules nor otherwise, nor the flight number or flight dates entered in the air waybill constitute an express agreement within the meaning of sentence 1. No employee, agent, representative or vicarious agent shall be entitled to place the carrier under any obligation by declarations or determinations on the dates or times of departure or arrival or on the operation of a flight.

b) The contract of carriage does not include any guarantee for an aircraft to be used for carriage or for its suitability for carriage of the cargo to which the contract of carriage refers. The carrier may without notice deploy another carrier or a substitute aircraft. In this respect, the carrier may also perform code-sharing.

c) The carrier may without notice cancel, terminate, change, reschedule or postpone any flight or any right to further carriage or continue a flight without or only with part of the cargo if it considers this advisable for the following reasons:

(I) due to any event beyond its control (including, but not limited to: weather conditions, acts of God, force majeure, strikes, riots, political disturbances, embargoes, wars, hostilities, civil commotions, unstable international conditions, terrorism or governmental warnings against terrorism or war); in this respect it is irrelevant whether the event has in fact occurred or is only threatened or announced or whether this directly or indirectly results in a delay, claim, requirement, incident or predicament, or

(II) due to any event which could not reasonably be foreseen, expected or anticipated, or

(III) due to governmental regulations, orders or requirements, or interventions by authorities for which the carrier is not responsible for or

(IV) due to any shortage of labor, fuel or facilities or due to labor-related difficulties of the carrier or any third party deployed by it.

d) If a flight is cancelled or rescheduled or ends at any location other than the place of destination for any reason set forth under c) above, or if the carriage of a consignment is cancelled (in total or in part), rescheduled, brought forward or terminated, the carrier shall not be under any liability with respect thereto. If the carriage of the consignment or part thereof is terminated, its delivery by the carrier to a forwarding agent for further carriage, delivery or storage shall be considered as proper delivery according to the air waybill; the carrier is no longer liable but merely obliged to notify the consignor or consignee at the address stated in the air waybill about the disposal of the consignment. The carrier is entitled but not obliged to carry the consignment via any other route or to forward it by any other means of transportation as representative of the consignor or consignee. The costs incurred thereby shall be added to the freight rate. If the carrier is responsible for the cancellation, rescheduling or termination of carriage at any location other than the one stated in the air waybill, the consignment shall be delivered at the choice and at the expense of the carrier.

e) Within the scope of applicable laws and regulations, the carrier is entitled to determine the priority of any carriage both between consignments and between consignments and other cargo, mail or passengers, and to decide which items are to be carried or not or which are to be unloaded at any time or at any place; the Performing Carrier may continue any flight without any or without individual parts of a consignment.

#### **4. Carrier's Rights to Dispose of Consignments in Transit**

If the carrier deems it necessary to hold any consignment or part(s) of it at any place during or after carriage for preventing damage or danger the carrier may store the consignment or part(s) of it at the expense, risk and cost of the consignor and/or consignee at a storehouse or any other available place or with the customs authorities, notifying the consignor and/or consignee at the address stated in the air waybill; the carrier may also hand over the consignment to any other carrier for further carriage to the consignee. Consignor and consignee are jointly and severally liable towards the carrier for any expenses or risks arising from the foregoing and have to reimburse the carrier accordingly.

## **Article 7**

### **Right to Dispose of the Cargo**

#### **1. Exercise of the Disposal Right**

The right to dispose of the cargo may be exercised only by the consignor or its designated agent and must extend to the entire consignment to be carried under an air waybill. The right to dispose of the cargo can be exercised only if the consignor or its agent presents the part of the air waybill that was given to it. Any disposal instructions must be given in writing and in the form prescribed by the carrier to the extent that in that particular case no other provisions of the carrier apply. If the exercise of right of disposal results in a change of consignee, the new consignee shall be deemed to be the one named in the air waybill.

#### **2. Payment of Costs**

The consignor shall be liable and obliged to compensate the carrier for any loss or damage sustained as a result of the exercise of the right of disposal. The consignor shall reimburse the carrier for all costs incurred by the exercise of its right of disposal.

#### **3. Carrier's Inability to follow the Instructions**

If it is impossible or unreasonable for the carrier to follow the consignor's instructions, it shall without undue delay inform the consignor accordingly. The costs incurred thereby shall be added to the freight rate.

## **Article 8**

### **Delivery**

#### **1. Delivery to Consignee**

a) Unless expressly otherwise provided for in the air waybill, the consignment shall be delivered to the consignee named in the relevant field of the air waybill. When in doubt, delivery at the address of the agent specified by the consignor at the destination may be performed. The consignment is deemed to have been delivered to the consignee if it has been delivered to customs or any other competent authority in accordance with the applicable laws or customs requirements, when the carrier has submitted an authorisation to the consignee enabling the same to obtain release of the consignment and when the carrier has sent the arrival notification ("Notice of Arrival"), if any.

b) The carrier delivers the consignment only against written receipt of the consignee and upon compliance with all other requirements stated in the air waybill and these Terms and Conditions of Carriage.

