

Non-binding Recommendations of the German Insurance Association (GDV) for Facultative Use.  
Other conditions may be agreed.  
In case of deviations, only the German wording shall be binding and prevail.

## DTV Terms & Conditions of Liability Insurance for Open-Cover Policies of Carriers, Freight Forwarders and Warehouse Operators 2003/2011

### (DTV-VHV Open Policy 2003/2011)

Model policy conditions of the GDV

#### Table of Contents

|   |  |    |   |
|---|--|----|---|
| 1 | <b>Subject Matter of the insurance</b> | 10 | <b>Insurer's right of recourse</b>                          |
| 2 | <b>Insured/Policyholder</b>            | 11 | <b>Declaration, premium, payment and restructuring</b>      |
| 3 | <b>Insured liability</b>               | 12 | <b>Right of inspection and audit</b>                        |
| 4 | <b>Scope of cover</b>                  | 13 | <b>Termination</b>  |
| 5 | <b>Territorial scope</b>               | 14 | <b>Place of jurisdiction, applicable law</b>                |
| 6 | <b>Exclusions</b>                      | 15 | <b>German Federal Data Protection Act</b>                   |
| 7 | <b>Obligations</b>                     | 16 | <b>List of participating insurers and leadership clause</b> |
| 8 | <b>Limits of indemnity</b>             | 17 | <b>Final Clause</b>   |
| 9 | <b>Deductible</b>                      |    |   |

#### 1 Subject of the insurance

##### 1.1 Service contracts

The subject of the insurance are service contracts (carriage, forwarding and warehousing contracts) concluded during the term of the insurance policy by the Insured in his capacity as a carrier in road transport operations, as a freight forwarder or as a warehouse operator and placed in accordance with Clause 11, insofar as the services associated with these contracts are documented explicitly in the business description.

##### 1.2 Notwithstanding the other provisions in the insurance contract, the cover exists only to the extent and as long as this does not conflict with economic, trade or financial sanctions or embargoes imposed by the European Union or the Federal Republic of Germany that are directly applicable to the contracting parties.

The same applies to economic, trade or financial sanctions or embargoes imposed by the United States of America to the extent that this does not conflict with legal provisions of the European Union or the Federal Republic of Germany.

##### 1.3 Provision for new risks

The subject of the insurance shall extend also to service contracts of the Insured in his capacity as a carrier in road transport operations, as a freight forwarder or as a warehouse operator as defined by the insurance policy in respect of services commonly associated with the transport and warehousing industry that were taken up by the Insured after the insurance policy was concluded (new risk). Insurance cover commences immediately when the new risk materialises without any need for prior confirmation. However, the Insured shall be obliged to declare the new risk to the Insurer within one month of it being taken up. If the Insured fails to declare the new risk within this time, or if an

agreement on the premium due is not reached within a month of the Insurer receiving the disclosure, insurance cover for the new risk will lapse retroactively from the time of its inception.

The provision for new risks shall be limited to EUR 500,000 per loss.

##### 1.4 The insurance shall not apply to contracts which entail – either in part or in whole –

- the carriage and carriage-related storage of goods where the Insured is (effectively) performing the carrying operations himself by sea and inland waterways, by air, or by rail;

- the carriage and storage of the following goods:

- Within the Federal Republic of Germany in accordance with the 4th Book Fourth Section of the German Commercial Code (HGB) pursuant to § 431 HGB with 8.33 SDR/kg of damaged goods (damage to goods) and/or
- according to § 449 HGB in the agreed amount up to 40 SDR/kg goods damaged, subject to legal admissibility.
- Liability of the freight forwarder: worldwide in accordance with legal liability regulations or the German Freight Forwarders' Standard Terms and Conditions (ADSp).
- Cross-border transport of goods by motor vehicle by road within Europe, provided that these states have ratified the Convention on the Contract for the International Carriage of Goods by Road (CMR).

- the carriage and storage of removal goods;

- the carriage and storage of heavy-lift goods, oversized cargo and use of cranes or assembly jobs;

- the carriage and storage of goods requiring towing or salvage;

- production services, contractual work services or other contractual services in a service contract that are not specific to the carriage, forwarding or warehousing of goods and extend over and above the primary contractual obligation of a carrier, freight forwarder or warehouse operator as set down in the German Commercial Code (HGB). These do not in-

DTV-VHV Open Policy 2003/2011, May 2020

clude the commissioning, labelling, packaging and weighing of goods if these activities are to be performed in connection with a transport contract.

