

# T r a n s l a t i o n

## **Commercial Code**

(Extract from Book Four - Commercial Contracts)

### **Freight Business, Forwarding Business; Warehousing Business**

as revised by the Act dated 25 June 1998 to Reform the Law on Freight, Forwarding and Warehousing, as amended by the Act dated 26 November 2001

(Transport Law Reform Act)

#### **Fourth Chapter      Freight Business**

##### **First Sub-chapter      General Provisions**

#### **Section 407. Contract of carriage**

- (1) By virtue of the contract of carriage the carrier is obliged to carry the goods to their destination and there to deliver them to the consignee.
- (2) The sender is obliged to pay the agreed freight.
- (3) The provisions of this sub-chapter apply whenever
  1. the goods are to be carried over land, on inland waterways or by aircraft, and
  2. the carriage is part of the operation of a commercial enterprise.

If the nature or size of the enterprise is such that it does not require a commercial business organisation, and if the firm is not entered in the Commercial Register in accordance with section 2, the provisions of the First Chapter of the Fourth Book, with the exception of sections 348 to 350, shall apply to the freight business as a subsidiary source of law.

#### **Section 408. Consignment note**

- (1) The carrier may require a consignment note to be issued containing the following particulars:
  1. Place and date of issuance;
  2. name and address of the sender;
  3. name and address of the carrier;
  4. place and date of taking over of the goods and place designated for delivery;
  5. name and address of the consignee and special address, if any, for notification;
  6. description in common use of the nature of the goods and the method of packaging, and, in the case of dangerous goods, their description as required by the regulations concerning

dangerous goods, or, in the absence of such requirement, their generally recognised description;

7. number of packages and their special marks and numbers;
8. gross weight of the goods or their quantity otherwise expressed;
9. agreed freight and any costs incurred up to the time of delivery, as well as a note concerning payment of the freight;
10. any amount of money to be collected on delivery of the goods;
11. instructions relating to customs and other official formalities;
12. any agreement concerning carriage in an open unsheeted vehicle or on deck.

Other particulars deemed useful by the parties may be entered in the consignment note.

(2) The consignment note shall be made out in three original copies signed by the sender. The sender may require the carrier also to sign the consignment note. Reproductions of the personal signatures by means of printing or stamp shall be sufficient. One copy shall be for the sender, one shall accompany the goods and one shall be retained by the carrier.

#### **Section 409. Evidentiary effect of the consignment note**

(1) A consignment note signed by both parties shall be *prima facie* evidence of the conclusion of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier.

(2) A consignment note signed by both parties shall also give rise to the presumption that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note. However, the consignment note does not give rise to this presumption if the carrier has entered a reservation accompanied by reasons; the carrier may give as a reason that he had no reasonable means of checking the accuracy of the statements.

(3) If the gross weight of the goods or their quantity otherwise expressed or the content of the packages have been checked by the carrier and the result of the checks has been entered in a consignment note signed by both parties, the latter shall be *prima facie* evidence that the weight, quantity or content corresponds to the statement in the consignment note. The carrier is obliged to check the weight, quantity or contents if the sender so requires and the carrier has reasonable means of checking; the carrier is entitled to be reimbursed for his expenses for such checking.

#### **Section 410. Dangerous goods**

(1) If dangerous goods are to be carried, the sender shall, in good time and in form of a text, inform the carrier of the precise nature of the danger and, if necessary, of the precautionary measures to be taken.

(2) Unless, when taking over the goods, the carrier neither knew of the nature of the danger, nor had at least been informed of it, he may

1. unload, store or return dangerous goods or, to the extent necessary, destroy them or render them harmless without becoming liable in damages to the sender, and
2. claim reimbursement from the sender for any expenses necessarily incurred in carrying out these measures.

#### **Section 411. Packaging. Labelling**

In so far as the goods, in view of their nature and of the agreed type of transport, require packaging, the sender shall package them in such a way that they are protected against loss and damage and that the carrier suffers no detriment. Furthermore, the sender shall label the goods to the extent necessary to handle them in accordance with the contract.

#### **Section 412. Loading and unloading**

(1) Unless the circumstances or usages indicate otherwise, the sender shall put on board, stow and secure (load) the goods so as to provide for their safe transport as well as unload them. The carrier must see to it that the loading is consistent with safe operation of the vehicle.

(2) No special fee may be charged for loading and unloading time, the period of which, in the absence of another agreement, shall be reasonable in view of the particular circumstances.

(3) If the carrier waits beyond the loading or unloading time on the basis of a contractual agreement or for reasons outside the sphere of risks to be borne by him, he is entitled to appropriate remuneration (demurrage).

