



AGB

German Freight Forwarders' Standard Terms and Conditions
- ADSp -

(The following text is a translation from the German language original. In case of disputes the German language original of the ADSp are applicable)

Preface

The terms and conditions are recommended for use, starting January 1 st , 2003, by the Federal Association of German Industry, the Federal Association of German Wholesalers and Exporters, the Federal Association of German Freight Forwarders and Logistics Operators, the Association of German Chambers of Industrie and Commerce, and the German Association of Retailers. This recommendation is not obligatory. Contract parties can formulate different agreements.

1.

Interest of the principal and due care

The freight forwarder shall act in the interest of his principal and fulfil his duties with due care.

2. Area of application

2.1 The ADSp apply to all contracts for the transportation of goods, irrespective of whether they concern freight forwarding, carriage, warehousing or other services common to the forwarding trade; these also include logistical services commonly provided by freight forwarders in connection with the carriage or storage of goods.

2.2 In the case of forwarding services regulated by sections 453 to 466 of the German Commercial Law (HGB), the freight forwarder is only responsible for arranging the necessary contracts required for the performance of these services, unless other legal provisions take precedence

2.3 The ADSp are not applicable for contracts that deal exclusively with

- packaging,
- the carriage of removal goods and their storage,
- crane lifting, assembly jobs or heavy lift and high volume transports, except for normal transshipment services of the freight forwarder.
- the carriage and storage of goods to be towed or salvaged.

2.4 The ADSp are not applicable for transport contracts with consumers. Consumers are natural persons concluding the contract for reasons other than commercial or in pursuit of their professional activities.

2.5 If trade customs or legal provisions differ from the ADSp, the ADSp take precedence unless these legal provisions are mandatory.

For contracts of carriage by air, sea, inland waterways or for multi-modal transports different contractual arrangements may be made in accordance with the terms of carriage devised for these transports.

2.6 The freight forwarder is authorised to agree to normal standard terms and conditions of third parties.

2.7 In the relationship between a principal freight forwarder and an intermediate freight forwarder, the ADSp are deemed to be the general terms and conditions of the intermediate freight forwarder.

3. Instructions, transmission errors, contents, special type of goods

3.1 Forwarding instructions, other instructions, directives and communications are valid even if given informally. Subsequent modifications must be specifically identifiable as being amendments.

The burden of proof for the correct and complete transmission lies with the party referring to it.

3.2 If statements must be made in writing, they are deemed to having been made in writing when using electronic data communication or any other machine readable form for as long as the originator of the message is identifiable.

3.3 The principal must inform the freight forwarder, at the time of giving the instructions, that the transport contract concerns:

- dangerous goods
- live animals and plants
- perishables
- valuable goods and goods with an inherent risk of theft

3.4 The principal must specify in his instructions addresses, marks, numbers, quantity, nature and contents of the packages as well as declaring the properties of the goods, as required by section 3.3, the goods value for insurance purposes and any other information relevant for the proper execution of the forwarding instructions.

3.5 In the case of dangerous goods, the principal must inform the freight forwarder in writing - at the time of giving the instructions - of the exact nature of the hazard and, if appropriate, about precautionary measures. In the case of dangerous goods subject to the law for the carriage of dangerous goods or other goods, the carriage of which is subject to specific regulations regarding dangerous goods, their handling or their disposal, the principal has to make the necessary declarations required for the proper execution of the forwarding instruction, especially the classification in accordance with the regulations for dangerous goods.

3.6 The principal must inform the freight forwarder about particularly valuable goods or goods with an inherent risk of theft (e.g., cash, precious metals, jewellery, clocks and watches, precious stones, works of art, antiquities, bank or credit cards, valid telephone cards or other means of payment, bonds, shares and similar, foreign currencies, documents, spirits, tobacco, entertainment electronics, telecommunications devices and accessories) and goods with an actual value of € 50 per kg or more well in advance to allow the freight forwarder to decide about acceptance of the goods and to take measures for a safe and secure execution of the forwarding job.

3.7 If a forwarding instruction does not comply with the terms stated in sections 3.3 to 3.6, the freight forwarder has the option to

- refuse acceptance of the goods
- return goods already accepted or to make them available for collection
- ship, transport or store them without the need to notify the principal and to charge an extra, appropriate fee, if the safe and secure execution of the instruction causes extra costs.

3.8 The freight forwarder is not obliged to check or supplement the statements made regarding sections 3.3 to 3.6.

3.9 The freight forwarder is not obliged to check the authenticity of signatures on any messages or documents relating to goods, nor to check the authority of the signatories, unless there exist reasonable doubts concerning the authenticity or authority.

4. Packaging, provision of loading and packaging aids, weighing and checking

4.1 Unless specifically stated, the forwarding instruction does not cover

4.1.1 the packaging of the goods,

4.1.2 the weighing, checking, measures to preserve or enhance the goods and its packaging, unless this is customary for this kind of transaction,

4.1.3 the provision or exchange of pallets or other loading or packaging aids. If they are not swapped one-for-one, they are only picked up as part of a new forwarding instruction. This does not apply if the exchange is intentionally not carried out by the freight forwarder.

4.2 The services under section 4.1 are charged for separately.

5. Customs clearance

5.1 The instruction for shipment to a destination in another country includes instructions for customs clearance, if this is necessary for arranging the transport to the place of destination.

5.2 The freight forwarder is entitled to an extra fee for the customs clearance, over and above the actual costs incurred.

5.3 The instruction to forward bonded goods or to deliver them free house, authorises the freight forwarder to effect the customs clearance and to advance customs and excise duties and fees.

6. Packaging and marking obligation of the principal

6.1 The packages have to be clearly and durably marked by the principal to facilitate their proper handling, e.g. addresses, marks, numbers, symbols for handling and properties; old marks must be removed or made illegible.