## 2

### **Insured/Policyholder**

#### 2.1

The Insured is the company named in the business description, including all legally dependent domestic

Page 1 / 5

branch offices and business premises. Other operations/businesses may be included in the insurance by arrangement.

- 2.2 The insurance extends also to the Insured's employees if they have been involved in carrying out the service contracts stated in Clause 1.

### 3 Insured liability

The insurance shall cover

the Insured's contractual liability as a freight forwarder as set down in

- 3.1 German legal provisions, in particular Sections 407 ff. of the German Commercial Code (HGB);
- 3.2 the Insured's General Terms and Conditions of Business (T&Cs), provided that the Insurer has agreed to include these terms and conditions in the insurance cover;
- 3.3 the General Terms and Conditions of Business (T&Cs) within the scope of Section 449, § 2, no. 1 HGB, provided that the Insurer has agreed to include these terms and conditions in the insurance cover;
- 3.4 the Convention on the Contract for the International Carriage of Goods by Road (CMR);
- 3.5 the respective national legal provisions governing the transport and warehousing industry in the countries of the European Economic Area (EEA);
- 3.6 the Convention on International Carriage by Rail (Appendix B – COTIF, as amended) and the unified legal provisions concerning the Contract of International Carriage of Goods by Rail (CIM);
- 3.7 the Montreal Convention (MC) of 28.5.1999, the Warsaw Convention (WC) of 1929 and, where applicable, the Hague Protocol of 28.05.1955, the Guadalajara Declaration of 18.09.1961, together with other ancillary agreements material to air transport insofar as their application is mandatory;
- 3.8 the Hague Rules and – where applicable – the Hague-Visby Rules or the German Maritime Law Amendment Act (Seerechtsänderungsgesetz) of 25.06.1986, the Hamburg Rules, together with other applicable international conventions and national maritime transport provisions insofar as their application is mandatory;
- 3.9 the provisions of an FIATA Combined Bill of Lading (FBL) or Through Bill of Lading (TBL), in the form adopted by the FIATA;
- 3.10 a House Airway Bill (HAWB), House Bill of Lading (House B/L) or other document used by the Insured, provided that the Insurer has agreed to include such documents in the insurance cover;
- 3.11 the respective applicable legal provisions of other countries if the Insured is unsuccessful in invoking the provisions set down in the clauses above. In that case, cover is limited exclusively to loss/damage to cargo, and indemnifiable at max. SDR 8.33 per kg.
- 3.12 The insurance also covers claims based on tort law if and insofar as the claimant is asserting these statutory claims in addition to or in place of the liability claim arising from the service contract.

### 4 Scope of the insurance cover

- 4.1 The insurance covers the settlement of justified and the defence of unjustified claims for compensation brought against the Insured in his capacity as an en-

trepreneur accepting a service contract.

- 4.2 The Insurer shall indemnify the Insured for
- expenses reasonably incurred in preventing or mitigating an insured loss if the threat of loss/damage is imminent or the loss has already occurred
- and for
- judicial and extra-judicial expenses to the extent that they were reasonably incurred under the circumstances.
- 4.3 The Insurer shall indemnify the Insured in respect of General Average contributions (G.A.) based on an adjustment drawn up in accordance with the law, the York-Antwerp Rules, the Rhine Rules (IVR 1979), or any other internationally recognised G.A. rules, provided that the measure was intended to avert loss/damage that would have been borne by the insurer.
- 4.4 The Insurer shall indemnify the Insured in respect of expenses incurred as a result of damaged goods having to be salvaged, destroyed or removed by legal or official order of up to EUR 500.000 (per occurrence) where an indemnifiable loss has occurred and the costs are not to be borne by another insurer.

### 5 Territorial scope

Except as otherwise stated in the written conditions, the insurance shall cover service contracts within and between the countries of the European Economic Area (EEA), Switzerland.