(4) The Federal Ministry of Justice is hereby empowered to determine by regulation, issued in agreement with the Federal Ministry of Transport and not requiring the consent of the Federal Council (Bundesrat), the prerequisites applicable to inland navigation for the start and duration of the loading and unloading time as well as the amount of demurrage, taking into account the nature of the vehicles intended to be used in carriage, as well as the nature and quantity of the goods to be transhipped, the technical means available in transhipping the goods as well as the requirements of rapid transportation.

#### **Section 413. Accompanying documents**

(1) The sender shall provide to the carrier such documents and such information as may be necessary for official processing prior to the delivery of the goods, in particular for customs clearance.

(2) The carrier is liable for any detriment caused by loss of, damage to or incorrect use of documents given to him, unless the loss, damage or incorrect use was caused by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. However, his liability shall not exceed the amount which would be payable in the event of loss of the goods.

#### **Section 414. Sender's liability in special cases, irrespective of fault**

(1) The sender shall, even if he is not at fault, compensate the carrier for damage and outlays caused by

1. insufficient packaging or labelling,
2. incorrect or incomplete statements made in the consignment note,
3. failure to disclose the dangerous nature of the goods, or
4. absence, incompleteness or incorrectness of the documents or the information specified in section 413 paragraph 1.

However, the sender's liability for damage is limited to an amount of 8.33 units of account for each kilogram of gross weight of the consignment; section 431 paragraph 4 and sections 434 to 436 shall apply *mutatis mutandis*.

(2) If conduct on the part of the carrier has contributed to causing the damage or outlay, the obligation to pay compensation and the extent of the compensation payable shall depend upon the extent to which the conduct of the carrier has contributed to the damage and outlay.

(3) If the sender is a consumer, he shall be obliged to compensate the carrier for damage and outlay in accordance with paragraphs 1 and 2 only in so far as he has acted culpably.

#### **Section 415. Termination by the sender**

(1) The sender may, at any time, terminate the contract of carriage by notice.

(2) If the sender terminates the contract, the carrier may claim either

1. the agreed freight, any demurrage, as well as any outlay which he is entitled to have refunded, minus any savings occasioned by the termination of the contract or any moneys which the termination of the contract has enabled him to earn and which he has in fact earned, or which he has, in bad faith, failed to earn, or
2. one third of the agreed freight (*Fautfracht*).

If the termination is based on reasons within the sphere of risks to be borne by the carrier, no claim to *Fautfracht* based on sentence 1 No. 2 shall arise; neither shall a claim based on sentence 1 No. 1 arise in such a case in so far as the carriage is of no interest to the sender.

(3) If goods had already been loaded prior to the termination, the carrier may take measures at the sender's expense in accordance with section 419 paragraph 3 sentences 2 to 4, or may require the sender to unload the goods without delay. The carrier must tolerate the unloading of the goods only in so far as it can be done without prejudice to his business and without causing damage to the senders or consignees of other consignments. If the termination is based on reasons falling within the sphere of risks to be borne by the carrier, the carrier is, contrary to sentences 1 and 2, obliged to unload the goods already loaded without delay and at his own expense.

#### **Section 416. Right to carriage of part of consignment**

If only part of the agreed consignment has been loaded, the sender may at any time require the carrier to begin to carry the incomplete load. In this case the carrier is entitled to the full freight and to demurrage if any, as well as to reimbursement of any outlays he may have incurred because of the incompleteness of the consignment; however, any freight for goods which the carrier transports with the same vehicle instead of the goods which had not been loaded shall be deducted from the full freight. In addition, the carrier is entitled to demand

further security to the extent that the incompleteness of the consignment causes him to lose security for the full freight. If the incompleteness of the load is due to reasons within the sphere of risks to be borne by the carrier, the carrier shall be entitled to the claim under sentences 2 and 3 only to the extent that goods actually are carried.

#### **Section 417. Carrier's rights if loading time is not complied with**

(1) If the sender fails to load the goods within the loading time or, if he is not obliged to load, fails to make the goods available within the loading time, the carrier may set a deadline, which must be reasonable, within which the goods shall be loaded or made available by the deadline.

(2) If the consignment has not been loaded or made available by the deadline set in accordance with paragraph 1, the carrier may terminate the contract and assert the claims pursuant to section 415 paragraph 2.

(3) If only part of the agreed consignment has been loaded or made available by the deadline set in accordance with paragraph 1, the carrier may begin to carry the incomplete load and assert the claims pursuant to section 416 sentences 2 and 3.

(4) The carrier does not have these rights if the reasons for non-compliance with the loading time fall within the sphere of risks to be borne by him.

