

## THE BULGARIAN NATIONAL FORWARDERS ASSOCIATION (NSBS) STANDARD WAREHOUSING CONDITIONS (EDITION 2005)

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The right to use these STANDARD WAREHOUSING CONDITIONS is reserved exclusively to the Freight Forwarders – members of the BULGARIAN NATIONAL FORWARDERS ASSOCIATION (N S B S), holding a valid Certificate of membership, whose liability towards the Customers under these STANDARD WAREHOUSING CONDITIONS is insured.

### **NOTICE:**

*THIS TEXT IS AN ENGLISH TRANSLATION FROM THE BULGARIAN ORIGINAL. While every care has been taken to achieve an accurate translation, no legal responsibility can be accepted for its contents, nor should it be regarded as an equivalent for legal purposes of the Bulgarian original.*

## I. DEFINITIONS AND ABBREVIATIONS

**ART. 1.** The definitions and abbreviations used in the text of these STANDARD WAREHOUSING CONDITIONS bear the following meaning:

1. "STANDARD WAREHOUSING CONDITIONS" hereinafter is abbreviated as "SWC".
2. "WAREHOUSING OPERATOR" or "OPERATOR" is the Forwarder, who by occupation and for common use performs on his own account the services and the related transactions concerning the warehousing, handling and documenting – constituting the objects of these STANDARD WAREHOUSING CONDITIONS (SWC).  
For the purposes of these SWC the meaning of the terms "FORWARDER" or "OPERATOR" is not limited exclusively to the legal definitions contained in Art. 361 to Art. 366 of the Commerce Act of Bulgaria.
3. "CUSTOMER" is any Person on whose behalf, in whose benefit and/or at whose request the WAREHOUSING OPERATOR undertakes any business or provides any services or information under these SWC.
4. "OWNER" (of the goods) is any person who has legal interest in and legal rights of disposal of the goods.
5. "SUBCONTRACTOR" means the person, hired by the OPERATOR to fulfill the dealings and services, so far these are not accomplished directly by the OPERATOR.
6. "PERSON" means any physical person or body corporate, as well as his/hers/its legal representatives and any Authority or Institution.
7. "GOODS" is the object of the services and the related transactions performed by the OPERATOR under these SWC, which includes also any packing, container or equipment for the protection of the goods in transportation, handling or storage.
8. "DANGEROUS GOODS" are such goods which constitute a risk in transportation, handling or storage according to the legislation of Bulgaria and/or the applicable international regulations.
9. "WAREHOUSE" is any space (open or covered, protected or unprotected from the atmospheric influences) whereupon the WAREHOUSING OPERATOR renders the services described in these SWC, irrespective whether this space is owned or contracted by the OPERATOR.
10. "HANDLING" is the physical operations performed by the OPERATOR with the goods, such as: loading, unloading, stowing, re-stowing, re-arranging, securing and unsecuring, packing and unpacking, sorting, counting, weighing, marking, labelling, installing, fixing and the like.

11. "INSTRUCTIONS" are any general and specific requirements, clearly stated by the CUSTOMER and accepted for execution by the OPERATOR.

12. Unless otherwise agreed, the contract concluded by the OPERATOR for warehousing and/or the handling of the goods is not a contract for a deposit in a public warehouse acc. to the provisions of Chapter THIRTY-FOUR of the Commerce Act.

13. The HEADINGS of the Chapters and the Articles of these STANDARD WAREHOUSING CONDITIONS (SWC) serve for convenience only and have no legal significance.

## II. OBJECTS AND SCOPE OF APPLICATION

**ART. 2.** These SWC set down the terms and conditions for and the liabilities of the Parties in the course of any activity, service or business undertaken by the OPERATOR and by his Employees, Agents and by any other person acting at the request and on behalf of the OPERATOR in respect of the storage, handling or customs clearance of goods, whether or not this activity, service or business is performed:

1. against remuneration or gratuitously;
2. by express or implied agreement or request;
3. as a separate service or as an integral part of another service;
4. at the request of the CUSTOMER, the OWNER or of any other person having a legal interest in the goods.

### ART. 3. SCOPE OF APPLICATION

(1) Any and all activities or services performed, agreements concluded and documents signed by the OPERATOR are undertaken solely and exclusively subject to these SWC and to the mandatory legislation, unless the parties have expressly agreed otherwise in writing.

(2) By agreeing, expressly or by implication, to accept any service from or otherwise to deal with the OPERATOR, the CUSTOMER and the OWNER unconditionally accept that they conclude with the OPERATOR a contract containing as its integral part these SWC.

**ART. 4.** If any legislation or court decision limiting the rights or increasing the liability of the OPERATOR is mandatory applicable to any business or service undertaken by the OPERATOR, same shall be applied only to the respective transaction or part thereof, without otherwise affecting the validity or the meaning of the other provisions of these SWC.

**ART. 5.** Where the OPERATOR performs the carriage of goods to or from the warehouse by own or hired means of transport, this carriage shall be subject to the STANDARD TRADING CONDITIONS OF THE BULGARIAN NATIONAL FORWARDING ASSOCIATION, unless otherwise explicitly agreed.

### **III. GENERAL OBLIGATIONS OF THE OPERATOR**

**ART. 6.** The OPERATOR shall perform his duties and services with professional care, diligence and skill and within a reasonable time.