### 6 Exclusions

Excluded from the insurance cover are claims

- 6.1 for loss/damage due to natural catastrophes (e.g. earthquakes, lightning strikes, volcanic eruptions);
- 6.2 for loss/damage due to war, warlike events, civil war, civil unrest, commotion;
- 6.3 for loss/damage due to strikes, lock-outs, industrial unrest, acts of violence by terrorist or political groups;
- 6.4 for loss/damage due to the use, by whomever, of chemical, biological and biochemical substances or electromagnetic waves in weapons of mass destruction, irrespective of contributory causes;
- 6.5 for loss/damage due to nuclear energy or other ionising radiation;
- 6.6 for loss/damage due to the confiscation or deprivation of goods, or other such interventions by a sovereign authority (interventions by a sovereign authority are understood to include acts carried out by appointed third parties for whom the sovereign state is liable);
- 6.7 for loss/damage to works of art, antiques, precious metals, precious stones, genuine pearls, cash, securities, documents, certificates;
- 6.8 for loss/damage to living animals and plants;
- 6.9 which are usually the subject of a commercial third party, product, environmental, water bodies pollution,

- motor vehicle, personal liability insurance or credit insurance policy, or which could have been insured under corresponding customary terms of insurance;
- 6.10 which are insured under another liability insurance for carriers, freight forwarders or warehouse operators taken out by the Insured;
  - 6.11 due to non-performance of service contracts (first-party losses of the Insured);
  - 6.12 based on contractual agreements not common to the transport and warehousing industry, such as contractual penalties and guaranteed time of delivery, etc., and on arrangements that exceed the limit of indemnity of SDR 8.33 per kilogram of gross weight of the consignment or extend beyond the statutory liability applicable to service contracts, such as value or interest agreements pursuant to Art. 24 and Art. 26 CMR, Art. 22, § 2 WA, Art. 22, no. 3 and Art. 25 MÜ, Section 512 HGB, etc.;
  - 6.13 of a punitive nature, e.g. monetary fines, administrative levies, penalties, enforcement and security payments, and losses arising from other punitive or penalty payments and the associated costs;
  - 6.14 directly related to the use, forwarding or repayment of advances, reimbursements, etc.;
  - 6.15 arising from a defect or flaw at the Insured's business (e.g. inadequate or missing interface controls), where the Insurer had asked for the defect to be eliminated within an appropriate length of time and advised the Insured of the legal consequences of failing to do so (risk exclusion);
  - 6.16 for loss/damage due to charter and partial charter contracts in connection with the carriage of goods by ocean vessels, railways or aircraft;
  - 6.17 due to compensation of a punitive nature, notably punitive and exemplary damages in accordance with American and Canadian law
  - 6.18 arising from Carnet TIR procedures;
  - 6.19 due to bodily injury claims;
  - 6.20 arising from service contracts which breach a prohibition in law (Section 134 BGB) or contra bonos mores (Section 138 BGB);
  - 6.21 where the claim was caused deliberately by the Insured or one of his representatives; additionally, claims asserted against the servant himself in the case of a deliberate act;
  - 6.22 asserted against the employees of the Insured if their actions were deliberate.

## 7 Obligations

The insured is obliged –

- 7.1 before the occurrence of the claim –
  - 7.1.1 to use only vehicles and trailers, swap bodies/containers, cranes/lifting gear, and other equipment (including ropes, belts) that are in perfect working order and appropriate for the respective task in hand;
  - 7.1.2 to use only ATP-certified vehicles and trailers fitted with a temperature recorder for the carriage of refrigerated goods, to make a note in the transport document of the temperature to be maintained, and to instruct the drivers of the need to regularly verify and

document that the requisite temperature is being maintained during the carriage;