#### **Section 418. Subsequent instructions**

(1) The right of disposal in relation to the goods is vested in the sender. He may in particular instruct the carrier to stop the goods in transit or to deliver them to another destination, to another place designated for delivery or to another consignee. The carrier is obliged to comply with such instructions only in so far as this can be done without the risk of prejudice to his business or damage to the senders or consignees of other consignments. He may claim from the sender reimbursement for outlays occasioned by his having carried out the instruction, as well as appropriate remuneration; he may require an advance payment as a precondition to carrying out the instruction.

(2) The sender's right of disposal lapses on the arrival of the goods at the place designated for delivery. Henceforth, the right of disposal under paragraph 1 shall lie with the consignee. If the consignee exercises this right, he shall reimburse the carrier for any additional outlays as well as remunerate him appropriately; the carrier may require an advance payment as a precondition to carrying out the instruction.

(3) If in exercising his right of disposal the consignee has ordered the delivery of the goods to a third person, that person shall not be entitled to specify another consignee.

(4) If a consignment note has been issued and signed by both parties, the sender may exercise his right of disposal only upon presentation of his copy of the consignment note, if the consignment note so prescribes.

(5) If the carrier intends not to comply with an instruction, he must inform the person who has given it without delay.

(6) If the exercise of the right of disposal has been made dependent upon the presentation of the consignment note and if the carrier carries out an instruction without having had the

sender's copy of the consignment note presented to him, he shall be liable to the person entitled for any loss or damage caused thereby. The provisions relating to limitation of liability shall not apply.

#### **Section 419. Obstacles to carriage and delivery**

(1) If it becomes evident prior to the arrival of the goods at the place designated for delivery that the carriage cannot be performed in accordance with the contract, or if, after the arrival of the goods at that place, the delivery of the goods faces obstacles, the carrier shall ask for instructions from the person who has the right of disposal in relation to the goods in accordance with section 418. If that is the consignee and if he cannot be located, or if he refuses to accept the goods, the sender shall have the right of disposal under sentence 1; the consignment note need not be produced in such a case even if its terms require that this be done when exercising the right of disposal. If instructions have been issued to the carrier and the obstacle is not within the sphere of risks to be borne by the carrier, the carrier may assert claims in accordance with section 418 paragraph 1 sentence 4.

(2) If the obstacle to carriage or delivery has arisen after the consignee has, based on his right of disposal under section 418, issued the instruction that the goods are to be delivered to a third party, the consignee and the third party shall be deemed to be the sender and the consignee respectively for the purposes of applying paragraph 1.

(3) If the carrier cannot, within a reasonable time, obtain instructions with which he would have had to comply according to section 418 paragraph 1 sentence 3, he shall take such measures as seem to be in the best interest of the person having the right of disposal. He may for instance unload the goods and store them, entrust them to a third party for storage for the account of the person having the right of disposal under section 418 paragraphs 1 to 4, or return them; if the carrier entrusts the goods to a third party, he shall be liable only for exercising due diligence in choosing the third party. The carrier may also have the goods sold in accordance with section 373 paragraphs 2 to 4 if they are perishable or if their condition warrants such a measure, or if the costs which would otherwise be incurred are out of proportion to the value of the goods. The carrier may destroy goods which cannot be sold. The carriage is deemed to have been terminated once the goods have been unloaded.

(4) The carrier is entitled to reimbursement for any outlays necessitated by measures taken in accordance with paragraph 3, and to reasonable remuneration, unless the obstacle falls within the sphere of risks to be borne by the carrier.

#### **Section 420. Payment. Calculation of freight**

(1) The freight is payable on delivery of the goods. In addition to the freight, the carrier is entitled to be reimbursed for any outlays in so far as they were incurred in the interests of the goods and he could in all the circumstances reasonably regard them as necessary.

(2) If the carriage is terminated prematurely due to an obstacle to carriage or delivery, the carrier is entitled to a pro rata part of the freight for the completed part of the carriage. If the obstacle falls within the sphere of risks to be borne by the carrier, he may claim pro rata freight only to the extent that the carriage is of benefit to the sender.

(3) If, for reasons within the sphere of risks to be borne by the sender, delay occurs after the start of carriage and before arrival at the place designated for delivery, the carrier is entitled to reasonable remuneration in addition to the freight.

(4) If the freight is agreed by reference to the number, weight or quantity otherwise expressed of the goods, it is presumed for the purpose of calculating the freight that the statement in the consignment note or consignment bill relating to this is correct; this presumption applies even if such statement is accompanied by a reservation justified by the indication that there had been no reasonable means of checking the accuracy of the information.