## **2. Notice of Arrival**

The consignee or the person to be notified shall be informed of the arrival of the consignment at the carrier's sole discretion; the notification may at the carrier's choice be given either in writing or orally, also by telephone. The written notification can also be given by fax or by electronic mail (e-mail). The carrier is not liable for non-receipt or delay in receipt of the notification or for non-notification thereof. The consignee or the person to be notified can waive its right to be notified by the carrier. Lack of data in the air waybill or if the consignee or the person to be notified cannot be reached shall constitute such waiver.

## **3. Place of Delivery**

Insofar as delivery to the address of the consignee has not been agreed between the consignor or the consignee and the carrier, the consignee shall accept delivery and collect of the consignment at the airport of destination.

## **4. Failure of Consignee to Take Delivery**

a) If the consignee refuses or omits to take delivery of the consignment after its arrival at the place of delivery set forth in the air waybill or if the consignee cannot be reached, the carrier shall try to follow the consignor's instructions on the air waybill, if any. If no such instructions are given or if the consignor has not issued new instructions or if they cannot reasonably be followed, the carrier may after notification of the consignor about the non-acceptance by the consignee take the following measures. The carrier may return the consignment to the airport of departure, either by its own means or by any other way, and there wait for the consignor's instructions, or sell the consignment by public or private sale as a whole or in several parts after at least 30 days of storage.

b) Consignor and consignee are jointly and severally liable for all costs and expenses resulting from or in connection with the non-acceptance of the consignment, including the freight charges arising from the return of the consignment. If the consignment is returned to the airport of departure, and if the consignor or owner refuses or fails to make such payment within 14 days after the return, the carrier may by public or private sale dispose of the consignment or parts thereof after having notified the

consignor of its intention at the address stated in the air waybill with a notice period of ten days.

c) In the event of a sale of the cargo in accordance with the foregoing provisions either at the place of destination or at the place to which the consignment was returned, the carrier shall be entitled to reimburse to itself and third parties all costs of freight, charges, advance payments and expenses plus costs of sale accrued to itself and other rightful claimants; a possible surplus amount shall be made available to the consignor. The sale of a consignment, however, does not release the consignor and the owner from the obligation to pay shortfall amounts, if any.

## **Article 9**

### **Liability**

#### **1. General**

With regard to the liability of the carrier, the carriage shall be subject to the regulations and limitations established by the convention applicable to the respective carriage, or by the national or international laws applicable to the respective carriage. The foregoing applies irrespective of whether the carriage is interrupted or the cargo is reloaded. The liability of carrier shall in no case exceed the amount of the proven damages. Unless otherwise provided for by the applicable convention or law to the benefit of the consignor or consignee, the following shall apply:

#### **2. Exclusion of Liability**

a) The carrier does not assume any liability for loading or delivery periods, nor for any specific order of handling of cargo of the same carriages.

b) The carrier is not liable for damage caused directly or indirectly by any compliance with laws, governmental regulations, requirements or orders or by any other event beyond the carrier's control. The carrier is not liable when refusing carriage of a consignment after having decided with due discretion and in good faith that the laws and regulations which it deems applicable do not permit the carriage of the consignment.

c) The carrier is not liable for damage or destruction to or delay of a consignment.

d) Consignments exposed to deterioration or decay due to change of climate, temperature, height or for any other usual circumstance or due to the duration of the agreed carriage time are taken on by the carrier to the exclusion of any liability for loss or damage caused by deterioration or decay.

e) Unless otherwise provided for in these Terms and Conditions, the carrier is not liable for indirect or consequential damages. These include in particular loss of turnover, profit or earnings, interest, lost business transactions, currency risks, production shortfall or penalties resulting from any carriage subject to these Terms and Conditions, irrespective of whether the carrier knew that any such damage might occur. This shall not apply to damage caused by gross negligence or willful act on the part of the carrier or its employees. The provisions of the applicable international conventions remain unaffected.

f) If the liability of the carrier is excluded or limited according to these Terms and Conditions, such exclusion or limitation shall likewise apply to any agents, employees, representatives or vicarious agents of the carrier, as well as for any carrier whose aircraft is used for the carriage and for the agents, employees, representatives or vicarious agents of the latter.

### **3. Liability for Damage to Cargo**

The carrier shall compensate the authorized party for damage caused by destruction, delay, loss or damage of cargo, but only if the event causing the damage occurred during the carriage by air. The carrier is not liable if it proves that the destruction, loss or damage of the cargo was caused by one or several of the following circumstances, i.e. the special nature of the cargo or any inherent defect of that cargo, defective packaging of the cargo performed by any person other than the carrier or its servants or agents, an act of war (including terrorist acts) or an armed conflict, an act of public authority carried out in connection with the entry, exit or transit of the cargo, force majeure, in particular acts of God.

