



Introduction

DFDS Germany ApS & Co. KG is acting solely as an agent to DFDS A/S ("DFDS") and therefore, all agreements are entered into on behalf of DFDS. The purpose of these general terms and conditions ("T&C") is to set out the rules of DFDS' engagement as logistics provider towards its customers of (i) domestic and international transports, (ii) engagement of storage assignments and (iii) any other services of whatsoever nature undertaken by DFDS (collectively referred to as "Services"). In the event of any inconsistency between these T&C and the terms of the customer, these T&C shall prevail.

1 Definitions

- 1.1 "CIM" means the Uniform Rules Concerning the Contract for International Carriage of Goods by Rail.
- 1.2 "CMR Convention" means the Convention on the Contract for the International Carriage of Goods by Road.
- 1.3 "Customer" means any person, including an individual, corporation or other legal entities, for which DFDS agrees to provide Services.
- 1.4 "DFDS Group" means any company within the group that is controlled directly or indirectly by DFDS A/S.
- 1.5 "Gate-to-Gate" means a carriage where DFDS has agreed to undertake sea carriage of the goods together with any incidental terminal handling in the port of loading and/or the port of discharge.
- 1.6 "General Agreement" means these T&C without the Appendices.
- 1.7 "Hague-Visby rules" means the International Convention for the Unification of Certain Rules and Law relation to Bills of Lading, signed at Brussels on 25 August 1924 as amended by the protocol signed at Brussels on 23 February 1968 and the protocol in relation to SDRs signed at Brussels on 21 December 1979.
- 1.8 "HGB" means the German Commercial Code ("Handelsgesetzbuch").
- 1.9 "Maritime Code" means the Danish, Finnish, Norwegian or Swedish Maritime Code (collectively referred to as "the Codes").
- 1.10 "Merchant" includes the shipper, receiver, consignor, consignee, the Customer and holder of any document evidencing the carriage and the owner of the goods and any person having a legitimate interest in the goods and anyone acting on behalf of any of the above mentioned persons.
- 1.11 "Multimodal Transport" means the carriage of goods by at least two different modes of transport (road, rail, sea) where (if applicable) the goods are unloaded from the vehicle during the sea or rail transport.
- 1.12 "NSFCC" means DFDS' North Sea Freight Conditions of Carriage (Appendix A), which incorporates the Hague-Visby rules and the Codes, as well as NSOCC Green Card (Appendix B).
- 1.13 "Port-to-Port" means a carriage where DFDS has agreed to undertake sea carriage of the goods tackle to tackle only.
- 1.14 "SDR" means Special Drawing Right as defined by the International Monetary Fund.

2 Structure of the T&C

- 2.1 DFDS offers various services. Therefore and for easier reference the T&C are divided into the following sections:
 - Section A: General conditions (clauses 3-13)
 - Section B: Special conditions (clauses 14-18)
- 2.2 Section B includes the following clauses, which specifically apply to:
 - Road transports (clause 14)
 - Sea transports and multimodal transports (clause 15)
 - Rail transports (clause 16)
 - Storage assignments (clause 17)
 - Other Services (clause 18)
 - Appendices

A GENERAL CONDITIONS

3 Scope of application

- 3.1 The provisions set out and referred to in these T&C shall apply to every specific contract and order concluded with DFDS for the performance of Services as undertaken by DFDS, whether evidenced by the issue of a document or not.
- 3.2 For the avoidance of doubt, where any provision of these T&C contravenes or is inconsistent with any provisions of the CMR Convention, the Hague-Visby rules, the CIM Convention, the Codes or any other compulsory law or convention, then these T&C shall supersede and take precedence to the extent legally possible. If any part of these T&C be repugnant to compulsory legislation to any extent, such part shall as regards such business, be overridden to that extent and no further, and these T&C shall be read as subject to such legislation.
- 3.3 In the event of any inconsistency between the different parts of these T&C the following shall apply:
 - The General Agreement shall prevail over the Appendices.
 - Section A of the General Agreement shall prevail over section B.
- 3.4 Any rights of DFDS under these T&C are in addition to and shall not in any way limit or reduce any right of DFDS under any applicable law or convention.