**ART. 7.** The OPERATOR is obliged to provide the necessary staff, organisation, structures, capital necessary equipment and skills for the execution of the contractual services.

**ART. 8.** The OPERATOR is obliged to exercise due care in protecting the goods, to apply reasonable measures in providing security or guard for the warehouse and to prevent loss or damage from atmospheric influences (with the exception of damages due to an unsuitable temperature and/or humidity during warehousing, unless special temperature and humidity are expressly contracted), from fire and from handling or storing the goods in an inappropriate manner.

### **ART. 9. INSTRUCTIONS OF THE CUSTOMER**

(1) Without prejudice to the provisions of these SWC, the OPERATOR shall take reasonable steps to execute the instructions of the CUSTOMER.

(2) Written instructions received by the OPERATOR are treated as definitive authority until revoked by the CUSTOMER.

However instructions to hold the goods at the disposal of or deliver to a third party cannot be revoked once this third party has exercised its right of disposal.

(3) The OPERATOR shall notify the CUSTOMER if he considers his instructions to be insufficient or inexecutable.

(4) The OPERATOR may depart from the CUSTOMER's instructions if there is good reason to consider that this departure is necessary to safeguard the interests of the CUSTOMER and/or protecting the other goods in the warehouse and/or for complying with the regulations of the Authorities, and/or the maintaining of the normal operation of the warehouse.

(5) In the absence of specific and implementable instructions, the OPERATOR must perform his services with reasonable diligence and care and in the customary manner.

**ART. 10.** Within the limits of his professional knowledge and of reasonable care for the interests of the CUSTOMER, the OPERATOR shall inform in advance the CUSTOMER of any circumstances which might obstruct the execution of the contractual services.

**ART. 11.** If after conclusion of the contract the OPERATOR becomes aware of circumstances which in his opinion make it partly or wholly impossible for him to fulfil his contractual duties, he shall inform the CUSTOMER and seek further instructions.

**ART. 12.** The OPERATOR is not entitled to use or to dispose of the goods without the consent of the CUSTOMER, except in accordance with the provisions of these SWC.

In case of contravention the OPERATOR is liable to remuneration to the CUSTOMER for the use of his goods and respectively to indemnify the latter for any resultant loss or damage.

**ART. 13.** Acting in his name and on his own behalf, the OPERATOR is entitled to perform any of his duties either himself or through another person – SUBCONTRACTOR (including also an intermediate Forwarder, Warehousing Operator, Stevedore, etc.) and any such person is also entitled to the benefit of these SWC.

#### **IV. GENERAL OBLIGATIONS OF THE CUSTOMER**

**ART. 14.** By agreeing to accept any service or business from the OPERATOR, the CUSTOMER warrants the following:

1. That he is legally entitled to dispose of the goods and that he accepts these SWC also for and on behalf of the OWNER;
2. That he has the necessary information of the transactions in respect of which he employs the services of the OPERATOR, including also the terms of delivery and storage of the goods;
3. That the goods are not the object of transactions prohibited by the laws of Bulgaria or of the applicable provision of international law;
4. That he knows the goods and their properties and that the written description of the goods and their properties is complete and accurate for the purposes, for which the goods are delivered to the OPERATOR;
5. That the goods are properly prepared, packed and marked for the purposes, for which they are delivered to the OPERATOR (unless the preparation, packing and



marking of the goods is the responsibility of the OPERATOR);

6. That in the absence of specific instructions he accepts the goods to be handled and stored in the usual manner at the discretion of the OPERATOR.

7. That he accepts all rights and immunities of the OPERATOR and all his own obligations and liabilities under these SWC, including also the obligation to indemnify in certain circumstances the OPERATOR against expenses, damages, losses and claims of third parties.

#### **ART. 15. ACCESS TO THE WAREHOUSE**

(1) Entry in the warehouse and action of any kind in respect of the goods therein shall be undertaken by the CUSTOMER and/or the OWNER only with the consent of the OPERATOR and in the presence of its authorised Representative.

(2) The CUSTOMER/the OWNER are liable for any loss or damage caused to the property of the OPERATOR or of third parties by vehicles, mechanization and staff of the CUSTOMER and/or of third persons acting on his behalf.

#### **ART. 16. INDEMNITIES DUE BY THE CUSTOMER and/or the OWNER**

(1) Even if there is no negligence or fault of the CUSTOMER/the OWNER, they undertake to indemnify the OPERATOR as follows:

1. For all taxes, duties, levies, fines, expenses, losses, damages and liabilities sustained or incurred by the OPERATOR in the course of execution of the order;
2. Against claims by third parties and by any Authority, when such claims concern the goods of the CUSTOMER and the services of the OPERATOR and the liability which such claims seek to impose on the OPERATOR exceeds the extent and/or the scope of his liability under these SWC.

(2) The obligation defined in Section (1) above shall be revoked only when the indemnity due by the CUSTOMER is expressly included in the agreed remuneration of the OPERATOR or when the expenses, losses, damages and liabilities result from the fault or misconduct of the OPERATOR.

**ART. 17.** A notice that the order is made by or executed on the account of a third party does not revoke the obligations and liabilities of the CUSTOMER and the OWNER towards the OPERATOR.

