



## GENERAL TERMS OF DANISH SHIPBROKERS AND PORT OPERATORS (“DSHAB 2021”)

This is an English translation of the Danish version of *Danske Shipping- og Havnevirksomheders Almindelige Betingelser (DSHAB 2021)*. In case of discrepancy, the Danish version shall apply.

### 1. GENERAL PROVISIONS

- 1.1 Unless otherwise explicitly agreed, these terms shall apply to any work performed by a member of Danish Shipbrokers and Port Operators (Danske Shipping- og Havnevirksomheder), hereinafter referred to as the ‘member’. Any reference to the member encompasses the member, its employees, managers, and board members or members of management. The member’s contracting party is hereinafter referred to as the ‘orderer’. Any reference to the orderer encompasses the orderer, his employees, managers, and board members or members of management.
- 1.2 These terms, whether they are used amended or unamended in form or substance in the specific agreement, shall not apply and shall be deemed null and void, unless the member is a validly registered member of Danish Shipbrokers and Port Operators (Danske Shipping- og Havnevirksomheder).

### 2. PERFORMANCE OF THE WORK

- 2.1 The member shall carry out the work with due care and shall safeguard the orderer’s interests.
- 2.2 The orderer knows that the member for a limited remuneration assumes significant risks, which, without any regulation, would be disproportionate to the remuneration. The orderer accordingly understands and accepts that the member shall carry out his work under the protection provided for by these terms.

### 3. THE MEMBER IS AN INTERMEDIARY WHEN PERFORMING WORKS AS SHIP BROKER OR A SHIP’S AGENT

- 3.1 Unless specifically agreed to the contrary, the member shall always act as intermediary and contracts as agent only for the orderer as its principal when performing works as a ship broker or as an agent for a ship (“**Brokering or Agency Activities**”). The member is authorised to enter into agreements and other legal transactions for account of the orderer and shall not be liable for any breach of the agreement mediated by the member.

### 4. QUOTATIONS, TENDERS AND OFFERS

- 4.1 All quotations, tenders and other offers which are mediated by the member on behalf of the orderer or submitted in the member’s own name and for its own account are subject to final confirmation unless the member has explicitly stated a fixed time for acceptance in the quotation,



tender or offer. An agreement has not been formed until both parties have accepted prices and other conditions.

## 5. INSTRUCTIONS

- 5.1 When the member performs Brokering or Agency Activities, the orderer shall provide the member with all due instructions for the performance of the work. The orderer accepts that the member may carry out any such acts, at the orderer's risk and expense, which, in the member's sole discretion, are deemed necessary for the performance of the work, including but not limited to where the member in its own judgement has not been given adequate instructions or lacks sufficient time to obtain further instructions.
- 5.2 The same applies when the member performs Port Operator Activities for the orderer, including but not limited to any form of port work, stevedoring, storage, stock control, and operation of stock hotel or warehousing, as well as any form of handling of goods ("**Port Operator Activities**"). For Port Operator Activities, the orderer shall additionally and in good time provide the member with information, on:
- a) the nature, weight, and volume of the goods,
  - b) any special precautions which are necessary for the performance of the work,
  - c) stowage and/or discharge plans, and
  - d) any other relevant information, including but not limited to special precautions which must be observed to protect persons, the environment, and property owned by the member or any third-party-property from harm or damage caused by the goods (see also clause 7 on dangerous goods).
- 5.3 Where the Port Operator Activities comprise a stock hotel, warehousing, or storage of goods for a short-term or long-term period, the orderer shall also be responsible for providing the member with all relevant instructions pertaining to special warehousing or storage conditions, including temperature, light, and humidity.
- 5.4 Any instructions and information referred to above shall be given by separate written notice to the member. Information written on shipping/cargo notes etc. shall not constitute such written notice.
- 5.5 If the orderer does not meet the obligations stated above, the member shall be entitled, without notice and for the orderer's account and risk, to take all the precautions required to prevent damage to persons, property, or the environment, including disposing of, destroying, or selling the goods.