4 Compliance

- 4.1 Each party is responsible for and warrants its compliance with all applicable laws, conventions, rules and regulations, including but

- 4.2 not limited to the government regulations of any country to from or through which the goods may be carried, handled or stored.
- 4.3 For the purposes of customs clearance or other formalities, which have to be completed before delivery of the goods, the Customer shall attach the necessary documents to the relevant transport document or place them at the disposal of DFDS and shall furnish DFDS with all the information, which DFDS requires. DFDS has no duty to inquire into either the accuracy or the adequacy of such documents and information.
- 4.4 The Customer is responsible for obtaining any necessary export and/or import licenses or permits and any other licenses and permits as may be required in respect of the goods.

5 Insurance

- 5.1 No insurance on the goods (Cargo, "All Risks") will be effected except upon express instructions given in writing by the Customer and accepted in writing by DFDS, and all insurances effected by DFDS in respect of the goods are effected as agents for the Customer and DFDS assumes no liability what so ever for having mediated the insurance.

6 Quotations and payments for Services

- 6.1 DFDS' quotation is based on information of the goods supplied by the Customer to DFDS, or else on circumstances that are deemed by DFDS as normal for the intended contract. If the circumstances do not indicate otherwise, DFDS should be able to assume that the goods, which have been handed over to DFDS are of such a nature and such a relation between weight and volume as is normal for the type of goods in question.
- 6.2 In the event of increase in price for bunkers, fuel and/or other hydrocarbon oils, the rates for the Services may be adjusted to cover such increase. Furthermore, all rates quoted are subject to changes in applicable rules and regulations, changes in infrastructure or volumes and other such circumstances over which DFDS has no influence.
- 6.3 The Customer has a duty upon request, to pay DFDS what is due for the contract (freight, remuneration, advance payment, expenses as may be incurred in the performance of the contract, refund of outlays, taxes, duties, VAT and imposts) against appropriate documentation. DFDS is not obliged to provide a hard copy of the signed transport document to the Customer.
- 6.4 If the goods have not been delivered for transport, or if an impediment not caused by DFDS arises, DFDS is entitled to the agreed charges less any savings and/or to compensation for extra costs entailed thereby.
- 6.5 Even if DFDS has given the Customer the right to defer payment until the arrival of the goods at destination, the Customer has nevertheless a duty, when so requested, to pay DFDS what is due, if, due to circumstances beyond DFDS' reasonable control, the contract cannot be performed as agreed.
- 6.6 DFDS has the right to special payment for work rendered which is clearly necessary in addition to what has been explicitly agreed upon. The payment for such work is determined in accordance with the same principles as those applying to the Services under the specific contract.

7 Terms of payment and set-off

- 7.1 Payment for Services rendered shall be received on DFDS' bank account no later than the due date of the invoice.
- 7.2 Overdue amounts will be subject to late payment interests at the rate of 2% per month. DFDS is also entitled to full compensation of all costs and damages incurred as a consequence of non-payment or late-payment for the Services rendered.
- 7.3 Without prejudice to any other rights or remedies, if payment is not received on time, the Customer must accept to transfer to a direct debit agreement if requested to do so by DFDS.
- 7.4 The Customer must notify DFDS of any objections to an invoice within 8 days of the invoice date. Disputes regarding an invoice shall on no account release the Customer from its obligation to pay on time.
- 7.5 Should the Customer have a claim against DFDS and/or DFDS Group, DFDS may at any time set off all amounts which may be payable by the Customer to DFDS, in the Customer's claim against DFDS and/or DFDS Group, whether or not arising under these T&C's or a specific order or other contracts with DFDS and/or DFDS Group.

8 Lien

- 8.1 Notwithstanding any provisions to the opposite of the CMR Convention, the Hague-Visby rules and the CIM Convention, DFDS shall have a particular and a general lien on the goods and any documents relating thereto for all sums of whatsoever kind and nature due at any time to DFDS and/or DFDS Group from the Customer/Merchant in respect of such goods as well as for all other amounts due from the Customer/Merchant under other contracts or in tort, including general average contributions, remuneration and warehousing charges and all costs and expenses of whatever nature related to the exercising of the lien.