### **4. Part Shipments**

If the consignee (or any other person entitled to take delivery) is not delivered the entire consignment but only part thereof or if any part of a consignment is damaged, destroyed or lost, the liability of the carrier for the undelivered, damaged, destroyed or lost part shall be reduced proportionately on the basis of the weight, without any consideration of the value of the partial consignment or its contents.

### **5. Liability for Damage by Delay**

The carrier is liable for damage by delay, unless proving that it and its servants or agents took all reasonable measures to prevent the damage or that it or they were not able to take such measures. Delay occurs if the cargo has not been made available in time at the place of destination. Whether carriage was delayed depends

on the circumstances of each individual case and whether the consignor paid for a special service of the kind.

## **6. Contributory Negligence**

If the damage was caused by any act or omission of the consignor, consignee or the person claiming damage, of if such act or omission contributed to the occurrence of damage (contributory negligence), the carrier will be entirely or partly released from liability.

## **Article 10**

### **Limitation of Liability**

#### **1. General**

The scope of the carrier's liability depends on the regulations and limitations established by the convention applicable to the respective carriage, or by the national or international laws applicable to the respective carriage. Unless otherwise provided for by the applicable convention or law to the benefit of the rightful claimant, the following shall apply:

#### **2. Limitation of Liability in Respect of Total Amounts**

Unless otherwise provided for to the advantage of claimant by the applicable Convention or by law, the following shall apply: the carrier is liable for destroyed, lost, damaged or delayed cargo only up to an amount of 22 Special Drawing Rights (SDR) per kilogramme.

#### **3. Declaration of Value**

The limitations of liability in respect of total amounts do not apply if the consignor has made, at the time when the cargo was handed over, a special declaration of interest in delivery at destination and has paid the requested surcharge. In that case the carrier shall pay a compensation for destruction, loss, damage or delay up to the amount of the declared value, unless it proves that the sum is higher than the consignor's actual interest in delivery at destination. All compensation claims are subject to proof of value.

#### **4. Pre-carriage or on-carriage**

Pre-carriage or on-carriage performed or to be performed in connection with an international carriage of cargo shall be subject to limitation of 8.33 Special Drawing Rights (SDR) per kilogramme.



## **Article 11**

### **Periods for Compensation Claims and Legal Actions**

1. The unconditional acceptance of the cargo by the person entitled to take delivery constitutes, until proof to the contrary, a proof that the cargo has been delivered in faultless condition and in compliance with the contract of carriage.
2. If a rightful claimant intends to assert claims for compensation due to damage, partial loss equaling damage or delay, the consignee must without undue delay inform the carrier by notification with sufficient description of the cargo concerned, the approximate time of damage and the details of the claim, in any event within 14 days (7 days within the scope of application of the Warsaw Convention of 1929) after acceptance of the cargo, and in the event of delay within 21 days (14 days within the scope of application of the Warsaw Convention of 1929) after the cargo was made available to the consignee. A notification of the handling company is not sufficient unless a respective authorization has been given. The notification must be given in writing.
3. If the consignee fails to comply with the notification period, any action against the carrier shall be excluded unless the latter fraudulently hindered the claimant to establish the facts to be notified or to issue the notification in due time.
4. All claims for damages against the carrier expire unless action for damages is brought within a time-bar period of two years, if the convention is applicable. If the convention does not apply to the carriage, the preclusive periods or statutes of limitations according to the respective national laws shall apply. The period commences on the day on which the aircraft arrived or should have arrived at the location of destination or on which the carriage was discontinued.
5. If the carrier grants compensation despite failure to comply with the notification period or period for filing action, this shall with regard to any additionally asserted claims not constitute any waiver on the part of the carrier to its right to invoke the failure to observe the time limits.

## **Article 12**

### **Set-Off / Assignment**

1. The set-off against claims of the carrier is only permissible if the respective claim is uncontested, acknowledged or has become non-appealable.

2. The consignor may assign any claims arising from contracts with the carrier only with the prior written consent of the latter.

**Article 13**

**Applicable Law / Place of Jurisdiction**

Disputes arising from or in connection with these Terms and Conditions of Carriage are subject to the Polish Law. In the event of applicability of the Convention, an action for damages may only be brought within the sovereignty of one of the State Parties, at the court of the location where the contracting carrier is situated.

**Article 14**

**Conflicting Law**

If any provision contained in the air waybill or in these Terms and Conditions of Carriage is invalid because it contradicts applicable law, the validity of the air waybill or of the remaining Terms and Conditions of Carriage shall not be affected thereby. The invalid provision shall be replaced by a lawful provision closest to the economic content of the concluded contract of carriage in accordance with the respective applicable law.

**Article 15**

**Modifications and Waivers**

Provisions of the contract of carriage or these Terms and Conditions of Carriage cannot be validly changed, restricted or excluded by any agents, employees, representatives or vicarious agents of the carrier.

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