- 7.1.3 to fit his own vehicles used in road transport with two separate, independent anti-theft devices (excluding door locks), and to instruct the drivers of the need to activate these anti-theft devices upon leaving the vehicle;
- 7.1.4 to ensure that his own loaded vehicles, trailers and swap bodies/containers, as well as any third-party loaded vehicles that also fall under his influence and responsibility are secured against theft and robbery, especially when parked at night, weekends or on public holidays;
- 7.1.5 to ensure that all hardware and software used by the Insured (including protection of same against unauthorised access) and the systems for backing up and protecting data correspond to the state of the art and comply with the relevant laws (e.g. the German Federal Data Protection Act, Bundesdatenschutzgesetz), and that ongoing checks in this regard are performed;
- 7.1.6 to ensure that only warehouse and cargo handling buildings and areas, and technical and other equipment appropriate for the job in hand are used, that statutory or official directives are complied with, and that the capacity of security facilities to function correctly is not compromised;
- 7.1.7 to perform and document interface controls;
- 7.1.8 upon the request of the Insurer, to perform additional inventory checks at the Insured's expense over and above the audits and audit intervals stipulated in the job requirements;
- 7.1.9 to exercise prudence when selecting employees, and to monitor them;
- 7.1.10 to exercise the diligence of a prudent businessman when selecting sub-contractors and servants, and to ensure that these also meet the obligations set down in Clauses 7.1.1 to 7.1.9 and have taken out insurance in accordance with the customary terms, conditions and legal requirements;
- 7.1.11 to notify the Insurer immediately of any changes to terms and conditions of business, individual agreements, documents, bills of lading or other agreements affecting the Insured's liability previously brought to the attention of the Insurer and included in the insurance cover via the special terms and conditions or the business description;
- 7.1.12 to observe any laws, regulations, official ordinances or provisions, association rules and regulations and other security regulations when carrying out service contracts.
- 7.2 after the occurrence of the claim –
  - 7.2.1 to notify the Insurer immediately, but at the latest within a month, of the occurrence of a claim, and to present all documentation necessary to assess claim;
  - 7.2.2 to take all appropriate measures to prevent and mitigate the loss/damage, to provide the Insurer with all required information, and to follow any instructions given.
  - 7.2.3 to notify the Insurer without delay of any legal actions taken against him in the context of the insured activity and to file all necessary legal means and remedies, in particular appeals against court orders for payments;

- 7.2.4 not to assign claims for compensation or recourse without the consent of the Insurer;
- 7.2.5 to enter, upon request of the Insurer and at his expense, into legal proceedings and authorise the Insurer to conduct the proceedings;
- 7.2.6 to report any theft, robbery and traffic accident which might have had an adverse effect on the goods to the competent police authority and to notify the insurer without delay, and – in the case of any accidents, loss/damage in excess of EUR 50.000, or whenever there is doubt as to the scale or size of the loss/damage – to report the matter to the nearest competent average adjuster and to follow his instructions;
- 7.2.7 to safeguard potential rights of recourse against third parties and to observe the deadlines for lodging claims.
- 7.3 Release of the obligation to indemnify in the case of a breach of obligations
- 7.3.1 If the Insured or one of his representatives fails, either wilfully or through gross negligence, to satisfy these obligations or duties otherwise agreed in the insurance contract, the Insurer shall be released from his obligation to indemnify unless the breach of obligation influenced neither the occurrence or discovery of the claim, nor the discovery or scale of the indemnity payable. Sentence 1, second half-sentence shall not apply if the Insured breached the obligation with malicious intent.
- 7.3.2 If the breach of obligation concerns a duty to provide information or to disclose details of a claim after the event has occurred, e.g. in accordance with Clauses 7.2.1, 7.2.2, 7.2.3 or 7.2.6 above, the Insurer shall be released from his obligation to indemnify without having needed to explain the legal consequences of this breach to the Insured.

## 8 Limits of indemnity

### 8.1 Per claim

Limitation of indemnity in the case of statutory or contractual liability

The limit of indemnity per claim, i.e. per claimant and per service contract, is as follows:

- for contracts of carriage:
  - in the case of loss/damage to cargo  
EUR 2.000.0000 EUR;
  - in the case of pure financial loss  
EUR 750.000 EUR;
- for forwarding contracts:
  - in the case of loss/damage to cargo and consequential losses  
EUR 1.000.000;
  - in the case of pure financial loss  
EUR 500.000;
- for warehousing contracts:
  - in the case of loss/damage to cargo and consequential losses  
EUR 500.000;

in the case of differences between the nominal and actual inventory, however, the Insurer's limit of indemnity shall be EUR 300.000, irrespective of the number of claims that caused the inventory discrepancy;

- in the case of pure financial loss  
EUR 500.000,
- for claims based on tort law – irrespective of the type of service contract or the nature of the loss/damage – EUR 500.000.

### 8.2 Per occurrence

Limit of indemnity per occurrence

The Insurer's limit of indemnity shall be EUR 10.000.000

Regardless of the number of claimants and service contracts, the losses/damage incurred by several parties from one and the same occurrence shall be distributed amongst the claimants in proportion to their individual entitlements if the aggregate of these claims exceeds the limit of indemnity.