#### **Section 421. Rights of consignee. Duty to pay**

(1) After arrival of the goods at the place designated for delivery, the consignee may require the carrier to deliver them to him in exchange for the performance of the obligations resulting from the contract of carriage. If the goods have been delivered damaged or late or have been lost, the consignee may assert in his own name the rights against the carrier resulting from the contract of carriage; the sender remains entitled to assert these rights. It makes no difference in this context whether consignee or sender acts in his own interest or in the interest of a third party.

(2) The consignee who asserts his right under paragraph 1 sentence 1 has to pay any outstanding freight up to the amount specified in the consignment note. If a consignment note has not been issued or has not been presented to the consignee, or if the amount payable as freight is not evidenced by the consignment note, the consignee has to pay the freight agreed with the sender provided it is not unreasonable.

(3) A consignee who asserts his right under paragraph 1 sentence 1 shall, in addition, pay demurrage or remuneration in accordance with section 420 paragraph 3; demurrage for exceeding the loading time and remuneration under section 420 paragraph 3 is payable only if the consignee was informed, when the goods were delivered, of the amount owed.

(4) The sender remains obliged to pay the sums owed under the contract.

#### **Section 422. Cash on delivery**

(1) If the parties have agreed that the goods are to be delivered to the consignee only on a cash on delivery basis, it is presumed that the amount is to be collected in cash or in a form equivalent to cash.

(2) In relation to the creditors of the carrier, the amount received by virtue of the collection is deemed to have been transferred to the sender.

(3) If the goods are delivered to the consignee without collection of the cash on delivery amount, the carrier is liable to the sender for any damage caused, even if he has not acted culpably, the upper limit of the liability, however, being the cash on delivery amount.

#### **Section 423 Delivery period**

The carrier is obliged to deliver the goods within the agreed period or, in the absence of an agreement, within such a period as should reasonably be conceded to a diligent carrier, having regard to the circumstances (delivery period).

#### **Section 424. Presumption of loss**

(1) The person entitled to raise a claim may consider the goods lost if delivery has not taken place within the delivery period or within a further period equal in length to the delivery period but no shorter than either twenty days or, in cases involving cross-border carriage, thirty days.

(2) If the person entitled to raise a claim receives compensation for the loss of the goods, he may, when he receives the compensation, demand to be informed without delay if the goods should be found.

(3) Within one month of having been notified that the goods have been found, the person entitled to raise a claim may demand that they be delivered to him concurrently with his repaying the compensation, where appropriate minus the costs which had been part of it. Any obligation to pay the freight and any claims for damages remain unaffected.

(4) If the goods have been found after the compensation has been paid, and if the person entitled to raise a claim has not asked to be informed, or if, having been informed, he does not demand delivery, the carrier has the right of free disposal in relation to the goods.

#### **Section 425. Liability for loss of or damage to goods and for delay in delivery. Loss sharing**

(1) The carrier is liable for any damage resulting from loss of or damage to the goods, occurring during the time between the taking over of the goods and their delivery, or resulting from delay in delivery.

(2) If conduct on the part of the sender or the consignee, or a particular defective condition of the goods has contributed to the occurrence of the damage, the obligation to pay compensation and the amount of compensation payable depend upon the extent to which such circumstances have contributed to the damage.

#### **Section 426. Exclusion of liability**

The carrier is relieved of liability in so far as the loss, damage or delay in delivery was caused by circumstances which the carrier could not avoid even by exercising the utmost diligence and the consequences of which he was unable to prevent.

#### **Section 427. Particular grounds for exclusion of liability**

(1) The carrier is relieved of liability in so far as the loss, damage or delay in delivery was due to one of the following risks:

1. use of an open, unsheeted vehicle or loading on deck, if such a mode of carriage had been agreed or was customary;
2. insufficient packaging by the sender;
3. handling, loading or unloading of the goods by the sender or consignee;
4. nature of the goods which particularly exposes them to damage, especially through breakage, rust, decay, desiccation, leakage or normal wastage;



5. insufficient labelling of packages by the sender;
6. carriage of livestock.

(2) If damage has occurred which, in the circumstances, might have been due to one of the risks specified in paragraph 1, it is presumed that it has in fact been caused by this risk. This presumption shall not apply in the circumstances set out in paragraph 1 No.1 if there has been an abnormal loss.

(3) The carrier may avail himself of paragraph 1 No. 1 only in so far as the loss, damage or delay in delivery is not the result of the carrier having failed to comply with specific instructions given to him by the sender for the carriage of the goods.

