

Kap-Horn Logistics GmbH Standard Terms and Conditions

Kap-Horn Logistics GmbH (hereinafter "**Kap-Horn**") operates a terminal at the Bremen port for the handling and storage of goods and other related forwarding and logistic services (all of the aforementioned services individually and collectively hereinafter referred to as the "**Services**").

1. Scope of these Standard Terms and Conditions and further legal bases

- 1.1. These Standard Terms and Conditions (hereinafter the "**T&C**") apply to all offers and contracts on the basis of which Kap-Horn offers or provides Services to its contractual partner (hereinafter the "**Customer**"), provided that the Customer acts as an entrepreneur within the meaning of Section 14 German Civil Code ("BGB"), i.e. in the exercise of their trade, business, or profession.
- 1.2. In addition, the latest version of the Kap-Horn's tariff as applicable at the time of conclusion of the contract shall apply and can be accessed under the link:
http://kap-horn.eu/wp-content/uploads/2020/09/ENTWURF-Tarif_EN.pdf
- 1.3. All offers and contracts between the Customer and Kap-Horn are also based on the 2017 German Freight Forwarders' Standard Terms and Conditions ("ADSp 2017"), which can be downloaded here
[https://www.dslv.org/dslv/web.nsf/gfx/F486B2D03DC404C6C12583F3003EC7AC/\\$file/DSLVA-ADSp-2017-EN.pdf](https://www.dslv.org/dslv/web.nsf/gfx/F486B2D03DC404C6C12583F3003EC7AC/$file/DSLVA-ADSp-2017-EN.pdf).

To the extent that Kap-Horn's Services involve logistic services that are not covered by the ADSp 2017 or a forwarding, freight or storage contract, the Standard Terms and Conditions of Logistics-Services Providers (2019 version) published by the Federal Association of German Freight Forwarders and Logistics Operators ("Logistics T&C") shall apply in addition and can be downloaded here

[https://www.dslv.org/dslv/web.nsf/gfx/2FC0B73FFFC3AF35C1258519004436DB/\\$file/Logistik-AGB%202019%20eng.pdf](https://www.dslv.org/dslv/web.nsf/gfx/2FC0B73FFFC3AF35C1258519004436DB/$file/Logistik-AGB%202019%20eng.pdf)

Important note: The ADSp 2017 and the Logistics T&C partially provide for lower liability amounts than those provided for by law. For example, Section 23 ADSp 2017 additionally limits the statutory liability for damage to goods (Section 431 German Commercial Code ("HGB")) to the higher of EUR1.25 million per "Damage Case" and EUR2.5 million per "Damage Event", respectively, or 2 special drawing rights (SDR) per kilogram of the gross weight of the goods, and in the case of multimodal transports including carriage of goods by sea and unknown place of loss or damage generally to 2 SDR per kilogram.

In the event of inconsistencies between the provisions of ADSp 2017 or Logistics T&C, respectively, and the provisions of these Standard Terms and Conditions, the latter shall take precedence.

- 1.4. These T&C shall also apply to future offers and contracts in the context of the business relationship with the Customer, even if Kap-Horn does not expressly refer to them.
 - 1.5. The Customer's standard terms and conditions will not become part of the contract, unless Kap-Horn has expressly agreed to their validity.
- ### **2. Conclusion and content of the contract**
- 2.1. Kap-Horn's offers are non-binding until accepted in writing by the Customer. If the Customer's

order is not preceded by an offer from Kap-Horn, Kap-Horn's silence regarding this order shall not be deemed acceptance of the order.

- 2.2. The conclusion, amendments, additions or side agreements to an order must be made in writing in order to be effective. If, by way of exception, Kap-Horn accepted an oral order, it assumes no liability whatsoever for the consequences arising from the absence of an electronic or written order.
- 2.3. Kap-Horn may, in general or for certain Services, require that orders or other data and information essential for order processing be transmitted in accordance with a predefined pattern by means of electronic data communication in compliance with user regulations established for that purpose.
- 2.4. If the Customer and Kap-Horn agree on additional Services after conclusion of the contract, these Services must be remunerated additionally. Clause 3 shall apply mutatis mutandis to the amount of remuneration for the additional Services.