### 8.3 Annual aggregate limit

#### 8.3.1 Limit of indemnity per insurance year

The Insurer's limit of indemnity from the aggregate of all occurrences arising from the insured service contracts in any one insurance year is EUR 20.000.000

#### 8.3.2 Additional limitation in the case of qualified fault

Subject to the provisions governing statutory or contractual liability (Section 449, HGB corridor) and irrespective of the claim and the occurrence in question, the indemnity payable by the Insurer in any one insurance year shall be additionally limited to EUR ..... if the loss/damage was caused by an act or omission done by the Insured or by one of his legal representatives or managing executives with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, by infringement of Material Contractual Obligations, or by gross organizational negligence.

## 9 Deductible

- 9.1 The standard deductible shall be 15 % of the indemnity per claim, the minimum amount being EUR 1.000 and the maximum EUR 5.000
- 9.2 In the case of deficit or shortfall losses in respect of storage, the amount of the loss shall be assumed to be EUR 100.000 unless the Insured can provide evidence that a different amount is applicable.

## 10 Insurer's right of recourse

- 10.1 The Insurer waives his right of recourse against the Insured and his employees. However, the Insurer has the right of recourse against any person who has caused loss/damage deliberately.
- 10.2 The Insurer shall be further entitled to recourse against the Insured if
- 10.2.1 the Insured deliberately breached his duties of declaration and payment and the Insurer shall be still obliged to compensate the injured party;
- 10.2.2 an exclusion was effective, a breach of obligation by the Insured or one of his representatives would have relieved the Insurer of his obligation to indemnify, or the underlying transport contract was not covered by the insurance and the Insurer shall be still obliged to compensate the injured party.



## **11 Declaration, premium, payment and restructuring**

### **11.1 Duty of declaration**

This open-cover policy obliges the Insured to declare, as per Clause 11.2 below, all service contracts named in the policy, or the agreed premium basis.

### **11.2 Declaration procedure**

(modular system: space for individual declaration procedure for each premium basis agreed, e.g. revenue-based, individual or summarised declarations, cover notes, etc.)

### **11.3 Breach of duty of declaration**

**11.3.1** The Insurer is released from liability without obligation to give notice of cancellation if the Insured fails to make a declaration or submits an erroneous declaration, unless it can be established that the Insured observed his duty as a prudent businessman and that he submitted or corrected the declaration immediately upon becoming aware of the error.

**11.3.2** The Insurer shall be entitled to cancel the policy without notice if the Insured deliberately breaches his duty of declaration. The Insurer shall be entitled to the premiums that would have been payable up to cancellation had the contract not been breached.

### **11.4 Premium**

Part of written contract

### **11.5 Payment**

Part of written contract

### **11.6 Restructuring**

Terms and conditions are negotiated 6 months before the End Date for the new insurance year.

## **12 Right of inspection and audit**

The Insurer shall be entitled to inspect relevant business documents of the Insured in order to verify the premium declarations. The Insured shall be obliged to maintain absolute confidentiality vis-à-vis third parties with regard to the findings made.

## **13 Termination**

**13.1** Both the Insured and the Insurer shall be entitled to terminate the insurance contract by giving written notice to the end of the insurance year. The notice of termination must be received not later than three months prior to the lapse of the contract.

**13.2** Either party shall be entitled to cancel the insurance contract in the event of an insured loss/damage. Notice of termination must be made in writing and must be received not later than one month after the conclusion of negotiations on the indemnification. The Insurer must observe a period of notice of one month. If the Insured gives notice, he may decide whether cancellation is to take effect immediately or at a later date, at the latest, however, at the end of the current period of insurance.

**13.3** Insurance cover shall remain in force for all service contracts concluded before the insurance policy was terminated until all duties and obligations arising out of them have been fulfilled. In the case of contracted storage, the insurance cover ends at the latest one month after termination of the insurance contract.

## **14 Place of jurisdiction, applicable law**

**14.1** This insurance contract is subject to German law and, notably, to the provisions set down in the Federal Law on Insurance Contracts (VVG).

court in whose jurisdiction the Insured maintains his branch office or headquarters.

- 14.3 Legal actions against the Insurer must be brought before the court in whose jurisdiction the Insurer maintains his competent management agency.

DTV-VHV Open Policy 2003/2011, May 2020

**15 German Federal Data Protection Act**

**16 List of participating insurers and leadership clause**

**17 Concluding provisions**

The provisions of this policy apply only to the extent that they are not precluded by the mandatory legal requirement on compulsory insurance set down in Section 7a of the German Road Haulage Act (GüKG) and the limits and sums stated therein.