**ART. 18.** Any claims involving the liability of the OPERATOR under these SWC shall be directed solely and exclusively against the OPERATOR in his quality of a Merchant and the CUSTOMER shall under no circumstances raise any such claims against the Directors, Employees and Agents of the OPERATOR.

Exceptions therefrom are permissible only with an explicit authorization in writing by the OPERATOR.

## **V. OFFERS, ORDERS AND INSTRUCTIONS**

### **ART. 19. VALIDITY OF PRICES AND OFFERS**

(1) Offers made by the OPERATOR are valid if accepted immediately and for immediate execution and are subject to withdrawal or revision, unless they contain express provisions to the contrary.

(2) In the event of prime cost changes beyond his control, the OPERATOR may change his conditions and prices with or without prior notice. If the change of prices and conditions of OPERATOR's offers concerns goods accepted for a deposit, the OPERATOR has to inform the CUSTOMER in advance.

(3) The prices in the offers and contracts made by the OPERATOR include only the services expressly listed therein (and, unless otherwise agreed) relate to standard and harmless commercial goods of normal dimensions and weight and in normal condition which do not require special conditions of storage or handling.

(4) The execution of the OPERATOR's offers and contracts presupposes the existence of normal conditions for the performance of the contractual services and continuation in force of the costs and exchange rates on basis of which the relevant contract has been made.

(5) The OPERATOR may recover from the CUSTOMER any additional outlays made, provided that he has notified the CUSTOMER of same.

For this purpose a general indication (such as: "plus usual additional charges") shall suffice.

### **ART. 20. ORDERS AND INSTRUCTIONS**

(1) The execution of the OPERATOR's offers accepted by the CUSTOMER shall begin within a reasonable time after the OPERATOR has received and confirmed a concrete Order containing all particulars and instructions necessary for the execution of the contractual service.

(2) The CUSTOMER shall bear all consequences arising from the execution of an incorrect or incomplete Order; save when with a reasonable care the OPERATOR might have foreseen those consequences, but has not warned the CUSTOMER.

(3) Even when he has accepted the Order, the OPERATOR may refuse to execute it at his reasonable discretion in the absence of security or deposit for the payment of his expenses and remuneration.

(4) If the CUSTOMER withdraws a confirmed Order, the OPERATOR is entitled to receive a compensation of his expenses, except if proved that the Order was withdrawn through the fault of the OPERATOR.

(5) The burden of proof of the correct and timely transmission of instructions rests on the party, which seeks to rely on those instructions to avoid liability or to engage the liability of the other party.

(6) Instructions transmitted to persons not appointed or authorized to receive them are void, unless the transmitting side can prove that employing the care of a good Merchant it has had good reason to consider the receiving persons to be so appointed or authorized.

(7) Neither party is responsible for loss or damage arising solely as a consequence of verbal instructions, unless same have been confirmed in writing.

## **VI. ACCEPTANCE OF GOODS INTO THE WAREHOUSE**

**ART. 21.** The OPERATOR accepts the goods by external appearance (by number of packages, type and condition of packing) and by documents, without responsibility for the contents.

**ART. 22.** The goods are deemed to be accepted by the OPERATOR when the CUSTOMER (or any person acting on his behalf) delivers the goods to any person acting on behalf of the OPERATOR and:

1. such delivery is made in accordance with the instructions of the OPERATOR;
2. the OPERATOR issues a Warehouse Receipt (or a substitute document) for the goods received.

## **ART. 23. WAREHOUSE RECEIPT**

(1) A separate Warehouse Receipt (or a substitute document), certifying acceptance of the goods by the OPERATOR in accordance with Art. 21 and Art. 22 above shall be issued for each lot or consignment of goods.

(2) Contents, weight and value of the packages are entered in the Warehouse Receipt at the risk and liability of the CUSTOMER on the basis of his declaration of same. Commercial and transport documents accompanying the goods shall have the effect of such declaration.

(3) The OPERATOR is entitled, but not obliged, to enter in the Warehouse Receipt his observations in respect of deficiencies of the goods or their packing.

(4) Unless otherwise agreed, the Warehouse Receipt is made out to the name of the CUSTOMER who has concluded the contract of storage.



(5) If following instructions of the CUSTOMER the Warehouse Receipt is made out to the name of a third person (inclusive of “to Bearer” or “to Order”), such third person shall act as Agent for the CUSTOMER.

(6) When Interchange Statements are issued upon receipt of the goods, same are deemed to be an integral part of the Warehouse Receipt and are subject to the provisions of this Article.

#### **ART. 24. INTERMEDIATE STORAGE**

Intermediate storage of goods undertaken before, after or during the course of transportation arranged by the OPERATOR in the cases, when this transport constitutes the main part of the business or service rendered by OPERATOR, is subject to the provisions of the STANDARD TRADING CONDITIONS OF THE BULGARIAN NATIONAL FORWARDING ASSOCIATION, unless otherwise agreed.

#### **ART. 25. DECLARATIONS OF THE OPERATOR**

(1) The OPERATOR is not obliged to submit or to accept binding statements for the contents, weight, value and internal condition of the goods or for any special interest in delivery; the Warehouse Receipt (or a substitute document) of receipt issued by the OPERATOR is not a proof for the correctness of those particulars.