3. Prices, tariffs, costs of packaging, price changes

- 3.1. Unless Kap-Horn and the Customer entered into any special agreements on the items and the amount of Kap-Horn's remuneration, the fees and charges to be billed by Kap-Horn shall be in accordance with Kap-Horn's applicable tariff (see Clause 1.2). To the extent that the applicable tariff does not provide otherwise and Kap-Horn and the Customer have not entered into any special agreements, all pricing information set forth in the tariff applies exclusively to Kap-Horn's own Services listed there and/or services provided by third parties and to goods of customary volume, weight and ordinary quality, the handling, transport or storage of which is not subject to any special statutory provisions.
- 3.2. If the information provided in the Customer's inquiry or order regarding the goods (such as their dimensions or weight), type or scope of the Service to be provided or operational framework conditions for the provision of Services (such as ship size or draught) turns out to be incorrect or incomplete, Kap-Horn shall be entitled, at its equitable discretion, to unilaterally increase the agreed remuneration to reflect the additional expenses caused thereby.
- 3.3. If, after conclusion of the contract, freight, freight surcharges, taxes, public charges or fees or collective wages are introduced or increased, Kap-Horn shall be entitled to change the price at its equitable discretion, unless it is responsible for the increase.
- 3.4. In the event of hindrances or difficulties in the provision of Services beyond Kap-Horn's control, the additional expenses incurred by Kap-Horn for that reason shall be reimbursed by the Customer.
- 3.5. All prices are net, i.e. excluding VAT. If VAT arises, it will be shown separately on the invoice in the amount valid on the date of invoicing.
- 3.6. To the extent that Kap-Horn has been commissioned with packaging services and in the absence of a different price agreement between the parties, the Customer shall bear the costs for packaging materials in addition to the remuneration of Kap-Horn according to outlay. The packaging materials used shall become the property of the Customer upon completion of the packaging work.

4. Prohibited and restricted goods

- 4.1. Excluded from Kap-Horn's acceptance are goods
 1. the custody, handling and transport of which is prohibited by applicable laws or regulations or the quantities of which exceed any prescribed maximum quantities; or
 2. which, after careful assessment by Kap-Horn, are not suitable for acceptance due to their properties, condition or packaging or endanger safe handling or safe storage.

4.2. The acceptance, storage and handling of

1. valuables, works of art, precious metals, money and securities;
2. fragile goods;
3. live animals;
4. waste as defined by public waste law;
5. goods that are moisture-sensitive, temperature-sensitive or otherwise perishable goods;
6. refrigerated containers; and
7. dangerous goods as defined in the laws governing hazardous goods (e.g. German Carriage of Hazardous Goods Act or the IMDG Code)

are to be separately agreed upon with Kap-Horn by the Customer with explicit reference to the relevant property among those listed above, together with instructions as to the specific requirements for the handling of the goods.