6.2 In addition, the principal is under obligation:

6.2.1 to mark all packages belonging to the same consignment in such a way that they are easily recognised as forming one consignment,

6.2.2 to prepare packages in such a way that they may not be accessed without leaving visible trace (adhesive tape, bands, etc. are only permissible when they are individually designed or otherwise difficult to imitate; foil wrapping must be thermally sealed);

6.2.3 in case of a consignment being part of a forwarders consolidation, to group the individual packages or units of this consignment into larger units if their strap length (largest circumference plus longest side) is less than 1 metre;

6.2.4 to combine a consignment of hanging garments consisting of several individual units into wrapped units for easier handling;

6.2.5 to mark packing units with a gross weight of at least 1,000 kilograms with the weight specification as prescribed for heavy loads to be transported by ship.

6.3 Packages are single packages or units of packages, formed by the principal for the purpose of being carried according to the forwarding instruction, e.g., boxes, wireboxes, pallets, handling units, enclosed loading units such as covered wagons, wagons with tarpaulin covers, semi-trailers, swap bodies, containers or igloos.

6.4 If the packages do not comply with the terms under 6.1 and 6.2, section 3.7 shall apply.

7. Supervisory duties of the freight forwarder

7.1. At specific interfaces the freight forwarder is under the obligation to:

7.1.1 check packages regarding their quantity, identity and apparent good order and whether seals and fastenings are intact;

7.1.2 document irregularities (e.g. in the accompanying document or by special notification

7.2 An interface is any point at which the responsibility for the packages is passed on to another operator/agent or the handing over point at the end of each stage of the transportation process.

8. Receipt

8.1 Upon request by the principal, the freight forwarder shall issue a certificate of receipt.

With this certificate the freight forwarder confirms the quantity and type of packages, but not their contents, value or weight. In the case of bulk goods, full loads and such like the certificate of receipt does not state the gross weight or any other description of the quantity of the goods.

8.2 As proof of delivery the freight forwarder requests from the consignee a receipt of the packages as named in the forwarding instruction or other accompanying transport documents. Should the consignee refuse to sign for the receipt of the goods, the freight forwarder must request further instructions. If the goods have already been unloaded at the consignee, the freight forwarder is entitled to regain possession.

9. Instructions

9.1 An instruction remains valid for the freight forwarder until revoked by the principal.

9.2 In the case of insufficient or impractical instructions the freight forwarder may use his professional judgement.

9.3 An instruction to hold goods at the disposal of a third party can no longer be revoked after instructions from the third party have been received by the freight forwarder.

10. Freight payment, cash on delivery

10.1 The statement by the principal that the instruction is to be executed freight unpaid or that the costs are to be paid by the consignee or a third party does not affect his liability for payment of all charges.

10.2 The statement in section 10.1 does not concern cash on delivery instructions.

11. Deadlines

11.1 In the absence of specific agreements, neither loading or delivery deadlines are guaranteed, nor the sequence of the handling of goods of the same means of transport.

11.2 This does not affect the freight forwarder's statutory liability with regard to missing deadlines.

12. Obstacles

12.1 Obstacles beyond the freight forwarder's control relieve him, for their duration, from the duties that are affected by these obstacles.

In the case of such obstacles, the freight forwarder or the principal have the right to withdraw from the contract even if it has already been partially performed.

If the freight forwarder or the principal withdraws from the contract, the freight forwarder is entitled to the costs which he deemed to be necessary to be incurred or which were incurred in the interest of the principal.

12.2 The freight forwarder is only obliged within the framework of his ordinary professional care to advise the principal about legal or official restrictions concerning the shipment (e.g., import/export restrictions). If, however, the freight forwarder, through public statements or in the course of negotiations, created the impression that he has expert knowledge about specific circumstances, he has to act appropriately to this knowledge and expertise.

12.3 Governmental and/or official acts beyond the freight forwarder's control do not affect the rights of the freight forwarder towards his principal; the principal is liable towards the freight forwarder for all claims arising out of such acts. Claims of the freight forwarder against the state or third parties are not affected.

13. Delivery

Delivery is deemed to have been affected when the goods are handed over to any person present on the premises of the consignee, unless there are apparent reasonable doubts about their authority to receive goods on behalf of the consignee.

14. Right to information

14.1 The freight forwarder is obliged to provide the principal with all necessary information, to inform him, upon request, about the status of the transaction and to provide information about all transactions so far, however, he is only obliged to reveal the costs incurred if he acted in the name of the principal.

14.2 The freight forwarder is obliged to pass everything he receives/obtains while acting for him to the principal.

15. Warehousing

15.1 The choice of warehousing location (own or third party) lies with the freight forwarder. In case of a third party warehouse the freight forwarder must notify the principal in writing and immediately of the warehouse company and its address, or, in case of a warehouse warrant, to mark these on the warrant.

15.2 The principal is at liberty to inspect the warehouse. Objections or complaints about the storage of the goods must be made immediately. If he does not exercise the right of inspection, he waves all rights to objections against the storage and warehousing, for as long as the choice and type of storage complies with the usual professional care of a freight forwarder.

15.3 Access to the warehouse is only granted to the principal during the normal working hours of the freight forwarder and in his company.

15.4 If the principal handles the goods (e.g. sample taking) the freight forwarder may demand that the number, the weight and the status of the goods be inspected together with the principal. If the principal does not agree to this, the freight forwarder is not liable for damage discovered later, unless the damage was clearly not caused by such handling of the goods.

15.5 The principal is liable for all damage caused by him or his staff or agents to the freight forwarder, other warehouse clients or third parties whilst on the premises of the warehouse, unless he, his staff or agents are not responsible for such damage.