(4) If the carrier, by virtue of the contract of carriage, is obliged to protect the goods particularly from the effects of heat, cold, variations in temperature, humidity, vibrations or similar influences, he may avail himself of paragraph 1 No. 4 only if he has taken all measures incumbent upon him in the circumstances, in particular in respect to the choice, maintenance and use of specific equipment, and has complied with any specific instructions.

(5) The carrier may avail himself of paragraph 1 No. 6 only if he has taken all measures incumbent upon him in the circumstances, and has complied with any specific instructions.

#### **Section 428. Responsibility for other persons**

The carrier is responsible for acts and omissions of his servants to the same extent as for his own acts and omissions provided the servants act within the scope of their employment. The same applies to the acts and omissions of other persons whose services he uses for the carriage of the goods.

#### **Section 429. Compensation based upon value**

(1) Where the carrier is liable to pay compensation for total or partial loss of the goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

(2) If the goods have been damaged, the measure of the damages payable will be the difference between the value of the undamaged goods at the place and time of acceptance for carriage and the value which the damaged goods would have had at the place and time of acceptance. The costs necessary in order to reduce and remedy the damage are considered *prima facie* to be equal to the amount of the difference calculated pursuant to the first sentence.

(3) The value of the goods shall be fixed in accordance with the current market price or, if there is no such price, in accordance with the normal value of goods of the same kind and quality. If the goods were sold immediately prior to their acceptance for carriage, the purchase price noted in the seller's invoice, minus carriage charges included therein, shall be considered *prima facie* to be the current market price.

#### **Section 430. Assessment costs**

In the event of loss of or damage to the goods, the carrier shall bear, in addition to the compensation due in accordance with section 429, the costs of assessing the damage.

### **Section 431. Maximum amount of liability**

(1) The compensation payable in accordance with sections 429 and 430 for loss of or damage to the entire consignment is limited to an amount of 8.33 units of account for each kilogram of gross weight of the consignment.

(2) If only individual packages of the consignment have been lost or damaged, the liability of the carrier is limited to the amount of 8.33 units of account for each kilogram of gross weight

1. of the whole consignment, if the whole consignment has lost its value,

2. of a part of the consignment, if only that part of the consignment has lost its value.

(3) The liability of the carrier for non-compliance with the delivery period is limited to an amount equal to three times the freight.

(4) The unit of account referred to in paragraphs 1 and 2 is the Special Drawing Right of the International Monetary Fund. The amount shall be converted into Deutsche Mark according to the value of the Deutsche Mark, in terms of the Special Drawing Right, on the day on which the goods were accepted for carriage, or on the date agreed by the parties. The value of the Deutsche Mark, in terms of the Special Drawing Right, is to be calculated according to the method of evaluation applied by the International Monetary Fund for its operations and transactions on the day in question.

### **Section 432. Compensation for other costs**

If the carrier is liable for loss or damage, he shall, in addition to the compensation payable in accordance with sections 429 to 431, refund the freight, public levies and other charges occasioned by the carriage of the goods, in cases of damage to the goods however only in proportion to the amounts referred to in section 429 paragraph 2. He is not liable for any further damage.

### **Section 433. Maximum liability in cases of other pecuniary loss**

If the carrier is liable for the breach of a contractual duty connected with the performance of the carriage of the goods, his liability for damage which has not resulted from loss of or damage to the goods or from non-compliance with the delivery period and which is not damage to goods or persons, is limited also, namely to three times the amount payable in the event of loss of the goods.

### **Section 434. Non-contractual claims**

(1) The exemptions from and limitations on liability provided for in this sub-chapter and in the contract of carriage shall also apply to a non-contractual claim of the sender or of the consignee against the carrier for loss of or damage to the goods, or for delay in delivery.

(2) The carrier may also avail himself of the defences referred to in paragraph 1 against non-contractual claims of third parties for loss of or damage to the goods. The defences may, however, not be invoked if

1. the third party had not consented to the carriage and the carrier knew or, due to carelessness, did not know that the sender was not entitled to send the goods, or
2. the goods, prior to having been accepted for carriage, had been lost while in the hands of the third party or of a person deriving his right to possession from the third party.

### **Section 435. Cessation of the exemptions and limitations**

The exemptions from and limitations on liability provided for in this sub-chapter and in the contract of carriage do not apply if the damage resulted from an act or omission of the carrier or of one of the persons referred to in section 428 done with the intent to cause such damage or recklessly and with knowledge that damage would probably result.

### **Section 436. Liability of servants**

If non-contractual claims are asserted against one of the carrier's servants for loss of or damage to the goods or for delay in delivery, the servant may also avail himself of the exemptions and limitations provided for in this sub-chapter and in the contract of carriage. This does not apply if he has acted with intent to cause such damage or recklessly and with knowledge that damage would probably result.