(2) An exception from the provisions of Section (1) above may be made under special arrangement with the CUSTOMER, as well as when the latter requests and pays for a verification of the contents, weight, condition or the declared value of the goods.

The result of this check may be registered and then binds the OPERATOR, but even in this case the OPERATOR does not act as an Expert.

**ART. 26.** The OPERATOR is entitled, but not obliged, to check the contents and the weight of the goods and may debit all arising costs and losses to the CUSTOMER in case any discrepancy against the declared particulars is established.

**ART. 27.** An order to the OPERATOR to receive incoming goods authorises him to disburse all charges due on delivery.

In this case the OPERATOR is entitled to a separate remuneration for the advance payment made on behalf of the CUSTOMER.

**ART. 28.** The OPERATOR is obliged to inspect, maintain the condition of or repair the goods and their packing only under an express agreement in writing with the

CUSTOMER. If the goods reach the OPERATOR in a visibly impaired condition, he must establish the damage, inform the CUSTOMER and maintain the latter's rights against the Carriers or the delivering persons.

**ART. 29.** Weighing, sorting, marking, labelling, packing and re-packing of the goods is undertaken by the OPERATOR only following an express agreement or order of against separate remuneration

**ART. 30.** The OPERATOR shall maintain a Warehouse Logbook and shall record therein any circumstances of material significance in respect of the receipt, storage and delivery of the goods; this Logbook may be kept in EDP-form.

## **VII. MANNER AND PERIOD OF STORAGE OF GOODS**

**ART. 31.** Without prejudice to the provisions of Art. 8 of these SWC, the OPERATOR reserves to himself a reasonable liberty as to the means, technologies and procedures employed in the handling and storage of the goods.

### **ART. 32. INSPECTION DUTY**

(1) The CUSTOMER is entitled and obliged to inspect the warehouse of the OPERATOR and to state in writing any objections he may have in respect of the method of handling or storage of his goods.

If the CUSTOMER makes no use of his right of inspection, it is presumed that he approves the warehouse and the method of handling, stowing and storing of his goods.

(2) In such case, the OPERATOR is liable for damages arising through improper handling, stowing or storing of the goods only to the extent to which his fault can be proved.

**ART. 33.** Unless explicitly otherwise agreed, the OPERATOR is not obliged to store or handle the goods of the CUSTOMER separately from other goods.

**ART. 34.** Notices in respect of the goods duly sent by the OPERATOR are sufficient evidence in disputes and claims.

### **ART. 35. DURATION OF STORAGE**

(1) Unless otherwise agreed, either party may at any time terminate the contract of storage by means of 30-days preliminary notice in writing.

(2) Irrespective of the agreed duration of storage the OPERATOR may terminate the contract of storage as follows:

1. By 30-days preliminary notice if he deems that his rights are not secured by the value of the goods;
2. Without notice if he establishes that the goods present an imminent danger to his staff, property or other goods, or if the goods have deteriorated or perished.

## **VIII. SPECIAL CONDITIONS RELATING TO SPECIFIC GOODS**

### **ART. 36. DECLARATION OF GOODS WITH SPECIAL PROPERTIES**

(1) Goods, which:

- are overweight, overdimensional or perishable cargo and/or constitute a hazard for the human health or life, for any property or for the environment and/or
- require special conditions or facilities for their storage or handling, are accepted by the OPERATOR only under an express written agreement, based on the declaration of the CUSTOMER for the specific properties and the special conditions of storage or handling of such goods.

(2) If the goods described in Section (1) above are delivered to the OPERATOR in the absence of such declaration or if same is incomplete or imprecise, the CUSTOMER is liable for any costs and damages arising therefrom, even when there is no negligence or fault on his part.

**ART. 37.** When delivering dangerous goods, in addition to the requirements stipulated in Art. 36 above the CUSTOMER is further obliged:

1. To declare the class of the hazard and its classification number and to deliver the goods packed and marked in accordance with the applicable legislation.
2. To issue written instructions for:
  - the nature of the hazard and the security measures which should be applied in the handling, storage and carriage of the goods;
  - the measures which should be applied in case of an accident involving the dangerous goods, including the aid which must be rendered to persons who have come in contact with the goods or with the substances derived therefrom.

### **ART. 38. RIGHT OF DISPOSAL OF GOODS WITH SPECIAL PROPERTIES**

(1) The OPERATOR may at any time render harmless or destroy goods which create an imminent danger to human life or health, to property or to the environment.

The OPERATOR shall exercise reasonable efforts to notify in advance the CUSTOMER/OWNER of his actions, except in an emergency situation.

(2) If in the circumstances stated in Section (1) above the CUSTOMER has not complied with the requirements of Art. 37, then the OPERATOR is not liable to pay any compensation.

**ART. 39. GOODS EXCLUDED FROM ACCEPTANCE:**

(1) Except under special agreement the OPERATOR does not accept and does not deal with bank notes, coin, bullion, precious stones and metals, jewellery, valuables, antiques, objects of art, bonds, shares, negotiable instruments and securities of any kind, tobacco products, strong alcohol, personal luggage and cellular phones.

(2) Should the CUSTOMER nevertheless deliver or cause the OPERATOR to deal with any such goods otherwise than under special agreement, the OPERATOR shall be exempted from any liability whatsoever for or in connection with such obligation.