5. Customer's duty to provide information, to properly label the goods, and to cooperate

- 5.1. The Customer must inform Kap-Horn fully and in a timely manner of all relevant circumstances that Kap-Horn requires for the proper execution of the order. This applies in particular to the number, type, size and content of the packages, their loadability, special properties such as center of gravity, hazardousness, fragility and sensitivity to temperature and moisture.
- 5.2. Dangerous goods that are subject to the laws and regulations on the carriage of hazardous goods must be announced in advance in accordance with the relevant legal and regulatory requirements. The data transmitted shall contain all the information required, and must be accompanied by the necessary safety data sheets. The Customer must ensure that the acceptance or handling of the goods by Kap-Horn is permitted in accordance with the relevant laws and regulations, and notify Kap-Horn if there are any special requirements involved.
- 5.3. If, after acceptance of an item, it turns out that, according to Kap-Horn's due assessment, that item poses a concrete threat to human health or Kap-Horn's or a third party's legally protected interest, the Customer must collect the item in question immediately upon the request of Kap-Horn, or neutralize it in a suitable manner. If there is imminent danger, Kap-Horn shall be authorized to neutralize the goods even without prior request to the Customer. The costs incurred by these measures and the risk to the item associated therewith shall be borne by the Customer if the Customer had failed to duly communicate the risk or if the risk was not caused by Kap-Horn's fault.
- 5.4. The goods must be clearly and permanently marked with the adequate labeling required for their proper handling as laid down in the applicable laws or regulations.
- 5.5. The Customer must provide Kap-Horn, without being prompted and in a timely manner, with all information required for the proper export of the goods from the territory of the EU or the Federal Republic of Germany or import into the EU or the Federal Republic of Germany. The Customer shall be responsible for compliance with all applicable laws and regulations on imports and exports (including customs, tax and foreign trade law). In particular, the Customer must issue all necessary forms itself, or deliver them electronically and, where necessary, complete them, and it must arrange for the proper handling of the goods.
- 5.6. The Customer shall be responsible for any fault committed by the persons it uses in the fulfillment of its obligation of submitting accurate and complete documents and information in the same manner as it is responsible for its own fault.

- 5.7. Kap-Horn is not obligated to verify the accuracy and completeness of documents and information it receives from the Customer, or from third parties attributable to the Customer, or the Customer's vicarious agents, unless Kap-Horn is in possession of clear indications that there are inconsistencies.

6. General provisions regarding the execution of orders

6.1. Rights of the owner of the premises

- 6.1.1. All exclusive rights of an owner of premises are vested in Kap Horn with regard to its business premises and the associated buildings and facilities. Persons driving onto or otherwise entering the premises of Kap-Horn and its associated buildings and facilities must comply with the rules and prohibitions announced by signs and follow the written or oral instructions issued by Kap-Horn's employees on operational safety. In addition, they must comply with all relevant accident prevention regulations issued by the Employer's Liability Insurance Association.
- 6.1.2. Smoking is only permitted in the designated smoking areas.

6.2. Subcontractors

Kap-Horn is entitled to use subcontractors.

6.3. Delivery to authorized recipients

The handing over of the goods to the consignee's agent or to a carrier authorized to receive the goods shall be deemed equivalent to delivery. Likewise, loading the goods into railroad wagons, containers, flats or trailers as well as transferring the goods to the vessel shall also be deemed equivalent to delivery.

6.4. Safekeeping of loading equipment

- 6.4.1. If loading equipment (such as containers, flats, pallets) belonging to the Customer or third parties contracted by the Customer remains with Kap-Horn after the Service has been performed in accordance with the order, Kap-Horn will keep the loading equipment until the Customer picks it up or makes other arrangements. The Customer shall pay for the duration of such safekeeping all fees and charges incurred according to the relevant tariff (Clause 1.2). Unless Kap-Horn has agreed otherwise with the Customer, the Customer shall be obligated upon Kap-Horn's request to pick up the loading equipment or make other arrangements.
- 6.4.2. The Customer must indemnify Kap-Horn at its first request from any claims of third parties (such as demurrage/detention, container deposit, pallet costs) related to loading equipment belonging to the Customer or third parties contracted by it .

6.5. Waiting times and additional expenses

The Customer shall pay Kap-Horn all fees and charges in accordance with the relevant tariff (Clause 1.2) for increased operating expenses or time expenditure (including waiting times) incurred on the Customer's initiative or due to inaccuracy, incompleteness of, or delay in providing, the required documents and information, or for any other reasons that are not attributable to any risk area falling within Kap-Horn's responsibility.

6.6. No insurance of the goods by Kap-Horn

Except where a declaration of the value within the meaning of Clause 10.4.2 is provided, Kap-Horn shall not be obligated to provide insurance for the goods.

6.7. Force majeure

- 6.7.1. Events of force majeure (circumstances and incidents which Kap-Horn could not avoid despite employing the diligence of a prudent businessman, such as labor disputes, war, fire, shortage of raw materials, government action, including sanctions issued by the European Union or the Federal Republic of Germany, epidemics or pandemics, traffic route closures, or unusual acts of

God) will interrupt Kap-Horn's obligation to perform its Services for the duration and extent of their effect. This shall also apply if Kap-Horn is already in default with the fulfillment of the affected obligation to perform its Services at the time when the event of force majeure occurs. Kap-Horn will immediately notify the Customer of the occurrence of a force majeure event and the expected duration of the disruption.