- 8.2 Should the goods be lost or destroyed, DFDS has similar rights in respect of compensation payable by insurance companies, carriers or others.
- 8.3 Should the amount due to DFDS/DFDS Group not be paid, DFDS has the right to arrange the sale, in a satisfactory manner, of as much of the goods as is required to cover the total amount due, including expenses incurred. DFDS shall, if possible, inform the Customer/Merchant well in advance what DFDS intends to do with regard to the sale of the goods.
Such lien and liability shall remain notwithstanding the goods have been unloaded, stored or otherwise dealt with. If on the sale of the goods the proceeds fail to realise the amount due, DFDS and/or DFDS Group shall be entitled to recover the difference from any of the parties included in the term Merchant.

9 Liability and time-bar

- 9.1 Liability of DFDS
- 9.1.1 Notwithstanding anything else contained in these T&C, DFDS does not under any circumstances whatsoever and howsoever arisen accept liability towards its Customer or any third party for any loss of profit, loss of use, loss of revenue, loss of contracts, loss of business, loss of goodwill, increased costs and expenses, wasted expenditure, whether direct or indirect and whether foreseeable or not.
- 9.1.2 DFDS' liability is further set out in section B below, which also contains limitations of liability.
- 9.1.3 DFDS' liability to pay compensation of any claim, not specifically limited or mentioned in section B, including but not limited to any claim regarding delay in collection of the goods, misdelivery and delivery of the wrong goods, shall not exceed (i) the amount payable by DFDS had the goods in question been delayed, lost or damaged during transport or (ii) SDR 50,000 per specific order, whichever is the lesser. This limitation shall apply whether DFDS is liable in contract or tort.
- 9.1.4 DFDS assumes product liability in accordance with applicable mandatory legislation. Any other product liability howsoever caused is excluded.
- 9.1.5 Subject to mandatory law, these T&C apply equally to the persons that provide services for DFDS in order to perform the contract as to DFDS itself, irrespective of the grounds for the Customer's claims against DFDS and such other persons. The aggregate liability of DFDS and such other persons is limited to the amount that applies to DFDS' liability under these T&C.
- 9.2 Liability and obligations of the Customer
- 9.2.1 The Customer has the burden of proving that any loss or damage is caused by DFDS' negligence or fault.
- 9.2.2 The Customer has a duty to hold DFDS harmless for damage or loss incurred by DFDS owing to the fact that:
- The particulars concerning the goods are incorrect, unclear or incomplete;
 - The goods are incorrectly packed, marked or declared, or incorrectly loaded or stowed by the Customer;
 - The goods have such harmful properties as could not have been reasonably foreseen by DFDS;
 - Due to errors or omissions by the Customer, DFDS is obliged to pay duty or official taxes or fines and penalties, or to provide security or incur other costs, charges and fees;
 - The documents and/or information mentioned in clause 4.2 are absent, inadequate or irregular, regardless whether or not this is due to any errors or omissions by the Customer.
- 9.2.3 It is the Customer's obligation to load, secure and unload the goods.
- 9.2.4 The Customer shall be liable for damage to and loss of DFDS' equipment, such as but not limited to tractor units, trailers, containers etc., and other property, or injury to or death of any person caused by the negligence, fault or wilful act of the Customer or any of its employees, servants or agents.
- 9.2.5 If DFDS is liable to pay compensation for any damage to goods and property of a third party, the Customer shall indemnify DFDS for any part of such compensation, which is not proven to be caused by the negligence or fault of DFDS. Further, the Customer shall indemnify DFDS for any part of such compensation that DFDS would not have been obliged to pay if these T&C could be asserted against such third party.
- 9.2.6 Should DFDS in its capacity as charterer or shipper become liable in connection with carriage of the Customer's goods by sea, to pay general average contribution to the shipowner or the carrier, or become exposed to general average claims or demands from third parties, the Customer shall hold DFDS harmless.
- 9.3 Time-bar
- 9.3.1 Unless otherwise stipulated in Section B, any notice of claims shall be given to DFDS without undue delay and legal proceedings against DFDS shall be commenced within a period of 9 months otherwise the right to claim will have become lost. The time limit period runs:
- upon damage to goods from the day upon which the goods were delivered to the consignee;
 - upon delay, loss of the whole consignment or other kind of loss from the time at which the goods should have been delivered or on which the delay, total loss or other loss could at the earliest have been noticed whichever is the earliest; and
 - in all other cases from the time at which the cause on which the claim is based could at the earliest have been noticed.