15.6 In case of inventory discrepancies, the freight forwarder is entitled to balance shortages and surpluses of the same principal.

15.7 If the freight forwarder has reasonable doubt about the security of his claim upon the value of the goods he is entitled to set a reasonable time limit for the principal to either secure the claims of the freight forwarder or to make alternative provisions for the storage of the goods. If the principal does not comply with this, the freight forwarder is entitled to terminate the contract without further notice.

16. Offers and Payment

16.1 Offers from the freight forwarder and agreements with him regarding price and services always refer to specified own services or those of third parties, and to goods of normal size, weight and nature; they presume normal unfettered transport situations, unimpeded access, the possibility of immediate on-shipment and that freight rates, exchange rates and tariffs upon which the quotation was based remain valid, unless changes could be foreseen under the current circumstances. The note "plus the usual ancillary charges" entitles the freight forwarder to charge for supplements and surcharges.

16.2 All quotations made by the freight forwarder are valid only for immediate acceptance and immediate execution of the relevant task, unless otherwise specified in the quotation, and when the instructions refer to the quotation.

16.3 In case of a cancellation of or withdrawal from the instruction the freight forwarder is entitled to the claims in accordance with §§ 415, 417 of the German Commercial Law (HGB).

16.4 In case of a COD- or other collection instruction being withdrawn retrospectively or if the money is not paid, the forwarder is still entitled to his collection fee.

16.5 If the consignee refuses to accept a consignment destined for him or, if the delivery is impossible for reasons beyond the control of the freight forwarder, the freight forwarder is entitled to the cartage charges for the return of the consignment.

17. Disbursements of the freight forwarder, exemption from third party claims

17.1 The freight forwarder is entitled to reimbursement for outlays which he could reasonably consider appropriate.

17.2 The instruction to accept incoming consignments entitles the freight forwarder - but does not oblige him - to advance freight, COD-sums, duties, taxes and other dues in connection with such consignments.

17.3 The principal has to relieve the freight forwarder immediately of demands regarding freight, average demands, customs duties, taxes or other dues directed against the freight forwarder as being agent for or possessor of the goods owned by third parties, when the freight forwarder is not responsible for such payments. The freight forwarder is entitled to take reasonable measures appropriate to protect himself. If the circumstances do not require immediate action, the freight forwarder must request instructions from his principal.

17.4 The principal must inform the freight forwarder in an appropriate way about all public/legal obligations, e.g. regarding customs regulations or trademark obligations, arising from the possession of the goods, unless it may reasonably be deduced from the quotation of the freight forwarder that he is aware of such obligations.

18. Invoices, foreign currencies

18.1 Freight forwarders' invoices are due immediately.

18.2 The freight forwarder can demand from his foreign principals payment either in local or German currency.

18.3 If the freight forwarder owes foreign currency amounts, or if he advances sums in foreign currencies, he can demand payment either in German or in foreign currency. If he demands payment in German currency, the current exchange rate will be used, unless it can be proven that a different rate of exchange must be used or was used.

19. Settlement

Claims arising out of the forwarding contract and other related claims may only be set off against counter claims, if these are undisputed.

20. Lien and retention

20.1 The freight forwarder has a lien on all goods in his possession or other valuables in connection with any claim, whether due or not for any services for his principal in accordance with section 2.1. This lien does not exceed the general legal lien which applies.

20.2 The freight forwarder may exercise his lien for claims arising out of other contracts with the principal only if they are undisputed or if the financial situation of the debtor puts the claims of the freight forwarder at risk.

20.3 The time limit of one month as specified in section 1234 of the German commercial Law is superseded in all cases by a time limit of two weeks.

20.4 If the principal is in arrears, the freight forwarder is entitled, after due notice, to sell such a portion of the principal's goods in his possession as is necessary, after appropriate consideration, to meet his claims.

20.5 The freight forwarder is entitled to the usual sales commission on the net proceeds of the sale when exercising his lien.

21. Insurance of the goods

21.1 The freight forwarder arranges for the insurance of the goods (e.g., transit or warehousing insurance) with an insurer of his choice if instructed to do so by the principal before the goods are handed over.

If the freight forwarder cannot effect insurance cover, either due to the nature of the goods or for any other reason, he must inform the principal without delay.

21.2 The freight forwarder is entitled, but not obliged, to effect the insurance of the goods if this is in the interest of the principal. The freight forwarder may assume that the

insurance cover is in the interest of the principal, especially when,

- the freight forwarder effected insurance cover for previous freight forwarding instructions

- the principal declared the value of the goods in his freight forwarding instructions (3.4).

This assumption for the arrangement of insurance cover may not be made if

- the principal expressly forbids such insurance cover
- the principal is a freight forwarder, carrier or warehousing company.

21.3 The freight forwarder, after due consideration decides the type and scope of the insurance and arranges the cover at the usual market rates, unless the principal instructs the freight forwarder differently, specifying the insured sum and the risks to be covered, in writing.

21.4 If the freight forwarder is himself the insurance policy holder and if he acted for the account of the principal he is obliged, if requested to do so, he is obliged to provide information about this in accordance with 14.1. In such a case the freight forwarder is obliged to invoice the premium for each freight forwarding instruction individually, to document it and to pay it to the insurer exclusively for this insurance cover.

21.5 The freight forwarder is entitled to a special fee, apart from his reimbursements, for arranging the insurance, handling claims and other administrative tasks in connection with claims and averages.

22. Liability of the freight forwarder, cession of claims

22.1 The freight forwarder bears liability for all his services (section 2.1) according to legal regulations. Unless specified otherwise, however, the following shall apply.

22.2 If the freight forwarder is only responsible for arranging the contracts required for the services requested, his responsibility is limited to the careful choice of such third party service providers.