### **Section 437. Actual carrier**

(1) Where the carriage is performed completely or partly by a third party (actual carrier), the latter shall be liable in the same way as the carrier for the damage caused by loss of or damage to the goods or by delay in delivery occurring during the carriage performed by him. Any contractual agreement with the sender or consignee under which the carrier extends his liability shall affect the actual carrier only if he has consented to it in writing.

(2) The actual carrier may avail himself of all defences to which the carrier is entitled under the contract of carriage.

(3) The carrier and the actual carrier are liable jointly and severally.

(4) If claims are asserted against the servants of the actual carrier, section 436 shall apply *mutatis mutandis* to them.

### **Section 438. Notice of damage**

(1) Where the loss of or damage to the goods is apparent and the consignee or sender fails to notify the carrier of the loss or damage on delivery of the goods at the latest, it is presumed that the goods have been delivered in a condition conforming with the contract. The notice must specify the damage sufficiently clearly.

(2) The presumption referred to in paragraph 1 shall also apply where the loss or damage was not apparent, provided there has been no notice within seven days after delivery.

(3) Claims for delay in delivery shall expire if the consignee does not notify the carrier of the delay in delivery within twenty-one days after delivery.

(4) After delivery any notice of damage shall be given in form of a text; transmission of the notice may be effected by telecommunication. A signature is not required if the notice identifies the author in some other way. Dispatch within the applicable notification period is sufficient.

(5) If loss, damage or delay in delivery is notified on delivery, it is sufficient to give notice to the person delivering the goods.

#### **Section 439. Limitation of actions**

(1) Claims resulting from carriage to which the provisions of this sub-chapter apply are time-barred within a period of one year. In cases of intent or of fault considered to be equivalent to intent in accordance with section 435 the limitation period shall be three years.

(2) The limitation period runs from the end of the day on which the goods were delivered. If the goods have not been delivered, the limitation period runs from the day on which the goods should have been delivered. The first and second sentences notwithstanding, the limitation period applicable to claims of recourse runs from the day on which the judgement against the recourse claimant becomes final and non-reviewable or, if there is no such judgement, from the day on which the recourse claimant satisfies the claim; this does not apply if the recourse debtor was not informed of the damage within three months after the recourse claimant gained knowledge of the damage and of the identity of the recourse debtor.

(3) The running of the limitation period of a claim against the carrier is suspended by a written statement in which the sender or consignee asserts a claim for damages until the carrier refuses in writing to satisfy the claim. A further statement asserting the same claim for damages does not again suspend the running of the limitation period.

(4) The limitation may be made easier or more difficult only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties.

#### **Section 440. Jurisdiction**

(1) The court of the district in which the place for receiving the goods for carriage or the place designated for their delivery lies has an additional jurisdiction to hear disputes arising from carriage to which the provisions of this sub-chapter apply.

(2) The actual carrier may be sued *inter alia* in the court which has jurisdiction for actions against the carrier, and the carrier may be sued *inter alia* in the court which has jurisdiction for actions against the actual carrier.

#### **Section 441. Lien**

(1) The carrier has a lien over the goods for all claims founded on the contract of carriage and for uncontested claims arising from other carriage, forwarding or warehousing contracts concluded with the sender. The lien extends to the accompanying documents.

(2) The lien persists as long as the carrier has possession of the goods, in particular as long as he has the right of disposal over them by means of a bill of lading, consignment bill or warehouse warrant.

(3) The lien persists after delivery if the carrier asserts it by legal action within three days after delivery and the goods are still in the possession of the consignee.

(4) The threat of a sale as required by section 1234 paragraph 1 of the Civil Code (Bürgerliches Gesetzbuch) and the notifications provided for in sections 1237 and 1241 of the Civil Code shall be addressed to the consignee. If the latter cannot be traced, or if he refuses to accept the goods, the threat and notification shall be addressed to the sender.

#### **Section 442. Subsequent carrier**

(1) If, on delivery, the last of several carriers is obliged to collect the money owing to the preceding carriers, he is to exercise the rights of the preceding carriers, particularly the lien. The lien of each of the preceding carriers persists as long as that of the last carrier.

(2) If a preceding carrier is paid by a subsequent carrier, the claim and the lien of the former pass to the latter.

(3) Paragraphs 1 and 2 apply also to claims and rights of a forwarder who has participated in performing the carriage.