**6. PACKING AND INSURANCE OF THE GOODS, PROCUREMENT OF EQUIPMENT AND PREPARATION FOR ANY MEANS OF TRANSPORT**

6.1 The following terms apply in relation to packing and insurance of the goods, procurement of equipment and preparation for any means of transport when the member performs Port Operator Activities:

6.1.1 The orderer shall make sure that the goods are packed and labelled in accordance with any rules and custom applicable and so as to withstand usual handling as well as wind and weather.

6.1.2 The member is under no obligation to insure the goods. The orderer shall take out insurance against any damages to the goods and any damage to persons, property or the environment caused by the goods. At the request of the member, the orderer shall prove that such insurance has been taken out and is in force.

6.1.3 Notwithstanding that the member shall utilize its own, customary equipment for loading, stowage, securing, unloading etc., the orderer shall always make fully appropriate, special equipment available to the member when required, customary, or expedient. In that case, such equipment shall meet all regulations in force as well as any specific requirements set out by the member. In addition, the orderer shall ensure that the member is properly instructed in the use of the equipment provided by the orderer.

6.1.4 Unless otherwise agreed, the orderer shall ensure that the relevant means of transport are prepared for the member to perform his work with due care and expediently. The orderer shall ensure that the working conditions on board any means of transport comply with all applicable rules and regulations.

6.2 If, in the opinion of the member, the orderer has not met his obligations under the above-mentioned clauses, the member shall be entitled, but shall not be obliged, to perform the relevant work for the orderer's risk and expense, meaning the member is free from liability for damage or loss occurring from the orderer's breach of its obligations.

6.3 The member will not carry out tally for the orderer, unless otherwise explicitly agreed.

**7. DANGEROUS GOODS**

7.1 The orderer is subject to a strict liability to the member for any damage and loss that may incur in relation to dangerous goods. Dangerous goods mean inter alia goods which must be treated in a way which, in the circumstances, requires expert knowledge, special care, compliance with certain standards of conduct applicable under law or custom, and/or the use of special equipment to avoid risk or danger of damage to persons, property, or the environment.

7.2 The orderer warrants that all dangerous goods have been packed, labelled, packaged, and classified in accordance with applicable conventions, rules, and standards of conduct for



dangerous goods. The orderer warrants that all necessary permits from the authorities have been obtained.

7.3 The orderer shall, in due time, inform the member whether any means of transport will be carrying dangerous goods. The orderer shall in the affirmative declare the nature, classification, and treatment of such goods. This applies regardless of whether such dangerous goods are merely in transit. Furthermore, the orderer shall ensure compliance with any rules and norms for dangerous goods that apply in the port in question.

## 8. TERMS OF PAYMENT

8.1 Unless otherwise agreed, the member's claims against the orderer fall due upon presentation of the invoice and interest shall accrue from the due date at the rate of two (2) per cent for each month or a part of a month.

8.2 The member is entitled to charge on account payments and may at any time set off or demand instant payment of, including without limitation disbursements, collection costs and all other costs related to the performance of the work.

8.3 The member is entitled to set off his claims against the orderer in freight and any other amounts that the member has collected or holds on behalf of the orderer. The orderer has no right of set-off whatsoever against the member.

8.4 Against any amount that the member holds in possession on behalf of the orderer, the member shall be entitled to set off his own claims against the orderer, including without limitation disbursements and costs.

8.5 If the member does not receive incoming freight or other payments on behalf of the orderer, or if they are not sufficient to settle the member's claims against the orderer, the member is entitled to claim payment from the orderer of such claims prior to the ship's departure. The member may refuse to provide outward clearance until the orderer has paid or provided adequate security.

8.6 Should the member extend credit for payment of disbursements, the member may charge a late payment fee of two (2) per cent for each month or a part of a month accruing from the ship's departure date.

8.7 All prices shall be stated without VAT and any other duties and taxes. The member is entitled to charge the orderer for any increased taxes and duties, whether direct or indirect.

8.8 The orderer shall pay the price demanded by the member, unless the orderer proves that such price is manifestly unreasonable. If the orderer does not immediately object to the price charged by the member, the member's price shall be considered reasonable.



8.9 Any work that exceeds the scope of work expressly agreed or implied between the parties at the time of contract shall be considered extra work for which the member is entitled to separate remuneration computed in accordance with the previous provisions.