22.3 In all cases where the freight forwarder is liable for loss of or damage to goods, his liability will be in accordance with §§ 429, 430 of the German Commercial Law.

22.4 If §§ 425 pp and 461, section 1 of the German Commercial Law are not applicable, the freight forwarder is liable for damage resulting from:

22.4.1 - insufficient packaging or marking by the principal or third parties

22.4.2 - agreed or customary outdoor storage

22.4.3 - theft or robbery (§§ 243, 244, 249 German Penal Code)

22.4.4 - Acts of God, weather conditions, failure of appliances or wiring, influence of other goods, damage by animals, inherent vice

Only, if there is evidence of the freight forwarder being at fault. If the damage could have arisen from one of the above circumstances it shall be deemed to have arisen from it.

22.5 If the freight forwarder has a claim against a third party for damage for which he is not liable, or if the freight forwarder has claims in excess of the sum for which he is liable, he must, on request, cede such claim to his principal, unless the freight forwarder, by special agreement, had undertaken to pursue such claims at the cost and risk of his principal.

The principal may also demand that the freight forwarder cedes all claims against third parties to him. § 437 of the German Commercial Law remains unaffected.

If the claims of the principal have been met by the freight forwarder or by the forwarders' insurance, the claim to be ceded is limited to that portion which exceeds that already paid by the freight forwarder or his insurance.

23. Limitation of liability

23.1 The liability of the freight forwarder for loss of or damage to goods, with the exception of warehousing on request, is limited:

23.1.1 to € 5 per kilogram of gross weight of the consignment;

23.1.2 in case of damage occurring to goods whilst being carried, the damage is limited - contrary to section 23.1.1 - to the legally limited maximum amount specified for this type of carriage;

23.1.3 in case of a contract of multi-modal carriage - including sea transport - to 2 SDR per kg;

23.1.4 to € 1 million or 2 SDR per kg per claim, whichever is the higher.

23.2 If only individual packages or parts of the consignment were damaged or lost, the maximum liability is calculated on the basis of the gross weight

- of the whole consignment if it is rendered valueless
- of that part of the consignment that is rendered valueless

23.3 The liability of the freight forwarder for damage other than to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, is limited to three times the amount payable for the loss of the goods, but not more than € 100,000 per event. §§ 431 section 3 and 433 HGB (German Commercial Code) remain unaffected.

23.4 The liability of the freight forwarder, irrespective of the number of claims per event is limited to € 2 Millions per event or 2 SDR per kg of lost or damaged goods, whichever is the greater; in the case of more than one claimant the freight forwarder's liability is proportionate to their individual claims

23.5 The SDR is calculated in accordance with § 431, section 4 of the German Commercial Law.

24. Liability limitations in the case of warehousing upon instruction

24.1 The liability of the freight forwarder for loss of or damage to goods in the case of warehousing upon instruction is limited

24.1.1 to € 5 for each kg gross weight of the consignment,

24.1.2 to a maximum of € 5,000 per claim; if the claim of a principal is based upon the difference between the nominal and actual inventory (section 15.6) the liability is limited to € 25,000, irrespective of the number of events causing the inventory discrepancy. Section 24.1.1 is not affected.

24.2 Section 23.2 applies accordingly.

24.3 In the case of warehousing upon instruction the liability of the freight forwarder 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 € 5,000 per claim.

24.4 Irrespective of the number of claims arising from an event, the liability of a freight forwarder is limited to € 2 Millions per event; in the case of more than one claimant the freight forwarder's liability is distributed amongst them in proportion to their individual claims.

25. Burden of proof

25.1 The principal must provide evidence that goods of a specified quantity and state were handed to the freight forwarder in apparent good order (§ 438 German Commercial Law). The freight forwarder must provide evidence that he delivered the goods as he received them.

25.2 The burden of proof that goods were damaged whilst being transported (Section 23.1.2) in the means of transport lies with the party claiming such damage. If the place where the damage occurred is unknown, the freight forwarder must specify the sequence of transportation by documenting the interfaces (Section 7) if requested by the principal or the consignee. It is to be assumed that the damage occurred during that stage of the transportation for which the freight forwarder cannot provide a clean receipt.

25.3 The freight forwarder is obliged to ascertain, through appropriate enquiries and obtaining evidence, where the damage occurred.

26. Non-contractual claims

The aforementioned releases from and limitations of liability apply also, in accordance with §§ 434, 436 of the German Commercial Law, to claims not arising out of freight forwarding contracts.

27. Specific responsibility

The aforementioned releases from and limitations of liability do not apply, if the damage was caused:

27.1 By intent or gross negligence of the freight forwarder or his management staff or by violation of fundamental duties of the contract in which case damage claims shall be limited to foreseeable, typical damage;

27.2 by the freight forwarder in cases covered by §§ 425 pp, 461 Abs. 1 of the German Commercial Law or by persons specified in §§ 428, 462 of the German Commercial Law acting intentionally or recklessly, knowing that damage to the goods would be probable.

28. Notification of a claim

Claims have to be made in accordance with § 438 of the German Commercial Law.

29. Freight forwarding insurance

29.1 The freight forwarder is obliged to cover, at going market rates, his transport-related liability according to ADSp and as legally required to cover standard liabilities with an insurer of his choice.

29.2 Agreements for maximum compensation per claim, event and year are permitted; also contributions from the freight forwarder.

29.3 The freight forwarder may only refer to the ADSp towards his principal if he has arranged sufficient insurance cover at the time of the forwarding instructions are issued.

29.4 If requested by the principal, the freight forwarder has to provide proof of this liability insurance cover

30. Place of fulfilment, place of jurisdiction, applicable law

30.1 The place of fulfilment for all parties to the contract is the location of that branch office of the freight forwarder at which the instructions are directed.