**IX. CUSTOMS CLEARANCE**

**ART. 40. CUSTOMS REQUIREMENTS**

(1) The CUSTOMER is obliged to make beforehand a statement on the customs status of the goods delivered to the OPERATOR, as well to submit all necessary particulars and documents for the customs entry and for the customs manifesting and the customs clearance of the goods.

(2) The CUSTOMER and/or the OWNER are obliged to inform in due time the OPERATOR of all official requirements in respect of the goods delivered to the OPERATOR (such as: customs duties, taxes, levies, fines and the like). The consequences resulting from mistakes and omissions of the CUSTOMER/the OWNER in this respect are entirely on his own account.

(3) The OPERATOR is obliged to observe the prescribed from the law customs status of the goods and is exempted from the obligation to execute any instructions of the CUSTOMER/OWNER which may result in an infraction of customs rules and regulations.

**ART. 41. CUSTOMS CLEARANCE:**

(1) Customs clearance and/or customs manifest upon acceptance and delivery of the goods can be done by the OPERATOR in accordance with the conditions of the applicable normative regulations.

(2) Unless explicitly otherwise agreed, the OPERATOR effects customs clearance in Bulgaria in the capacity of a direct representative of the CUSTOMER/the OWNER in the sense of the Customs Act and the Regulations for its application.

(3) In any case the OPERATOR performs customs manifesting and/or customs clearance on basis of the documents accompanying the goods and/or the declaration of the CUSTOMER and/or the OWNER and/or their representatives and proxies and bears no responsibility for the authenticity of this documents and declarations.

(4) The order to accept and/or to deliver goods under customs bond includes an authorization for the OPERATOR to perform the required customs formalities.

(5) Unless otherwise agreed, the OPERATOR is entitled to demand from the CUSTOMER or OWNER a prepayment of or a security for the customs duties, taxes and levies due on the goods.

(6) The OPERATOR is entitled to a separate remuneration for performing customs formalities and/or for the payment or of securing of part or all customs duties and taxes, even when such remuneration has not been agreed in advance.

#### **ART. 42. RESPONSIBILITY FOR CORRESPONDING OF THE GOODS:**

(1) In the cases when the OPERATOR effects the customs manifest or clearance

1. The CUSTOMER and/or the OWNER, as well as their representatives and proxies, bear full responsibility for the complete correspondence of the goods with their declarations and/or the documents accompanying the goods;

2. The rights of the OPERATOR against the CUSTOMER and the OWNER shall not be affected by acts of the Authorities, for which the FORWARDER is not liable.

(2) In case of infringement of the provisions of section (1) above, the CUSTOMER and the OWNER are jointly responsible according to the conditions of Art. 16 of these SWC for indemnification of all the expenses, losses and damages brought upon the OPERATOR.

#### **X. DELIVERY OF GOODS FROM THE WAREHOUSE**

**ART. 43.** Delivery of goods from the warehouse is subject to the provisions of Art. 21 and Art. 44 of these SWC.

#### **ART. 44. DOCUMENTS AND PROCEDURES**

(1) Delivery of goods from the warehouse is made against surrender of the original of the Warehouse Receipt (or of the substitute document issued upon acceptance) and in accordance with the procedure applied in accepting the goods into the warehouse.

(2) At his own risk and responsibility the OPERATOR may deliver the goods even without surrender of the original Warehouse Receipt or the substitute document.



(3) Upon surrender of the original Warehouse Receipt, the OPERATOR is entitled to deliver the goods without checking the authority and the lawful entitlement over the goods of the person surrendering the original.

(4) An assignment of the CUSTOMER's rights over the goods to a third party binds the OPERATOR only when same has been communicated to him by the CUSTOMER in writing.

(5) Upon surrender of the endorsed original of the Warehouse Receipt, the OPERATOR is entitled to deliver the goods without having to check the authenticity of signatures and stamps on the endorsement and the authority of signatories to sign.

**ART. 45.** Any instructions for delivery of the goods in specified circumstances only (such as: against payment or against surrender of a particular document) are accepted for execution by the OPERATOR only as an Agent for the CUSTOMER, insofar as third parties are engaged to effect compliance with such instructions.

**ART. 46.** Delivery of the goods to the Consignee is subject to the payment of all collect charges due. If the Consignee refuses to pay part of or all collect charges due, he is deemed to refuse to take delivery of the goods.

**ART. 47.** The provisions of this Chapter are applied by analogy also when the OPERATOR performs delivery of the goods by own or hired means of transport directly into the warehouse of the CUSTOMER, the OWNER or the Consignee of the goods in accordance with Art. 5 of these SWC.

**ART. 48. DISPOSAL UPON IMPOSSIBILITY TO DELIVER THE GOODS**

(1) The OPERATOR is entitled to sell or to otherwise reasonably dispose of goods which cannot be delivered in accordance with the instructions of the CUSTOMER or the OWNER, under the following conditions:

1. On 30 days preliminary notice to the CUSTOMER.
2. When the CUSTOMER or the other persons having a legal interest in the goods cannot be traced and/or do not give practicable instructions and/or do not pay the legally pertaining on the goods amounts – upon expiry of 90 days from the date on which the Consignee should have taken delivery.
3. Without prior notice for perishable goods, for goods which have perished/deteriorated and/or the keeping of which may cause damage to the OPERATOR or to third parties, or contradicts the applicable legislation.