#### **Section 443. Ranking order of several liens**

(1) Of several liens which exist over the same goods under sections 397, 441, 464, 475 b and 623 and which have resulted from the dispatch or the carriage of the goods, one which has come into existence later takes priority over one which has come into existence earlier.

(2) These liens take priority over the liens of the commission agent and of the warehouseman which have not resulted from the dispatch of the goods, and over the liens of the forwarder, the carrier and the sea carrier for advance payments.

#### **Section 444. Consignment bill**

(1) The carrier may issue a consignment bill (Ladeschein) concerning the obligation to deliver the goods, and this should contain the particulars specified in section 408 paragraph 1. The consignment bill must be signed by the carrier; a reproduction of the personal signature by means of printing or stamp is sufficient.

(2) If the consignment bill has been made out to order, it should contain the name of the person to whose order the goods are to be delivered. If the name is not stated the consignment bill is deemed to have been made out to the order of the sender.

(3) The consignment bill determines the legal relationship between the carrier and the consignee. In particular it gives rise to the rebuttable presumption that the goods have been taken over as described in the consignment bill; section 409 paragraphs 2 and 3 first sentence applies *mutatis mutandis*. If the consignment bill has been transferred to a third party acting in good faith, the presumption in sentence 2 is irrebuttable.

(4) The provisions of the contract of carriage continue to determine the legal relationship between the carrier and the sender.

#### **Section 445. Delivery in exchange for the consignment bill**

The carrier is obliged to deliver the goods only in exchange for the return of the consignment bill on which delivery has been certified.

#### **Section 446. Entitlement by virtue of the consignment bill**

(1) The person to whom the goods are to be delivered according to the consignment bill, or to whom a consignment bill made out to order has been transferred by endorsement, is *prima facie* entitled to take delivery of the goods.

(2) The person *prima facie* entitled to take delivery has the right of disposal in relation to the goods in accordance with section 418. It is only if the consignment bill is returned to him that the carrier is obliged to comply with instructions concerning the return of the goods or delivery to someone other than the person entitled according to the consignment bill.

#### **Section 447. Delivery and carrying out instructions without the consignment bill**

The carrier is liable to the rightful holder of the consignment bill for any damage occasioned by delivering the goods or carrying out an instruction for return or delivery of the goods without having the consignment bill returned to him. The liability is limited to the amount which would have been payable if the goods had been lost.

#### **Section 448. Document of title**

The handing over of the consignment bill to the person it identifies as entitled to take delivery of the goods shall, if the goods have been received by the carrier, have the same effect with regard to the acquisition of rights in the goods as would the handing over of the goods themselves.

#### **Section 449. Contractual modifications**

(1) If the sender is a consumer, section 413 paragraph 2, sections 414, 418 paragraph 6, section 422 paragraph 3, sections 425 to 438 and 447 may not be modified by agreement to his disadvantage, unless the contract of carriage relates to the carriage of letters or of similar items. Section 418 paragraph 6 and section 447 may not be excluded by agreement to the disadvantage of third parties acting in good faith.

(2) In cases other than those specified in paragraph 1 sentence 1 and in which the contract of carriage does not relate to the carriage of letters or of similar items, the provisions specified in paragraph 1 sentence 1 may be modified only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. The compensation payable by the carrier for loss of or damage to the goods may, however, be restricted also by standard form contractual conditions to an amount other than that provided for in section 431 paragraphs 1 and 2 if this amount

1. lies between two and forty units of account and is given a prominent appearance by a special printing technique, or
2. is less favourable to the user of the standard form contractual conditions than the amount provided for in section 431 paragraphs 1 and 2.

The same applies to the compensation payable by the sender under section 414.

(3) If the contract of carriage is subject to foreign law, paragraphs 1 and 2 shall nevertheless apply provided that according to the contract the place of taking over of the goods and the place designated for delivery are situated in Germany.

### **Section 450. Application of maritime law**

If the contract of carriage calls for carriage of the goods, without transshipment, both on inland waters and by sea, maritime law on the carriage of goods by sea applies to the contract if

1. a bill of lading has been issued, or
2. the distance to be covered by sea is the longer.

## **Second Sub-chapter Carriage of Household Goods**

### **Section 451. Removal contract**

If the contract of carriage concerns the removal of household goods, the provisions of the first sub-chapter apply to the contract unless the following special provisions or applicable international conventions provide otherwise.

#### **Section 451a. Duties of the carrier**

- (1) The duties of the carrier include dismantling and reassembling the furniture, as well as the loading and the unloading of the goods being removed.
- (2) If the sender is a consumer, the duties of the carrier further include carrying out other services related to removal, such as packaging and labelling the goods being removed.