30.2 The place of jurisdiction for all disputes arising out the instruction is for all participants, so far as they are business people, exclusively the location of that branch office of the freight forwarder at which the instructions are directed.

30.3 The legal relationship between the freight forwarder and the principal or his legal successors is governed by the law of the Federal Republic of Germany.

CMR

Convention on the Contract for the International Carriage of Goods by Road (CMR)

PREAMBLE

THE CONTRACTING PARTIES

HAVING RECOGNIZED the desirability of standardizing the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability,

HAVE AGREED AS FOLLOWS:

CHAPTER 1 - Scope of application

Art. 1

(1) This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties.

(2) For the purposes of this Convention, "vehicles" means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Convention on Road Traffic dated 19th September 1949.

(3) This Convention shall apply also where carriage coming within its scope is carried out by States or by governmental institutions or organizations.

(4) This Convention shall not apply:

- a) to carriage performed under the terms of any international postal convention;
- b) to funeral consignments;
- c) to furniture removal.

(5) The Contracting Parties agree not to vary any of the provisions of this Convention by special agreements between two or more of them, except to make it inapplicable to their frontier traffic or to authorize the use in transport operations entirely confined to their territory of consignment notes representing a title to the goods.

Art. 2

(1) Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. Provided that to the extent that it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by an act or omission of the carrier by road, but by some event which could only have occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Convention.

(2) If the carrier by road is also himself the carrier by the other means of transport, his liability shall also be determined in accordance with the provisions of paragraph 1 of this article, but as if, in his capacities as carrier by road and as carrier by the other means of transport, he were two separate persons.

CHAPTER 2 - Persons for whom the carrier is responsible

Art. 3

For the purposes of this Convention the carrier shall be responsible for the acts and omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

CHAPTER 3 - Conclusion and performance of the contract of carriage

Art. 4

The contract of carriage shall be confirmed by the making out of consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.

Art. 5

(1) The consignment note shall be made out in three original copies signed by the sender and by the carrier. These signatures may be printed or replaced by the stamps of the sender and the carrier if the law of the country in which the consignment note has been made out so permits. The first copy shall be handed to the sender, the second shall accompany the goods and the third shall be retained by the carrier.

(2) When the goods which are to be carried have to be loaded in different vehicles, or are of different kinds or are divided into different lots, the sender or the carrier shall have the right to require a separate consignment note to be made out for each vehicle used, or for each kind or lot of goods.

Art. 6

(1) The consignment note shall contain the following particulars:

- a) the date of the consignment note and the place at which it is made out;
- b) the name and address of the sender;
- c) the name and address of the carrier;
- d) the place and the date of taking over of the goods and the place designated for delivery;
- e) the name and address of the consignee;
- f) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognized description;
- g) the number of packages and their special marks and numbers;
- h) the gross weight of the goods or their quantity otherwise expressed;
- i) charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);
- j) the requisite instructions for Customs and other formalities;
- k) a statement that the carriage is subject notwithstanding any clause to the contrary, to the provisions of this Convention.

(2) Where applicable, the consignment note shall also contain the following particulars:

- a) a statement that trans-shipment is not allowed;
- b) the charges which the sender undertakes to pay;
- c) the amount of "cash on delivery" charges;
- d) a declaration of the value of the goods and the amount representing special interest in delivery;
- e) the sender's instructions to the carrier regarding insurance of the goods;
- f) the agreed time-limit within which the carriage is to be carried out;
- g) a list of the documents handed to the carrier.

(3) The parties may enter in the consignment note any other particulars which they may deem useful.

Art. 7

(1) The sender shall be responsible for all expenses, loss and damage sustained by the carrier by reason of the inaccuracy or inadequacy of:

- a) the particulars specified in article 6, paragraph 1, b), d), e), f), g), h) and j);
- b) the particulars specified in article 6, paragraph 2;
- c) any other particulars or instructions given by him to enable the consignment note to be made out or for the purpose of their being entered therein.

(2) If, at the request of the sender, the carrier enters in the consignment note the particulars referred to in paragraph 1 of this article, he shall be deemed, unless the contrary is proved, to have done so on behalf of the sender.

(3) If the consignment note does not contain the statement specified in article 6, paragraph 1 k), the carrier shall be liable for all expenses, loss and damage sustained through such omission by the person entitled to dispose of the goods.

Art. 8 (1) On taking over the goods, the carrier shall check:

- a) the accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and
- b) the apparent condition of the goods and their packaging.

(2) Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1 a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note.

(3) The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking. The result of the checks shall be entered in the consignment note.

Art. 9

(1) The consignment note shall be prima facie evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier.

(2) If the consignment note contains no specific reservations by the carrier, it shall

be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier look them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note.

Art. 10

The sender shall be liable to the carrier for damage to persons, equipment or other goods, and for any expenses due to defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he look over the goods and he made no reservations concerning it.

Art. 11

(1) For the purposes of the Customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all the information which he requires.

(2) The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of such documents and information. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier. (3) The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.

Art. 12

(1) The sender has the right to dispose of the goods, in particular by asking the carrier to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note.

(2) This right shall cease to exist when the second copy of the consignment note is handed to the consignee or when the consignee exercises his right under article 13, paragraph 1; from that time onwards the carrier shall obey the orders of the consignee.

(3) The consignee shall, however, have the right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.

(4) If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, that other person shall not be entitled to name other consignees.

(5) The exercise of the right of disposal shall be subject to the following conditions:

a) that the sender or, in the case referred to in paragraph 3 of this article, the consignee who wishes to exercise the right produces the first copy of the consignment note on which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions;

b) that the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out and does not either interfere with the normal working of the carrier's undertaking or prejudice the senders of consignees of other consignments;

c) that the instructions do not result in a division of the consignment.