(2) In the cases stated in Section (1) above, the OPERATOR disposes of the goods for and at the expense of the CUSTOMER/OWNER and is obliged to put at the disposal of the rightful Claimant the proceeds of the sale after deducting all costs pertaining to the goods.

However if said costs exceed the proceeds of the sale, the OPERATOR is entitled to be paid the difference.

## **XI. INSURANCE**

**ART. 49.** The OPERATOR insures his liability for the goods for his benefit and at his expense, but only to the extent and limit of this liability defined in these SWC.

### **ART. 50. OPTIONAL INSURANCE AT THE EXPENSE OF THE CUSTOMER**

(1) Insurance of the goods over and above the limits stated in Art. 49 is done at the expense of the CUSTOMER and only pursuant to his express written instructions stating the insured value and the risks to be covered.

(2) Any insurance effected by the OPERATOR for and on behalf of the CUSTOMER is subject to the usual conditions, limitations and exceptions of the liability of the Insurer underwriting the risk.

(3) The OPERATOR is not obliged to conclude a separate insurance for each consignment, but may declare it on an open or general policy.

(4) When effecting optional insurance on behalf of the CUSTOMER, the OPERATOR neither enjoys the rights of the Insured, nor incurs any liability as Insurer.

The CUSTOMER has no recourse against the OPERATOR in respect of the insurance, except for error and negligence in effecting same.

(5) In the event of insurance claims, the OPERATOR is deemed to have fulfilled his duties when he has taken reasonable measures to safeguard the interests of the CUSTOMER/the OWNER and his rights under the insurance policy and has assigned the rights under the insurance contract to the CUSTOMER, the OWNER and/or to the INSURER.

**ART. 51.** The OPERATOR is relieved of liability to the CUSTOMER for any part of a loss covered by an insurance taken out by the OPERATOR on behalf of the CUSTOMER, save when a regular insurance is rendered inoperative or void through the fault of the OPERATOR.

**ART. 52.** The rights of the Insurer against the OPERATOR in respect of claims assigned to the Insurer by the CUSTOMER/OWNER may not exceed the rights of

the CUSTOMER under these SWC. Otherwise the provisions of Art. 16 of these SWC apply.

**ART. 53.** The OPERATOR is entitled to a separate remuneration for effecting insurance of the goods, for pursuing insurance claims and for collecting insurance reimbursements in accordance with the instructions of the CUSTOMER/the OWNER.

## **XII. LIABILITY OF THE OPERATOR**

**ART. 54.** The liability of the OPERATOR is functional, limited, excluded or terminated as defined in these SWC.

**ART. 55.** If the OPERATOR may invoke a provision in these SWC which limits or excludes his liability, then it is not an admissible counterplea that a delictual act has been committed.

**ART. 56.** The OPERATOR is liable for the proved loss or damage which has occurred between the time he has taken the goods in his charge and the time of delivery of same, subject to the provisions of Art. 54 and Art. 55 above.

**ART. 57.** In any case the OPERATOR is liable solely and exclusively for the direct loss of or damage to the goods taken in his charge and bears no liability for any consequential losses and damages or for the loss of revenue, profit or market.

In particular, in the event of loss or damage to a part of the goods which renders the other parts unusable, the OPERATOR is liable only for the loss of or damage to the directly affected part.

### **ART. 58. HIDDEN LOSS OR DAMAGE**

(1) In the event of loss or damage which cannot be established by external inspection of the goods upon acceptance into and delivery from the warehouse, it is deemed that the loss or damage has occurred prior to taking charge of the goods by the OPERATOR, unless proved otherwise.

(2) This provision is applied, but not by way of limitations, upon acceptance and delivery of goods in closed packing and of unpacked goods, the condition of which cannot reasonably be established by external inspection.

**ART. 59. EXCLUDED RISKS:**

(1) The OPERATOR is relieved of liability for loss of or damage to the goods if same is due to one of the following causes:

1. Implementation of the instructions of the CUSTOMER and acts or omissions of same;
2. The absence of documented instructions of the CUSTOMER when the nature of the goods and/or services requires such instructions;
3. Internal and hidden defect of the goods or their packing;
4. Inadequate or insufficient packing;
5. Inherent vice and properties of the goods and/or the materials of which the goods are manufactured;
6. Action of rodents, worms, moth, fungi, mold and of other pests and vermin;
7. Normal ageing, biological and physico-chemical processes usually taking place in the goods;
8. High and low temperatures, desiccation, humidity or condensation of vapours in a warehouse not designed to maintain a constant temperature or humidity (unless it is explicitly agreed to keep the goods in a warehouse with a temperature – or humidity-regulating facility);
9. Other atmospheric influences and the consequences thereof during the storage in a warehouse not protected from such influences, provided the use of such facilities has been authorised by the CUSTOMER;
10. Hostilities and military action; civil disturbances; strikes and lockouts; robbery; action of armed gangs; acts of any Authority; nuclear accidents and the consequences thereof; fire, earthquake and other natural disasters; events which are of a force majeure nature and other causes or events which the OPERATOR cannot reasonably avoid and/or the consequences thereof he is unable to prevent by the exercise of reasonable diligence.