- 6.7.2. If the disruption extends over more than three months, both parties shall be entitled to terminate the contract effective at notice, even if part of the Services has been performed already. This shall not affect the remuneration for the Services already performed up to the time of termination.
- 6.7.3. If Kap-Horn continues to perform Services in whole or in part despite a force majeure event, these Services must be remunerated in accordance with the contract; in every other respects, this performance by Kap-Horn does not constitute its waiver of the exemptions and rights set forth in Clause 6.7, and the Customer shall not be entitled to derive any rights against Kap-Horn from any delay in the performance of the Services or partial non-performance caused by the force majeure event.

7. Supplementary provisions for cargo handling and temporary storage

- 7.1. Kap-Horn generally puts goods to be handled in temporary storage. The goods may also be temporarily stored in the open. Kap-Horn is obligated to transship goods from one mode of transport to another (direct transshipment) only if this has been expressly agreed upon between Kap-Horn and the Customer. If Kap-Horn performs direct transshipment in accordance with the order, it is obligated to inspect the goods externally only to the extent that this can be done as part of the usual handling of the transshipment without any particular practical difficulties and within in a short period of time.
- 7.2. By way of derogation from Clause 7.1, the Customer must render direct transshipment by Kap-Horn possible for all those goods which, according to applicable laws or regulations, may only be handled by direct transshipment, or which, due to their volume, weight or other characteristics, are not suitable for Kap-Horn to take receipt of according to its careful assessment.
- 7.3. Kap-Horn will allow the Customer to handle and inspect the goods stored in Kap-Horn's transit sheds and open storage areas during regular business hours, provided that any such handling and inspection does neither interfere with Kap-Horn's regular workflow nor collide with its other legitimate interests, such as security concerns.
- 7.4. Any transshipment preparation work, including but not limited to compiling goods into units on or inside load carriers or means of transport (pallets, containers, flat racks, etc.) as well as the disassembly of such loading or transport units, including all associated ancillary activities (lashing, unlash, etc.) and other work typically performed at ports (such as the loading, discharging and bunkering of seagoing and inland waterway vessels, the handling of goods of all kinds on quaysides and in dock halls) shall be exclusively reserved to Kap-Horn and its subcontractors.
- 7.5. If, in Kap-Horn's judgment, mending or protective measures or other work are required to maintain, repair or reinforce the packaging of delivered goods, Kap-Horn shall be entitled to perform such Services or have them performed for the account of the authorized agent in cases where neither the Customer nor the authorized agent can be reached in time to provide for such measures themselves. Sentence 1 above shall not create a special duty of inspection on the part of Kap-Horn.
- 7.6. Unless Kap-Horn was expressly commissioned to load the goods onto or into road vehicles or railroad cars, the fastening of the goods to protect them or to ensure the operational safety of the

road vehicle or train shall not be part of Kap-Horn's duties. If Kap-Horn takes over the fastening of goods on road vehicles on the basis of a separate order, such fastening will be carried out strictly in accordance with the instructions of the vehicle operator in charge.