(6) When, by reason of the provisions of paragraph 5 b) of this article, the carrier cannot carry out the instructions which he receives, he shall immediately notify the person who gave him such instructions.

(7) A carrier who has not carried out the instructions given under the conditions provided for in this article, or who has carried them out without requiring the first copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.

Art. 13

(1) After arrival of the goods at the place designated for delivery, the consignee shall be entitled to require the carrier to deliver to him, against a receipt, the second copy of the consignment note and the goods. If the loss of the goods is established

or if the goods have not arrived after the expiry of the period provided for in article 19, the consignee shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage.

(2) The consignee who avails himself of the rights granted to him under paragraph 1 of this article shall pay the charges shown to be due on the consignment note, but in the event of dispute on this matter the carrier shall not be required to deliver the goods unless security has been furnished by the consignee.

Art. 14

(1) If for any reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for delivery, the carrier shall ask for instructions from the person entitled to dispose of the goods in accordance with the provisions of article 12.

(2) Nevertheless, if circumstances are such as to allow the carriage to be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in reasonable time from the person entitled to dispose of the goods in accordance with the provisions of article 12, he shall take such steps as seem to him to be in the best interests of the person entitled to dispose of the goods.

Art. 15

(1) Where circumstances prevent delivery of the goods after their arrival at the place designated for delivery, the carrier shall ask the sender for his instructions. If the consignee refuses the goods the sender shall be entitled to dispose of them without being obliged to produce the first copy of the consignment note.

(2) Even if he has refused the goods, the consignee may nevertheless require

delivery so long as the carrier has not received instructions to the contrary from the sender.

(3) When circumstances preventing delivery of the goods arise after the consignee, in exercise of his rights under article 12, paragraph 3, has given an order for the goods to be delivered to another person, paragraphs 1 and 2 of this article shall apply as if the consignee were the sender and that other person were the consignee.

Art. 16

(1) The carrier shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act or neglect of the carrier.

(2) In the cases referred to in article 14, paragraph 1, and in article 15, the carrier may immediately unload the goods for account of the person entitled to dispose of them and thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person so entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.

(3) The carrier may sell the goods, without awaiting instructions from the person entitled to dispose of them, if the goods are perishable or their condition warrants such a course, or when the storage expenses would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if after the expiry of a reasonable period he has not received from the person entitled to dispose of the goods instructions to the contrary which he may reasonably be required to carry out.

(4) If the goods have been sold pursuant to this article, the proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the person entitled to dispose of the goods. If these charges exceed the proceeds of sale, the carrier shall be entitled to the difference.

(5) The procedure in the case of sale shall be determined by the law or custom of the place where the goods are situated.

CHAPTER IV - Liability of the carrier

Art. 17

(1) The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.

(2) The carrier shall however be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

(3) The carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage, or by reason of the wrongful act or servants of the latter.

(4) Subject to article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one or more of the following circumstances:

- a) use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;
- b) the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
- c) handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf of the sender or the consignee;
- d) the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;
- e) insufficiency or inadequacy of marks or numbers on the packages; f) the carriage of livestock.

(5) Where under this article the carrier is not under any liability in respect of some of the factors causing the loss, damage or delay, he shall only be liable to the extent that those factors for which he is liable under this article have contributed to the loss, damage or delay.

Art. 18

(1) The burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier.

(2) When the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so caused. The claimant shall however be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks.

(3) This presumption shall not apply in the circumstances set out in article 17, paragraph 4 a), if there has been an abnormal shortage, or a loss of any package.

(4) If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of article 17, paragraph 4 d), unless he proves that all steps incumbent on him in the circumstances with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him.

(5) The carrier shall not be entitled to claim the benefit of article 17, paragraph 4 f), unless he proves that all steps normally incumbent on him in the circumstances were taken and that he complied with any special instructions issued to him.

Art. 19

Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time-limit or when, failing an agreed time-limit, the actual duration

of the carriage having regard to the circumstances of the case, and in particular, in the case of partial loads, the time required for making up a complete load in the normal way, exceeds the time it would be reasonable to allow a diligent carrier.

Art. 20

(1) The fact that goods have not been delivered within thirty days following the expiry of the agreed time-limit, or if there is no agreed time-limit, within sixty days from the time when the carrier took over the goods, shall be conclusive evidence of the loss of the goods, and the person entitled to make a claim may thereupon treat them as lost.

(2) The person so entitled may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered in the course of the year following the payment of compensation. He shall be given a written acknowledgement of such request. (3) Within the thirty days following receipt of such notification, the person entitled as aforesaid may require the goods to be delivered to him against payment of the charges shown to be due on the consignment note and also against refund of the compensation he received less any charges included therein but without prejudice to any claims to compensation for delay in delivery under article 23 and, where applicable, article 26.

(4) In the absence of the request mentioned in paragraph 2 or of any instructions given within the period of thirty days specified in paragraph 3, or if the goods are not recovered until more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the law of the place where the goods are situated.

Art. 21

Should the goods have been delivered to the consignee without collection of the "cash on delivery" charge which should have been collected by the carrier under the terms of the contract of carriage, the carrier shall be liable to the sender for compensation not exceeding the amount of such charge without prejudice to his right of action against the consignee.

Art. 22

(1) When the sender hands goods of a dangerous nature to the carrier, he shall inform the carrier of the exact nature of the danger and indicate, if necessary, the precautions to be taken. If this information has not been entered in the consignment note, the burden of proving, by some other means, that the carrier knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the sender or the consignee.

(2) Goods of a dangerous nature which, in the circumstances referred to in paragraph 1 of this article, the carrier did not know were dangerous, may, at any time or place, be unloaded, destroyed or rendered harmless by the carrier without compensation; further, the sender shall be liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.