10 Force majeure

- 10.1 DFDS shall not be liable for any failure to perform any Services under any specific order where and to the extent performance is prevented or delayed by any circumstances and/or event, which DFDS could not reasonably avoid and the consequences of which DFDS was unable to prevent by the exercise of reasonable diligence (Force Majeure Event). DFDS is not required to perform any of its obligations which are prevented or delayed by a Force Majeure Event for as long as such Force Majeure Event continues and leaves DFDS unable, using all reasonable efforts, to recommence its performance.

- 10.2 DFDS shall notify the Customer without undue delay and latest within 10 working days following the commencement of the Force Majeure Event setting out the nature and extent of the Force Majeure Event.

11 Sub-contracting

- 11.1 DFDS shall be entitled to sub-contract the whole or any part of the Services and, to avoid any doubt, any and all duties whatsoever undertaken by DFDS.

12 Governing law and dispute resolution

- 12.1 These T&C, and all contracts and specific orders entered into between the Customer and DFDS Germany ApS & Co. KG as agent to DFDS shall be governed by the laws of Germany, without giving effect to any choice of law or conflict of law provisions.
- 12.2 DFDS and the Customer shall endeavour to settle any dispute amicably, and if necessary by mediation if so agreed by the parties. If the dispute cannot be solved amicably or by mediation and legal proceedings are deemed necessary, the dispute shall be subject to the exclusive jurisdiction of Landgericht Hamburg.

13 Miscellaneous

- 13.1 If any provision of these T&C shall be found to be unenforceable but would be valid if any part of it were deleted or modified, the provision shall apply with such modifications as may be necessary to make it valid and effective.
- 13.2 In the event that the Customer breaches any provisions of these T&C, DFDS shall be entitled to suspend or terminate forthwith any contract or specific order with the Customer. This is entirely without prejudice to DFDS' rights to seek further recourse, remedies or compensation from or against the Customer.
- 13.3 DFDS may at any time transfer its rights and obligations or legal relationship with the Customer to any company belonging to DFDS' Group. In such an event, the Customer undertakes to co-operate to the extent necessary to effect such transfer expeditiously. The rights and obligations of the Customer may not be assigned, transferred or encumbered without the prior written consent of DFDS.

B SPECIAL CONDITIONS

14 Road transports

- 14.1 National road transports within Germany
- 14.1.1 In case DFDS undertakes national road transports within Germany or performs such national road transports as part of a logistic service, HGB shall be applicable in addition to this General Agreement.
- 14.1.2 Limitation of liability (HGB § 431)
- For loss of or damage to the goods DFDS' liability is limited to the lesser of
 - the value of the goods actually lost or damaged; or
 - the costs of repairing any damage or of reconditioning the goods; or
 - a sum calculated at the rate of 8.33 SDR per kilogram of gross weight of the consignment.
 - DFDS' liability for delay is limited to three times the freight paid.
- 14.1.3 Time limits for claims and legal proceedings
- Written notice of damage, loss or delay shall be given in accordance with § 438 HGB. It follows therefrom that if the Customer takes delivery of the goods without duly checking their condition with DFDS or without sending DFDS reservations giving a general indication of the loss or damage, not later than the time of delivery in the case of apparent loss or damage and within 7 days of delivery in the case of loss or damage which is not apparent, the fact of this taking delivery shall be prima facie evidence that the Customer has received the goods in the condition described in the consignment note. Furthermore, no compensation shall be payable for delay in delivery unless a reservation has been sent in writing to DFDS within 21 days from the time that the goods were placed at the disposal of the Customer.
 - Legal proceedings against DFDS shall be commenced and a notice in writing thereof given to DFDS within a period of 1 year, otherwise the right to claim in any event will have become lost.
- 14.2 International road transports and national road transports outside Germany
- 14.2.1 In case DFDS undertakes international road transports or performs such international road transports as part of a logistic service, or national road transports outside Germany, the CMR Convention shall be applicable in addition to this General Agreement.
- 14.2.2 The Customer shall pay particular attention to the following clauses in the CMR Convention:
- For loss of or damage to the goods DFDS' liability is limited to 8.33 SDR per kg gross weight of the part of the goods which has been lost or damaged (art. 23.3).
 - Compensation for delay in pick-up, carriage or delivery shall never exceed the amount of the freight (art. 23.5).
 - If the Customer takes delivery of the goods without duly checking their condition with DFDS or without sending DFDS reservations giving a general indication of the loss or damage, not later than the time of delivery in the case of apparent loss or damage and within 7 days of delivery in the case of loss or damage which is not apparent, the fact of this taking delivery shall be prima facie evidence that the Customer has received the goods in the condition described in the consignment note. Furthermore, no compensation shall be payable for delay in delivery unless a reservation has been sent in writing to DFDS, within 21 days from the time that the goods were placed at the disposal of the Customer (art. 30).