8. Supplementary provisions for marine transshipment

8.1. Berths

- 8.1.1. Regardless of the allocation of a berth by Kap-Horn, each shipmaster shall remain responsible for ensuring that the vessel complies at all times with public law rules and regulations for occupying the assigned berth at the port.
- 8.1.2. Based on Kap-Horn's ulterior use of its port basins and operating facilities, as well as any draught restrictions due to tides, ebb and flow, high or low water, Kap-Horn is not in a position to guarantee that the vessels will be able to call at and depart from the berths at any given time, or that they will be able to permanently stay at the assigned berth.
- 8.1.3. In the interest of the best possible utilization of Kap-Horn's facilities and of ensuring smooth traffic, Kap-Horn may require that the vessel vacate the assigned berth immediately after completion of the cargo handling operations.
- 8.1.4. Even before completion of the cargo handling operations, Kap-Horn may demand that the vessel be warped to another berth if this is necessary based on the nature or condition of the goods or the vessel (including its technical equipment), or if the ship's crew or the stevedores employed on board the vessel fail to perform their obligations due to a shortage of staff or other reasons, including force majeure. Kap-Horn is not responsible for any disadvantages incurred by the Customer as a result thereof. Kap-Horn shall be entitled to claim equitable additional compensation for any additional expenses incurred by it for the performance of its Services due to such warping.
- 8.1.5. In the event that a vessel fails to comply with instructions issued by authorities or with justified instructions by Kap-Horn, Kap-Horn shall be entitled, after consultation with the port authority, to have the required measures carried out by third parties for the account and at the risk of the vessel.

8.2. Power of representation of the shipbroker (port agent) on behalf of the Customer

Any declaration made to Kap-Horn by the shipbroker (port agent) entrusted with the handling of the vessel shall be legally binding on the Customer. Any declaration Kap-Horn makes to the shipbroker shall be deemed to have been made to the Customer.

8.3. Cargo handling (ships)

- 8.3.1. The ship's manifests (loading lists, etc., see also Clause 8.4) must be submitted for the loading and discharging of vessels in a timely and complete manner so that Kap-Horn can make all necessary handling arrangements.
- 8.3.2. Vessels in the process of loading and discharging shall set up their activities in the hatch or on deck in such a way that Kap-Horn can carry out its activities without delay or interruption. Kap-Horn may require vessels to work without interruption until all handling activities are completed; any related additional costs incurred shall be borne by the Customer.
- 8.3.3. Kap-Horn shall be entitled, at its sole discretion and with due consideration of all circumstances involved, to interrupt and continue at a later date any loading and discharging activities without being liable to the Customer for compensating any costs associated with the extended laytime or any further consequences of the delay.

- 8.3.4. Loading and discharging with the vessel's own hoists is permitted only with the express consent of Kap-Horn.

8.4. Ship's manifest

For all imported goods, the ship's manifest to be submitted by the vessel pursuant to Clause 8.3.1 must specify the marking, number of items, hazardous properties, type of packaging and the nature, characteristics, volume and weight of the goods. Dangerous goods must be labeled in accordance with the detailed provisions of Clause 5.2. Until separate orders have been submitted, the ship's manifest shall be deemed to be an order for the discharge and taking receipt of the goods as goods in transit. Kap-Horn will place the goods received, at its discretion, in transit sheds and/or open storage areas.

8.5. Loading of vessels

- 8.5.1. Unless otherwise agreed with the Customer, Kap-Horn will carry all cargo to the stowage location on board the vessel as specified by the vessel.
- 8.5.2. Each load or hoisted unit shall be deemed to have been taken over by the vessel once the load or unit has fully passed the vessel's ramp or railing. All activities performed by Kap-Horn from this point on, including any further use of equipment for the purpose of carrying the goods to the final stowage location will be carried out on behalf of the Customer. Kap-Horn's lifting equipment will be operated in the area of the vessel on instructions given by the vessel's representative, the vessel must therefore ensure proper signaling by a signaller. In addition to this, the vessel shall be obligated, acting on its own responsibility, to perform the necessary assistance, such as guiding the goods when they are lowered and removing the goods from the crane hook.
- 8.5.3. Upon Kap-Horn's request, its employees must be granted access to all areas of the vessel where Kap-Horn operates its hoists. This shall not affect the personal responsibility of the personnel employed on board the vessel for the duties incumbent on them, such as signaling.
- 8.5.4. If the Customer or the vessel requires goods be loaded by Kap-Horn with the Customer's or the vessels' equipment (e.g. lifting beams), the use of this equipment shall be at the risk of the Customer or the vessel. Kap-Horn shall not be obligated to check this device for its suitability for loading, unless there are obvious indications of unsuitability.