Art. 23

(1) When, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

(2) The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(3) Compensation shall not, however, exceed 8,33 SZR per kilogram of gross weight short.

(4) In addition, the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damages shall be payable.

(5) In the case of delay, if the claimant proves that damage has resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges.

(6) Higher compensation may only be claimed where the value of the goods or a special interest in delivery has been declared in accordance with articles 24 and 26.

Art. 24

The sender may, against payment of a surcharge to be agreed upon, declare in the consignment note a value for the goods exceeding the limit laid down in article 23, paragraph 3, and in that case the amount of the declared value shall be substituted for that limit.

Art. 25

(1) In case of damage, the carrier shall be liable for the amount by which the goods have diminished in value, calculated by reference to the value of the goods fixed in accordance with article 23, paragraphs 1, 2 and 4.

(2) The compensation may not, however, exceed:

- a) if the whole consignment has been damaged, the amount payable in the case of total loss;
- b) if part only of the consignment has been damaged, the amount payable in the case of loss of the part affected.

Art. 26

(1) The sender may, against payment of a surcharge to be agreed upon, fix the amount of a special interest in delivery in the case of loss or damage or of the agreed time-limit being exceeded, by entering such amount in the consignment note.

(2) If a declaration of a special interest in delivery has been made, compensation for the additional loss or damage proved may be claimed, up to the total amount of the interest declared, independent of the compensation provided for in articles 23, 24 and 25.

Art. 27

(1) The claimant shall be entitled to claim interest on compensation payable. Such

interest, calculated at five per centum per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which legal proceedings were instituted.

(2) When the amounts on which the calculation of the compensation is based are not expressed in the currency of the country in which payment is claimed, conversion shall be at the rate of exchange applicable on the day and at the place of payment of compensation. Art. 28

(1) In cases where, under the law applicable, loss, damage or delay arising out of carriage under this Convention gives rise to an extra-contractual claim, the carrier may avail himself of the provisions of this Convention which exclude his liability or which fix or limit the compensation due.

(2) In cases where the extra-contractual liability for loss damage or delay of one of the persons for whom the carrier is responsible under the terms of article 3 is in issue, such person may also avail himself of the provisions of this Convention which exclude the liability of the carrier or which fix or limit the compensation due.

Art. 29

(1) The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burden of proof if the damage was caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct.

(2) The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment. Furthermore, in such a case such agents, servants or other persons shall not be entitled to avail themselves, with regard to their personal liability, of the provisions of this chapter referred to in paragraph 1.

CHAPTER 5 - Claims and actions

Art. 30

(1) If the consignee takes delivery of the goods without duly checking their condition with the carrier or without sending him 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 seven days of delivery, Sundays and public holidays excepted. In the case of loss or damage which is not apparent, the fact of his taking delivery shall be prima facie evidence that he has received the goods in the condition described in the consignment note. In the case of loss or damage which is not apparent the reservations referred to shall be made in writing.

(2) When the condition of the goods has been duly checked by the consignee and the carrier, evidence contradicting the result of this checking shall only be admissible in the case of loss or damage which is not apparent and provided that the consignee has duly sent reservations in writing to the carrier within seven days, Sundays and public holidays excepted from the date of checking.

(3) No compensation shall be payable for delay in delivery unless a reservation has been sent in writing to the carrier, within twenty-one days from the time that the goods were placed at the disposal of the consignee.

(4) In calculating the time-limits provided for in this article the date of delivery, or the date of checking, or the date when the goods were placed at the disposal of the consignee, as the case may be, shall not be included. (5) The carrier and the consignee shall give each other every reasonable facility for making the requisite investigations and checks.

Art. 31

(1) In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

- a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or
- b) the place where the goods were taken over by the carrier or the place designated for delivery is situated, and in no other courts or tribunals.

(2) Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgment has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgment of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

(3) When a judgment entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become enforceable in that country, it shall also become enforceable in each of the other contracting States, as soon as the formalities required in the country concerned have been complied with. These formalities shall not permit the merits of the case to be re-opened.

(4) The provisions of paragraph 3 of this article shall apply to judgments after trial, judgments by default and settlements confirmed by an order of the court, but shall not apply to interim judgments or to awards damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

(5) Security for costs shall not be required in proceedings arising out of carriage under this Convention from nationals of contracting countries resident or having their place of business in one of those countries.

Art. 32

(1) The period of limitation for an action arising out of carriage under this Convention shall be one year. Nevertheless, in the case of wilful misconduct, or such default as in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be three years. The period of limitation shall begin to run:

- a) in the case of partial loss, damage or delay in delivery, from the date of delivery;

b) in the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which - the goods were taken over by the carrier;

c) in all other cases, on the expiry of a period of three months after the making of the contract of carriage. The day on which the period of limitation begins to run shall not be included in the period.

(2) A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached thereto. If a part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of the receipt of the claim, or of the reply and of the return of the documents, shall rest with the party relying upon these facts. The running of the period of limitation shall not be suspended by further claims having the same object.

(3) Subject to the provisions of paragraph 2 above, the extension of the period of limitation shall be governed by the law of the court of tribunal seized of the case. That law shall also govern the fresh accrual of rights of action.

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

Art. 33

The contract of carriage may contain a clause conferring competence on an arbitration tribunal if the clause conferring competence on the tribunal provides that the tribunal shall apply this Convention.

CHAPTER 6 - Provisions relating to carriage performed by successive carriers

Art. 34

If carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of his acceptance of the goods and the consignment note.

Art. 35

(1) A carrier accepting the goods from a previous carrier shall give the latter a dated and signed receipt. He shall enter his name and address on the second copy of the consignment note. Where applicable, he shall enter on the second copy of the consignment note and on the receipt reservations of the kind provided for in article 8, paragraph 2.