- Legal proceedings against DFDS shall be commenced within a period of 1 year; otherwise the right to claim will have become time-barred (art. 32).
- 14.3 DFDS has the right to issue the transport document.
- 15 Sea transports and Multimodal Transports**
- 15.1 North Sea Freight Conditions of Carriage
- 15.1.1 In case DFDS undertakes sea carriage of the goods from Port-to-Port or Gate-to-Gate or in respect of Multimodal Transport or if DFDS performs such sea carriages or Multimodal Transports as part of a logistic service, NSFCC and NSOCC Green Card (cf. Appendix A and B) shall be applicable in addition to this General Agreement.
- 15.1.2 Sea transports
- 15.1.2.1 The Customer shall pay particular attention to the following clauses in the NSFCC:
- Liability for loss of or damage to the goods is limited to 667 SDR for each package or unit or 2 SDR per kilo gross weight of the goods lost or damaged (cf. cl. 13.1 and 16.4).
 - DFDS shall in no circumstances whatsoever and however arising be liable for direct, indirect or consequential loss or damage caused by delay for sea transports. Without prejudice to the foregoing, if DFDS should nevertheless be held legally liable for any such delay, DFDS' liability shall be limited to the freight for the transport or to the value of the goods (as determined in cl. 16), whichever is the lower (cl. 14.2).
 - If loss or damage to the goods is apparent then notice of loss of or damage to the goods and the general nature of it must be given in writing to DFDS at the place of delivery before or at the time of the removal of the goods into the custody of the person entitled to take delivery thereof, or, if the loss or damage is not apparent, within 3 consecutive days thereafter, failing which the removal of the goods into the custody of the person entitled to delivery thereof shall be prima facie evidence of the delivery by DFDS of the goods in the same condition as received by DFDS (cl. 12).
 - All liability whatsoever of DFDS shall cease unless suit is brought within 12 months after delivery of the goods or the date when the goods should have been delivered (cl. 12 b).
- 15.1.3 Multimodal Transports
- 15.1.3.1 Where the stage of the carriage during which the loss occurred is not known, particular attention is drawn to the following clauses in NSFCC and HGB:
- Liability for loss of or damage to the goods is limited to 2 SDR per kilo gross weight of the goods lost or damaged (NSFCC cl. 16.5).
 - DFDS' liability for delay is limited to three times the freight paid (HGB § 431).
 - If loss or damage to the goods is apparent then notice of loss of or damage to the goods and the general nature of it must be given in writing to DFDS at the place of delivery before or at the time of the removal of the goods into the custody of the person entitled to take delivery thereof, or, if the loss or damage is not apparent, within 3 consecutive days thereafter, failing which the removal of the goods into the custody of the person entitled to delivery thereof shall be prima facie evidence of the delivery by DFDS of the goods in the same condition as received by DFDS (cl. 12).
 - All liability whatsoever of DFDS shall cease unless suit is brought within 9 months after delivery of the goods or the date when the goods should have been delivered (cl. 12 a).
- 15.1.3.2 Where the stage of the carriage during which the loss occurred is known, particular attention is drawn to the following clause in NSFCC:
- Liability of DFDS shall - subject to the specific conditions outlined in NSFCC - be determined in accordance with the provisions contained in any international convention or national law which provisions cannot be departed from and would have applied if a separate and direct contract had been made with DFDS in respect of the particular stage of transport where the loss or damage occurred (cl. 13.2).
- 16 Rail transports**
- 16.1 CIM Convention
- 16.1.1 In case DFDS undertakes an international transport carried out only by rail (unimodal transport), the CIM Convention shall be applicable in addition to this General Agreement. For national rail transports, the CIM Convention only applies to the extent permitted by national law. The Customer shall pay attention to the following clauses in the CIM Convention:
- For loss of or damage to the goods DFDS' liability is limited to 17 SDR per kg gross weight of the part of the goods which has been lost or damaged (art. 30 and 32).
 - Compensation for delay shall never exceed four times the amount of the freight (art. 33) and in no event more than what would have been paid if the goods were lost.
 - Acceptance of the goods by the person entitled shall extinguish all rights of action against DFDS arising from the contract of carriage. Nevertheless, the right of action shall not be extinguished in case of loss or damage which is not apparent, provided that the Customer gives notice immediately after discovery of the loss or damage and not later than 7 days after acceptance of the goods. In case of delay, the Customer has to give notice of the late delivery within 60 days. (art. 47)
 - Legal proceedings against DFDS shall be commenced within a period of 1 year, otherwise the right to claim will become time-barred (art. 48).