8.6. Stowage on board

- 8.6.1. The stowage of the goods on board, including fastening the goods for their protection and ensuring the operational safety of the vessel, is, as a rule, not part of the order. If the Customer provides the goods to be carried in a container, on a pallet or in or on other loading equipment used for grouping cargoes, the Customer must also stow and secure the goods in or on the loading equipment in a manner safe for transport.
- 8.6.2. If Kap-Horn expressly undertakes to stow the goods on board the vessel under the contract, the goods will be stowed in accordance with the instructions of the vessel's management. Kap-Horn assumes no liability for damage to the goods, the vessel or other legally protected interests of third parties due to incorrect instructions of the vessel's management.

8.7. Discharging ships

- 8.7.1. Unless agreed otherwise with the Customer, Kap-Horn shall discharge the entire cargo and bring it ashore.
- 8.7.2. The vessel shall provide the individual lots as per the bills of lading separately and in a self-contained manner, and, to the greatest possible extent, in hoisted units of equal size.

- 8.7.3. Subject to a detailed determination of the number of items, condition of the goods, etc., the goods shall be deemed to have been taken over by Kap-Horn upon being set ashore.
- 8.7.4. When taking over goods from vessels, Kap-Horn does not assume the obligation of notifying the consignee of the arrival of the goods, which is the responsibility of the marine carrier or freight carrier. Neither shall Kap-Horn be obligated to notify the consignee of any discrepancies between the particulars in the cargo documents and the actual facts in terms of size, weight, marking or description of the goods.
- 8.7.5. If the Customer or vessel requires goods to be discharged by Kap-Horn with the Customer's or the vessel's equipment (e.g. lifting beams), Kap-Horn shall not be obligated to check this device for its suitability for discharging cargo, unless there are obvious indications of unsuitability.

8.8. Delivery on land and (re)-loading

- 8.8.1. Kap-Horn shall be entitled to refuse delivery of and dealing with goods carried by ships until the discharge of vessel in question is completed, if, in Kap-Horn's judgment, the proper performance of the discharge operation and the necessary overview of the lots to be delivered would otherwise be impaired.
- 8.8.2. Kap-Horn will deliver the goods to anyone who, in addition to the delivery and/or loading order or electronic data to be submitted by them, presents Kap-Horn with a Letter of Indemnity (for release of cargo) from the shipbroker identifying them as the legitimate consignee.
- 8.8.3. The goods to be delivered shall be transshipped to means of land carriage by Kap-Horn at the places determined by Kap-Horn in accordance with the detailed provisions of Clause 7.

9. Dealing with claims (loss or damage)

9.1. Determination of damage

- 9.1.1. Upon acceptance, Kap-Horn shall be obligated to inspect with reasonable effort the goods only for externally recognizable loss or damage.
- 9.1.2. If the Customer or the authorized agent reports a loss or damage to the goods taken over by Kap-Horn, the latter shall determine the condition of the goods and the time of the loss or damage and shall provide the result in writing to the authorized agent.
- 9.1.3. Kap-Horn shall not be obligated to safeguard the rights of the Customer or any other authorized agent against marine carriers or freight carriers commissioned by the Customer or the authorized agent, and it is, in particular, not Kap-Horn's responsibility to submit a notice of claim for loss or damage in accordance with Section 438 or Section 510 HGB or for participating in the inspection of the goods.

9.2. Notification of claim (for loss or damage) and obligation to give such notice

- 9.2.1. If a loss or damage to the goods is externally recognizable, the Customer or the consignee must notify Kap-Horn of the loss or damage at the latest upon delivery of the goods. If the loss or damage was not externally recognizable, the Customer or the consignee must notify Kap-Horn of the loss or damage in text form within three calendar days of delivery. Such notice must specify as precisely as possible the nature of the loss or damage. Blanket statements, such as "dirty", "lost" or "damaged" without more specific information are not sufficient.

- 9.2.2. If a loss or damage to the goods has not been reported in accordance with Clause 9.2.1 or determined by Kap-Horn as described above, then the presumption shall be that the goods were delivered in their entirety and in undamaged condition.