(2) The provisions of article 9 shall apply to the relations between successive carriers.

Art. 36

Except in the case of a counter-claim or a set-off raised in an action concerning a claim based on the same contract of carriage, legal proceedings in respect of liability for loss, damage or delay may only be brought against the first carrier, the last carrier or the carrier who was performing that portion of the carriage during which the event causing the loss, damage or delay occurred; an action may be brought at the same time against several of these carriers.

Art. 37

A carrier who has paid compensation in compliance with the provisions of this Convention, shall be entitled to recover such compensation, together with interest thereon and all costs and expenses incurred by reason of the claim, from the other carriers who have taken part in the carriage, subject to the following provisions:

a) the carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier;

b) when the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him;

c) if it cannot be ascertained to which carriers liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers as laid down in b) above.

Art. 38

If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them.

Art. 39

(1) No carrier against whom a claim is made under article 37 and 38 shall be entitled to dispute the validity of the payment made by the carrier making the claim if the amount of the compensation was determined by judicial authority after the first mentioned carrier had been given due notice of the proceedings and afforded an opportunity of entering an appearance.

(2) A carrier wishing to take proceedings to enforce his right of recovery may make his claim before the competent court or tribunal of the country in which one of the carriers concerned is ordinarily resident, or has his principal place of business or the branch or agency through which the contract of carriage was made. All the carriers concerned may be made defendants in the same action.

(3) The provisions of article 31, paragraphs 3 and 4, shall apply to judgments entered in the proceedings referred to in articles 37 and 38.

(4) The provisions of article 32 shall apply to claims between carriers. The period of limitation shall, however, begin to run either on the date of the final judicial decision fixing the amount of compensation payable under the provisions of this Convention or, if there is no such judicial decision, from the actual date of payment.

Art. 40 Carriers shall be free to agree among themselves on provisions other than those laid down in articles 37 and 38.

CHAPTER 7 - Nullity of stipulations contrary to the Convention

Art. 41

(1) Subject to the provisions of article 40, any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.

(2) In particular, a benefit of insurance in favour of the carrier or any other similar clause, or any clause shifting the burden of proof shall be null and void.

CHAPTER 8 - Final provisions

Art. 42

(1) This Convention is open for signature or accession by countries members of the Economic Commission for Europe and countries admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference.

(2) Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become Contracting Parties to this Convention by acceding thereto after its entry into force.

(3) The Convention shall be open for signature until 31 August 1956 inclusive. Thereafter, it shall be open for accession.

(4) This Convention shall be ratified.

(5) Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Art. 43

(1) This Convention shall come into force on the ninetieth day after five of the countries referred to in article 42, paragraph 1, have deposited their instruments of ratification or accession.

(2) For any country ratifying or acceding to it after five countries have deposited their instruments of ratification or accession, this Convention shall enter into force on the ninetieth day after the said country has deposited its instrument of ratification or accession.

Art. 44

(1) Any Contracting party may denounce this Convention by so notifying the Secretary-General of the United Nations. (2) Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the notification of denunciation.

Art. 45

If, after the entry into force of this Convention, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, the Convention shall cease to be in force from the date on which the last of such denunciations takes effect.

Art. 46

(1) Any country may, at the time of depositing its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. The Convention shall extend to the territory or territories named in the notification as from the ninetieth day after its receipt by the Secretary-General or, if on that day the Convention has not yet entered into force, at the time of its entry into force.

(2) Any country which has made a declaration under the preceding paragraph extending this Convention to any territory for whose international relations it is responsible may denounce the Convention separately in respect of that territory in accordance with the provisions of article 44.

Art. 47

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention, which the parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting Parties concerned, be referred for settlement to the International Court of Justice.

Art. 48

(1) Each Contracting Party may, at the time of signing, ratifying, or acceding to, this Convention, declare that it does not consider itself as bound by article 47 of the Convention. Other Contracting Parties shall not be bound by article 47 in respect of any Contracting Party which has entered such a reservation.

(2) Any Contracting Party having entered a reservation as provided for in paragraph 1 may at any time withdraw such reservation by notifying the Secretary-General of the United Nations.

(3) No other reservation to this Convention shall be permitted.

Art. 49

(1) After this Convention has been in force for three years, any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing the Convention. The Secretary-General shall notify all Contracting Parties of the request and a review conference shall be convened by the Secretary-General if, within a period of four months following the date of notification by the Secretary-General, not less than one-fourth of the Contracting Parties notify him of their concurrence with the request. (2) If a conference is convened in accordance with the preceding paragraph, the

Secretary-General shall notify all the Contracting Parties and invite them to submit within a period of three months such proposals as they may wish the Conference to consider. The Secretary-General shall circulate to all Contracting Parties the provisional agenda for the conference together with the texts of such proposals at least three months before the date on which the conference is to meet.

(3) The Secretary-General shall invite to any conference convened in accordance with this article all countries referred to in article 42, paragraph 1, and countries which have become Contracting Parties under article 42, paragraph 2.

Art. 50

In addition to the notifications provided for in article 49, the Secretary-General of the United Nations shall notify the countries referred to in article 42, paragraph 1, and the countries which have become Contracting Parties under article 42, paragraph 2, of:

- a) ratifications and accessions under article 42;
- b) the dates of entry into force of this Convention in accordance with article 43;

- c) denunciations under article 44;
- d) the termination of this Convention in accordance with articles 45;
- e) notifications received in accordance with article 46;
- f) declarations and notifications received in accordance with article 48, paragraphs 1 and 2.

Art. 51

After 31 August 1956, the original of this Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the countries mentioned in article 42, paragraphs 1 and 2.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Geneva, this nineteenth day of May one thousand nine hundred and fifty-six, in a single copy in the English and French languages, each text being equally authentic.