(2) The burden of proof that the loss or damage was due to one or more of the causes specified above rests on the OPERATOR.

**ART. 60. CALCULATION OF COMPENSATION:**

(1) Without prejudice to the limitations defined in Art. 61, the compensation due by the OPERATOR cannot exceed the value of the lost or damaged goods at the place and time where the OPERATOR has taken same in his charge.

(2) This value is determined by reference to the declared invoice price of the goods or in the absence of such price – in a descending order according to: the current commodity exchange price, the current wholesale price, or by reference to the usual

value of goods of the same kind and quality.

(3) Compensation due by the OPERATOR is paid in Bulgarian currency and is recalculated (whenever necessary) according to the central rate of exchange of the Bulgarian National Bank on the date when the loss or damage had occurred, or when this date is unknown – on the date when the loss/damage was established.

(4) Where the Claimant is a foreign person, the compensation may be paid in foreign currency according to the value and rate of exchange established by applying the provisions of Section (2) and (3) above.

**ART. 61. LIMIT OF COMPENSATION:**

(1) In any case compensation due for loss of or damage to the goods is limited to the equivalent of € 4,00 per kilo of gross weight of the goods lost or damaged, but not exceeding € 25.000 under one Warehouse Receipt (or substitute document) for each lot or consignment of goods.

(2) The limit of compensation defined in Section (1) above does not affect the right of the CUSTOMER to receive insurance indemnity under the optional storage insurance effected on his account according to the provisions of Chapter XI of these SWC.

**ART. 62.** By special agreement and against additional remuneration the OPERATOR may accept liability in excess of the limits set out in these SWC.

**ART. 63.** The limits of liability defined in CHAPTER XII of these SWC shall be waived only for loss or damage caused by criminal acts of the OPERATOR or where the OPERATOR has expressly accepted a liability covering declared value and/or declared interest in delivery of the goods.

**ART. 64.** When the compensation which the OPERATOR has to pay covers the full value of the goods determined according to Art. 60 above, the CUSTOMER or OWNER is obliged to transfer to the OPERATOR the title in the goods and all rights, which he may have against third parties in respect of the goods.

**XIII. CLAIMS**

**ART. 65. TIME LIMITS AND PROCEDURES:**

(1) Any claim howsoever caused must be documented and notified in writing to the OPERATOR immediately after the events alleged to give rise to such claim become known to the Claimant, but in any case not later than:



- Upon taking delivery of the goods by the Consignee in the case of apparent loss of or damage to the goods;
- 5 days of taking delivery by the Consignee in the case of loss or damage which is not apparent;
- 30 days after the event in all other occurrences.

(2) If the time limits and procedures laid out in Section (1) above are not complied with, then it is presumed that the loss or damage has occurred after the OPERATOR has effected delivery of the goods.

(3) The time limit for the presentation of a proved claim against the OPERATOR is 3 (three) months from the date on which the goods have been delivered by the OPERATOR, or in case of total loss – from the date on which the goods should have been delivered.

(4) The claim is deemed to be legally tendered only after the CUSTOMER has paid all sums due to the OPERATOR without deferment, reduction or set-off.

(5) When the provisions of this Article have not been complied with or when the Claimant with his actions or omissions has prejudiced a counter-claim against liable third parties, the OPERATOR may reject the claim on this basis alone.

**ART. 66.** The period of limitation for any legal action arising in respect of the services of the OPERATOR is determined in accordance with Bulgarian law and starts to run from the date on which the goods have been delivered by the OPERATOR, or in case of total loss – from the date on which the goods should have been delivered.

#### **XIV. PAYMENT OF THE OPERATOR'S SERVICES, CHARGES AND REMUNERATION**

##### **ART. 67. TIME LIMIT:**

(1) The CUSTOMER must pay to the OPERATOR all sums immediately when due, without deferment, reduction or off-set, irrespective whether such sums constitute remuneration for services rendered or costs and damages sustained by the OPERATOR which, according to these SWC are on account of the CUSTOMER and/or of third parties having a legal interest in the goods.

(2) If a deadline for the payment has not been expressly agreed, the sums will be considered overdue and the CUSTOMER in default of payment after the expiry of 10 days from the date of issue or handing over of the OPERATOR's invoice for CUSTOMERS in Bulgaria and 14 days from the date of issue of the invoice or handing over for CUSTOMERS abroad.

(3) Irrespective of the provisions of Section (2) above, all receivables become due upon effecting delivery of the goods by the OPERATOR.

**ART. 68.** In the case of default on due payments the Payer becomes liable to a moratory interest on the overdue sum according the Regulations of the Bulgarian National Bank valid on the day of payment.

**ART. 69.** Insofar as this is consistent with the applicable currency regulations, the OPERATOR may demand from the CUSTOMER payment either in Bulgarian or in foreign currency. The exchange is calculated at the central rate of exchange of the Bulgarian National Bank on the date of issue of the OPERATOR's invoice, if not otherwise agreed.

**ART. 70.** Notwithstanding acceptance by the OPERATOR of instructions to collect part of or all charges and remunerations due to him from a third party, the CUSTOMER remains jointly responsible for the payment of such charges and remuneration when due.