10. Kap-Horn's liability

10.1. General provisions

- 10.1.1. Kap-Horn shall be responsible for fulfilling its contractual obligations with the diligence of a prudent businessman. In the event of culpable violation of this diligence, Kap-Horn shall be liable to the Customer for the resulting damage in accordance with Clauses 10.2 to 10.4.
- 10.1.2. The exclusions and limitations of liability set out in this Clause 10 shall also apply in favor of Kap-Horn's governing bodies, persons employed in the performance of its obligations and vicarious agents.
- 10.1.3. The exclusions and limitations of liability set out in this Clause 10 shall apply regardless of the contractual or non-contractual basis on which a claim for damages may be based.
- 10.1.4. The provisions of this Clause 10 do not affect more extensive statutory exclusions and limitations of liability as well as exclusions and limitations of liability included in other provisions of these T&C, the ADSp 2017 or Logistics T&C, or in individual agreements. An extension of Kap-Horn's liability beyond the exclusions and limitations of liability resulting from the provisions mentioned in the preceding sentence is not intended with these T&C.**

10.2. Exclusion of liability

- 10.2.1. Kap-Horn shall be liable without limitation for damages caused intentionally, for damages due to grossly negligent breach of an essential contractual obligation ("**essential contractual obligations**" are those which are imperative to proper performance of the contract in the first place, and in the observance of which the Customer may trust as a matter of course) and for damages resulting from loss of life, bodily injury or damage to health. As far as damage caused by gross negligence not covered by sentence 1 above is concerned, Kap-Horn's liability shall be limited to the compensation of damage foreseeable at the commencement of the contract and typical of this type of contract. Even in the event of a breach of an essential contractual obligation based on slight negligence, Kap-Horn shall be liable only for compensation of damage foreseeable at the commencement of the contract and typical of this type of contract; however, in the event of slight negligence on the part of non-managerial persons employed by Kap-Horn in the performance of its obligations, Kap-Horn's liability shall be limited in accordance with the provisions of Clause 10 even in the event of a breach of an essential contractual obligation.
- 10.2.2. Unless provided otherwise in Clause 10.2.1, Kap-Horn shall not be liable for damages caused by slight negligence.
- 10.2.3. Kap-Horn shall not be liable, except in the case of intent on the part of its legal representatives, for causing damage while providing free assistance to which it is not obligated.

10.3. Limitation of liability in terms of amount

- 10.3.1. In cases in which Kap-Horn is liable to pay compensation for damages according to Clauses 10.1 and 10.2 on the merits, and where its liability is not unlimited in accordance with these Standard Terms and Conditions, the following paragraphs shall apply in respect of the amount of damages to be paid.**

- 10.3.2. If compensation is to be paid for damage or for a total or partial loss of goods ("damage to goods") in accordance with Sections 429, 430 HGB, such compensation shall be limited in deviation from the amount provided for in Section 431 HGB, to an amount corresponding to two units of account for each kilogram of gross weight of the lost or damaged goods.**
- 10.3.3. If damage to goods is caused outside the performance of a transportation service, Kap-Horn's liability shall be limited to EUR 5,000 per package or cargo unit (e.g. vehicle, pallet or container), to EUR 50,000 per damaging event and to EUR 250,000 per calendar year and Customer. The lowest liability limit shall apply in each case.**
- 10.3.4. If Kap-Horn is liable for damages neither caused by damage, total or partial loss of the goods, nor with regard to items belonging to third parties, the liability for compensation shall be limited to an amount of EUR 100,000 per damaging event. Such liability of Kap-Horn shall be limited to EUR 500,000 per calendar year and Customer.**
- 10.3.5. Regardless of how many claims are made on the basis of one damaging event, Kap-Horn's liability per damaging event shall in any case be limited to the higher of EUR 2.5 million, or two special drawing rights for each kilogram of gross weight of the lost and damaged goods. Where the sum of the individual claims, calculated in accordance with the liability caps laid down in the preceding paragraphs, is greater than that amount, that amount shall be apportioned among the individual claimants on a pro rata basis in proportion to the claims calculated in accordance with the preceding provisions. If the amount of the individual claims or their apportionment among the individual claimants is disputed, Kap-Horn may release itself from liability towards all claimants by depositing the maximum liability amount payable in total.**
- 10.3.6. The "**unit of account**" referred to in Clauses 10.3.5 and 10.3.2 means the special drawing right of the International Monetary Fund. The amount shall be converted into euros in accordance with its value in relation to the special drawing right on the day Kap-Horn takes receipt of the goods. The value of the euro in relation to the special drawing right shall be determined in accordance with the calculation method used by the International Monetary Fund for its operations and transactions on the day in question.
- 10.3.7. If Kap-Horn is liable for damages resulting from exceeding an agreed period of time, the obligation to pay compensation shall be limited to a maximum of three times the agreed remuneration.