## **9. LIEN AND RETENTION**

9.1 As security for any claim the member has against the orderer, the member has a right of retention and a lien on the vessel, goods, documents, cash, and other materiel under the member's disposal and in bills of lading, storage receipts and other documents that represent goods. The member has equivalent rights with respect to surrogates and any compensation paid by insurers, carriers, or others.

9.2 If the member's overdue claims are not paid, the member may, acting prudently, arrange for the sale of any goods in the member's custody proportional to recover the member's claims. If no sale can be made or it is obvious that the costs associated with the sale cannot be recovered by the sales price, the member may dispose the goods, etc.

## **10. TERMINATION, CANCELLATION AND COLLECTION OF GOODS**

10.1 The member can at any time and without notice terminate the agreement upon the orderer's material breach, including but not limited to the orderer's breach of his obligations laid down in these terms.

10.2 The member is free to cancel the agreement with the orderer to perform work with 30 days' notice until the end of any month.

10.3 In the event of termination by default, upon cancellation or after completion of the work, any goods in the member's custody shall be collected in accordance with the member's instruction. If the goods are not collected within reasonable time, the member's duty of care for the goods ceases and the member shall not be liable for the goods and may, acting prudently, sell and/or destroy the goods as stated in clause 5.5 if not collected within reasonable time. This also applies in other cases where the orderer or a third party fails to collect any goods in the member's custody.

## **11. CALCULATION OF COMPENSATION**

11.1 Compensation for any loss, damage, or depreciation of the goods shall be calculated by reference to the invoice value at which the goods were last traded before being delivered into the member's custody. If there is no invoice value, the value of the goods shall be calculated by reference to the current market value of goods of the same nature and quality at the time and place when and where the member has taken over the goods.



**12. LIABILITY EXEMPT FOR ORDINARY NEGLIGENCE – LIABILITY FOR LOSS, DAMAGE AND DEPRECIATION OF THE GOODS IN THE MEMBER’S CUSTODY**

- 12.1 Except for loss, damage, or depreciation of the goods as provided for under clause 12.3, the member can only be held liable by the orderer or other parties for damage and loss caused intentionally or gross negligently by the member or any party for whom the member is liable.
- 12.2 The exemption from liability for simple negligent errors and omissions applies to damage to property other than goods, pollution and other environmental damages, personal injury, and death, etc. and regardless of whether the liability of the member is asserted on a contractual or non-contractual basis, including rules on product liability and direct claims. In all such cases, the member is entitled to invoke these conditions as part of limiting its liability.
- 12.3 The member is liable for loss of, damage to, or depreciation of the goods provided it is proven
- (a) that the event which caused the loss, damage, or depreciation occurred during the period in which the member had the goods in custody, and
  - (b) that the loss, damage, or depreciation was caused by fault or negligence shown by the member or any party for whom the member is liable.

**13. LIABILITY EXEMPT FOR CUSTOMS CLAIMS AND OTHER CLAIMS FROM PUBLIC AUTHORITIES**

- 13.1 Customs claims, direct and indirect taxes, fines, levies, duties, or any other claims from public authorities, which arise during the performance of the work, shall solely be for the orderer’s account. In the event that a member is charged with such claims, which arise from the performance of the work for the orderer, the orderer shall pay such costs.

**14. OTHER LIABILITY – ADDITIONAL LIMITATION OF LIABILITY**

- 14.1 The member shall not be liable for loss or destruction of cash that is in the member’s custody.
- 14.2 Unless otherwise explicitly agreed, the member does not assume any of the orderer’s or any third party’s obligations under the rules on ISPS and dangerous goods, and the member shall not in any case be obliged to give messages or any type of notices on behalf of the orderer in accordance with these rules. If the member does provide such messages or notices, the member is not responsible for the accuracy of the information it conveys.
- 14.3 The member shall in no event be held liable for any reduction in the functionality, breakdown, alteration, termination, damage to, intervention in (*hacking*) or lack of access to the internet or other forms of tele- or datacommunication, computer systems, hardware, applications, software, data, microprocessor(s), integrated circuits or networks or similar computer- and not computer-related devices, whether or not owned by the member, the orderer or a third party (*cyber risks*).