16.2 Notwithstanding clause 16.1 above, the following condition shall apply in addition to the CIM Convention and national law and in case of conflict or ambiguity between the below provision and the provisions in the CIM Convention and national law, the provision in clause 16.2.1 shall prevail:

16.2.1 In case DFDS undertakes national rail transports and international rail transports between a non-member state and a member state, DFDS shall in no circumstances whatsoever and howsoever arising be liable for loss or damage caused by delay, unless otherwise agreed in a specific contract.

17 Storage assignments

- 17.1 Storage in connection with the transports ("in-transit storage")
- 17.1.1 Storage in connection with road transports and rail transports
- If the consignee/Merchant does not take delivery of the goods in accordance with the transport agreement, DFDS accepts to store such goods at the expense of the Customer for a period of 14 days.
 - DFDS' liability for damage or loss of the goods during this in-transit storage is equivalent to DFDS' liability as carrier by road in case of road transports (clause 14 above) or by rail in case of rail transports (clause 16 above).
- 17.1.2 Storage in connection with sea transports and multimodal transports
- If the consignee/Merchant does not take delivery of the goods within 14 days after DFDS has given notice of delivery, DFDS is at liberty to store the goods in accordance with NSFCC (cl. 9), at the sole risk and expense of the Merchant.
 - DFDS' liability for damage or loss of the goods during this in-transit storage is equivalent to DFDS' liability as carrier by sea or multimodal carrier (clause 15 above).
- 17.2 Other storage
- 17.2.1.1 If the Customer wants DFDS to store the goods unrelated to any transport or following the expiry of the in-transit storage (clause 17.1 above), DFDS' liability for other storage assignments, including but not limited to storage assignments during a storage period unrelated to any transport or following the expiry of the in-transit storage, shall be limited to DFDS' negligent acts or omissions and shall not exceed:
- o 8,33 SDR for each kg gross weight of the consignment corresponding to 431(1),(2) and (4) HGB,
 - o a maximum of € 35,000 per claim; if the claim of a principal is based upon the difference between the nominal and actual inventory the liability is limited to € 70,000, irrespective of the number of events causing the inventory discrepancy.
- In the case of warehousing upon instruction DFDS' liability for claims other than for damage to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, is limited to € 35,000 per claim.
 - Irrespective of the number of claims arising from an event, the liability of DFDS is limited to € 2,5 million per event; in the case of more than one claimant, DFDS' liability is distributed amongst them in proportion to their individual claims.
- Claims have to be made in accordance with HGB § 438 (cf. clause 14.1.3 above) and claims will be time-barred after the expiry of 12 months.

18 Other Services

- 18.1 In case DFDS undertakes the performance of other Services, such as but not limited to, logistics management, assistance with documents for export and import, collection of "cash on delivery" charges, and Excise and Import Duties, customs clearance, and other assistance concerning the payment for the goods and advice in matters of transport and distribution, DFDS shall, unless otherwise stipulated above (clauses 14-17) or regulated within any international convention or compulsorily legislation, be liable to pay damages subject to the rules of damages in tort and contract under the governing law of these T&C.
- 18.2 Notwithstanding the above clause 18.1, DFDS' liability shall not exceed (i) the amount payable by the Customer for the service to which the damage or loss relates, or (ii) SDR 50,000 per specific order, whichever is the lesser.

APPENDIX A NSFCC

APPENDIX B NSOCC Green Card