10.4. Extended liability in the event a declaration of the value is submitted

- 10.4.1. The exclusions and limitations of liability specified in Clauses 10.1 to 10.3 shall not apply if the Customer has provided Kap-Horn information in text form on the kind and the value of the goods, as a separate declaration prior to their delivery. The same shall apply if the Customer has communicated, for the event of loss or damage to the goods, the amount of a 'special interest in delivery' in text form prior to the conclusion of the contract.
- 10.4.2. If a declaration of the value within the meaning of Clause 10.4.1 has been submitted, the liability cap shall be determined in accordance with the declared value of the goods and/or the special interest. Kap-Horn will insure the goods and the special interest, for which a declaration of value was submitted, against the risks of loss and damage for the duration of Kap-Horn's custody of the goods at the respective declared value. The Customer shall reimburse Kap-Horn for the costs incurred by it for the insurance. If Kap-Horn has taken out such insurance, it is exempt from liability for any damage covered and compensated by this insurance. This shall also apply in the event that, as a result of an insufficient value stated by the Customer, the sum insured falls short of the real value of the goods and/or the special interest or the real amount of damage.

11. Statute of limitations

- 11.1. The statutory limitation rules shall apply to the limitation of claims of the Customer against Kap-Horn in accordance with the provisions of the HGB.
- 11.2. Other claims of the Customer against Kap-Horn for breach of duty, including but not limited to claims for damages, are subject to a limitation period of one year from the time they arise. By way of derogation from sentence 1, the statutory limitation rules shall apply in the cases referred to in Clause 10.2.1.
- 11.3. The statutory provisions on suspension, tolling of the statute of limitations, and the recommencement of the limitation period shall remain unaffected.

12. Lien and right of retention

- 12.1. Kap-Horn has a contractual lien on, and a right of retention to, all goods in its possession under the contract for all claims, outstanding or not, against the Customer to which Kap-Horn is entitled under the contract as well as from other contracts entered into with the Customer. These rights shall also extend to amounts of money deposited in lieu of the goods and to claims that take the place of goods as indemnification or for other reasons. Claims of the type mentioned in the preceding sentence shall be deemed to have been assigned to Kap-Horn as security upon their accrual.
- 12.2. If the Customer is in default with the performance of the secured claims, Kap-Horn shall be entitled to exercise its lien, at its discretion, either by selling the goods by public auction or private sale. This shall also apply if the Customer's whereabouts are unknown or if no letters can be served on the Customer. A waiting period of two weeks shall take the place of the monthly period set forth in Section 1234 BGB. The realization proceeds, less any costs incurred, shall be set off against the Customer's liabilities in accordance with Section 367 BGB.
- 12.3. More extensive statutory liens and retention rights shall remain unaffected, where applicable, as modified by ADSp 2017 or the Logistics T&C.

13. Applicable law, place of performance and place of jurisdiction

- 13.1. German law shall apply to all legal relations between Kap-Horn and the Customer.
- 13.2. Bremen, Federal Republic of Germany, shall be the place of performance for all obligations of Kap-Horn towards the Customer or the Customer towards Kap-Horn arising from and in connection with the contract.
- 13.3. Bremen, Federal Republic of Germany, shall be the place of jurisdiction for all disputes arising from or in connection with the contract. This shall be the exclusive place of jurisdiction for any claims against Kap-Horn.

Last revised: September 2020