- 14.4 The member shall in no event be liable for indirect loss and consequential loss of any kind, including but not limited to loss of time or loss due to delay, lost profits, loss of production, loss of use, demurrage, damages for detention and similar losses.
- 14.5 The member's liability shall not be more onerous than the liability of the orderer. If the orderer has limited its liability vis-à-vis any third party, the member shall automatically have a similar right of limitation of liability against the orderer and/or a third party.
- 14.6 The member shall in no event be held liable for having disclosed, on behalf of the orderer or other parties, any data or information of any kind whatsoever, including, without limitation, in compliance with rules on reporting formalities for ships arriving in and/or departing from ports in EU-member states.
- 14.7 The member has no liability in the case of unforeseeable impediments to delivery, which are beyond the member's control, such as labor disputes, strikes, work stoppages, lockout, intervention by authorities, lockdown of society, war, riots, civil disturbances, quarantine, fire, flood, earthquake, disasters, exceptional weather, lightning strike, swells, ice, epidemics, pandemics, or the like.

**15. LIMITATION OF LIABILITY**

- 15.1 If the member should incur any liability for loss of, depreciation or damage to the goods, including but not limited when performing Port Operator Activities or when undertaking responsibility as carrier, the liability shall in any event – irrespective of the mode or modes of transport used – be limited in accordance with the provisions of the Danish Merchant Shipping Act to 667 SDR for each package or other unit of the goods or 2 SDR for each kilogram of the gross weight of the goods lost, damaged or depreciated in value, whichever is the higher, unless prescribed otherwise by mandatory rules of law.
- 15.2 Where a container, pallet or similar transport device is used to consolidate the goods, each package or other unit listed in the transport document as having been loaded in the device shall be deemed as one package or unit for the purpose of clause 15.1. Except as aforesaid the goods in the transport device shall be considered one unit.
- 15.3 The member's liability for any form of delay in performance of the task and delay in receipt, transport or delivery of the goods is limited to an amount equivalent to five (5) times the agreed remuneration for the work.

**16. GLOBAL LIMITATION**

- 16.1 Irrespective of the above provisions on limitation of liability, the member's liability shall always be limited to, and cannot exceed, SDR 25,000 for any one event that leads to loss or damage. If more than one orderer suffers loss or damage resulting from the same event, the member's aggregate liability towards all injured parties shall be limited to a maximum of SDR 500,000 distributed



between the orderers proportional to the value of their claims. The limits provided for herein include interest and all costs.

**17. FORFEITURE OF LIMITATION OF LIABILITY AND OF EXEMPTION FROM LIABILITY**

17.1 Gross negligence does not exclude the member from invoking the above provisions on limitation of liability or exemption from liability. Only if the member has caused damage or loss intentionally, the member cannot invoke the above provisions which limit liability or exempt the member from liability.

**18. INDEMNITY**

18.1 The orderer shall indemnify the member against any loss or damage, etc., that may be incurred by the member in relation to or in connection with the performance of the work. This includes, but is not limited to, claims for interest and costs and claims from employees, contracting parties, third parties, ports, etc.

**19. NOTICE**

19.1 If the orderer intends to hold the member liable, claim for damages or exercise other remedies for breach of contract, the orderer shall give the member written notice thereof immediately after the orderer discovered, or ought to have discovered, the circumstances that gave rise to such liability or breach of contract. If the orderer does not give such notice immediately, the orderer has forfeited his right to hold the member liable or to exercise other remedies for breach.

**20. TIME BAR**

20.1 Any claim for damages against the member shall be deemed time-barred ten (10) months from the time, when the claim was ascertained, or ought to be ascertained. Legal proceedings shall be instigated within the same time stipulated herein, or else the claim shall be deemed forever waived and time barred.

**21. CHOICE OF LAW AND JURISDICTION**

21.1 Any dispute arising out of or in connection to these terms shall be governed by Danish law with the Maritime and Commercial High Court of Copenhagen as jurisdiction.

**22. ENTRY INTO FORCE**

22.1 These terms shall apply to all agreements adopted on and after 15 October 2021.