**ART. 71.** The OPERATOR is entitled to recover all sums due to him either from the CUSTOMER or from the OWNER, the Consignor and the Consignee of the goods.

**ART. 72. SECURITY:**

(1) The OPERATOR is entitled to demand partial or complete prepayment of or a security for his remuneration and for all expenses and charges arising in the execution of the Order.

(2) The OPERATOR is entitled to take any reasonable measures according to the provisions of Chapter XV of SWC to safeguard his interests and to secure reimbursement of the costs, charges and damages sustained in the execution of the Order, including disposal of the goods at his discretion, unless such costs and damages result through the fault of the OPERATOR.

**ART. 73.** Unless otherwise agreed the OPERATOR is not obliged to provide at his expense security and deposit for the payment of freight, duties, taxes or other costs. If the OPERATOR nevertheless renders such security or deposit at his expense, he is entitled to demand immediate compensation.

**ART. 74.** Offsetting in respect of any debts or claims arising out of the storage contract is allowed only if such debts and claims are already due and are uncontested.

## **XV. RIGHTS OF LIEN AND OF DISPOSAL OF THE GOODS**

**ART. 75.** The right of disposal of the goods belongs to the CUSTOMER or to the persons having a legal entitlement for this right, with the exceptions set out in these SWC.

### **ART. 76. RIGHT OF LIEN:**

(1) In order to secure payment of any monies due the OPERATOR has the unconditional and irrevocable right of lien over the goods and documents which are the subject of such debt.

(2) This right of lien extends also to any other goods, commercial paper and money amount which are in custody or control of the OPERATOR and are the property or in disposition and possession of the irregular Debtor.

(3) No transaction or legal act accomplished in respect of the goods shall affect the right of lien described above.

### **ART. 77. OPERATOR'S RIGHT OF DISPOSAL:**

(1) If any sums due to the OPERATOR are not paid within 30 days after the OPERATOR has given notice to the Debtor that he will exercise his right of disposal over the goods, then the OPERATOR may sell those goods by auction or otherwise at his own discretion. In case of perishables that cannot be deposited in a warehouse due to some reason, the preliminary notice is of 3 days.

(2) In doing so the OPERATOR acts at the expense of the Debtor and is not liable for any reduction in value on the sale of the goods or for any other consequential losses and damages of the CUSTOMER/OWNER, or for any claims by third parties having a legal interest in the goods.

(3) The OPERATOR is entitled to apply the net proceeds of the sale to satisfy the debt. The Debtor is not relieved of liability to compensate any outstanding balance in favour of the OPERATOR. Any sum remaining after the debt to the OPERATOR has been satisfied will be deposited in a Bank at the disposal of the CUSTOMER/OWNER.

## **XVI. FINAL PROVISIONS**

**ART. 78.** By mutual agreement the OPERATOR and the CUSTOMER may negotiate conditions deviating from the provisions of these SWC.

Such agreement is valid only when done in writing and confirmed by duly authorised representatives of both parties.

**ART. 79.** The parties must notify each other immediately of any changes in their address; otherwise, all notices are sent to the last known address.

**ART. 80.** Unless otherwise agreed, the OPERATOR is entitled to send notices unregistered and documents of any kind uninsured.

**ART. 81. FORCE MAJEURE:**

(1) Events outside the control of the OPERATOR which obstruct partly or wholly the execution of his contractual duties, absolve the OPERATOR from his obligations and liability under the affected Order for the time-period during which such events last.

(2) Should such events occur, the OPERATOR is entitled to withdraw from the contract even if same has been partly executed, but in doing so he should exercise reasonable care to protect the interests of the CUSTOMER/OWNER.

In such events, the CUSTOMER is also entitled to terminate unilaterally the contract.

(3) In the circumstances stated in Section (1) and (2) above, the OPERATOR is entitled to receive compensation of the costs incurred up to this moment in respect of the order, as well as a provision proportionate to his executed services.

**ART. 82.** All matters not expressly dealt with in the text of these STANDARD WAREHOUSING CONDITIONS are subject to the provisions of the specific contract of storage, the STANDARD TRADING CONDITION OF THE BULGARIAN NATIONAL FORWARDING ASSOCIATION, the applicable international conventions and the law of the Republic of Bulgaria.

Those provisions govern also the legal relationship between the OPERATOR and the CUSTOMER and the interested third parties.

**ART. 83.** These SWC do not govern also the legal relations between the OPERATOR and the SUBCONTRACTORS for the services assigned by the OPERATOR.

**ART. 84. CHANGES IN LEGISLATION:**

(1) Should the existing legislation be changed or new mandatory legislation governing the business and services of the OPERATOR enacted, the parties shall comply with such new legislation irrespective whether same has been expressly agreed. The provisions of Art. 4 of these SWC will also apply.

(2) If any of the provisions of these SWC becomes inapplicable, this shall not affect the validity of the SWC.

The parties shall substitute the abrogated provisions with new ones as close as possible to the meaning of the initial text.

**ART. 85.** Any dispute arising in the interpretation or the implementation of these STANDARD WAREHOUSING CONDITIONS which cannot be settled amicably shall be referred to the jurisdiction of the Courts at the place where the OPERATOR has its seat and shall be resolved subject to the provisions of Art. 82 and 84 above.

Sofia, 2005