#### **Section 451b. Consignment note. Dangerous goods. Accompanying documents. Duties to report and provide information**

- (1) Contrary to section 408, the sender shall not be obliged to issue a consignment note.
- (2) If dangerous goods are part of the goods being removed, and if the sender is a consumer, he is, contrary to section 410, only obliged to inform the carrier in general terms of the danger posed by the goods; the information does not have to be provided in any particular form. The carrier shall inform the sender of the duty he owes under sentence 1.
- (3) If the sender is a consumer, the carrier shall inform him of the applicable customs requirements and other administrative requirements. He shall however not be obliged to enquire into the accuracy or completeness of documents and information provided by the sender.

### **Section 451c. Liability of the sender in special cases**

Contrary to section 414 paragraph 1 sentence 2, the sender is obliged to pay compensation to the carrier for damage up to an amount of 1,200 Deutsche Mark per cubic meter of the loading space required for the performance of the contract.

### **Section 451d. Particular grounds for exclusion of liability**

(1) Contrary to section 427, the carrier is relieved of liability in so far as the loss or damage was due to one of the following risks:

1. carriage of precious metals, jewels, precious stones, money, stamps, coins, securities or documents;
2. insufficient packaging or labelling by the sender;
3. handling, loading or unloading of the goods by the sender;
4. carriage in containers not packed by the carrier;
5. loading or unloading of goods the size or weight of which does not correspond to the space available at the place designated for loading or unloading, provided the carrier had informed the sender in advance of the risk of damage and the sender had insisted on the service being carried out;
6. carriage of livestock or of plants;
7. nature or defective condition of the goods which particularly expose them to damage, especially through breakage, failures of function, rust, decay or leakage.

(2) If damage has occurred which, in the circumstances, might have been due to one of the risks specified in paragraph 1, it is presumed that it has in fact been caused by this risk.

(3) The carrier may avail himself of paragraph 1 only if he has taken all the measures incumbent upon him in the circumstances, and has complied with any special instructions.

### **Section 451e. Maximum amount of liability**

Contrary to section 431 paragraphs 1 and 2, compensation payable by the carrier for loss or damage is limited to an amount of 1,200 Deutsche Mark per cubic meter of the loading space required for the performance of the contract.

### **Section 451f. Notice of damage**

Contrary to section 438 paragraphs 1 and 2 claims for loss of or damage to the goods shall expire

1. if the loss of or damage to the goods was apparent and the carrier was not notified of it on the day after delivery at the latest,
2. if the loss or damage was not apparent and the carrier was not notified of it within fourteen days after delivery.



### **Section 451g. Cessation of exemptions and limitations**

If the sender is a consumer, the carrier or one of the persons referred to in section 428

1. may not avail himself of the exemptions from and limitations on liability provided for in sections 451d and 451e, as well as in the first sub-chapter, in so far as the carrier, at the time the contract was concluded, failed to inform the sender of the provisions relating to liability and to point out that a more far-reaching liability could be agreed upon or that the goods could be insured,
2. may not rely on section 451f in conjunction with section 438 if the carrier had failed to inform the consignee, when the goods were delivered at the latest, of the required form and the deadline for the notice of damage, as well as of the legal consequences of failure to give notice of the damage.

Information in accordance with sentence 1 No. 1 must be given a prominent appearance by a special printing technique.

### **Section 451h. Contractual Modifications**

(1) If the sender is a consumer, the provisions contained in this sub-chapter governing the liability of the carrier and the sender, as well as the provisions of the first sub-chapter which are applicable to the removal contract may not be modified by agreement to the disadvantage of the sender.

(2) In cases other than those specified in paragraph 1, the provisions specified therein may be modified only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. The compensation payable by the carrier for loss of or damage to the goods may, however, be restricted also by standard form contractual conditions to an amount other than that provided for in section 451e. The same applies to the compensation payable by the sender under section 414 in conjunction with section 451c. Such a provision contained in the standard form contractual conditions shall however be ineffective if it is not given a prominent appearance by a special printing technique.

(3) If the removal contract is subject to foreign law, paragraphs 1 and 2 shall nevertheless apply provided that according to the contract the place of taking over of the goods and the place designated for delivery are situated in Germany.

## **Third Sub-chapter Carriage Using Various Modes of Transport**

### **Section 452. Contract of carriage involving various modes of transport**

If carriage of goods is performed by various modes of transport on the basis of a single contract of carriage, and if, had separate contracts been concluded between the parties for each part of the carriage which involved one mode of transport (leg of carriage), at least two of these contracts would have been subject to different legal rules, the provisions of the first sub-chapter shall apply to the contract, unless the following special provisions or applicable international conventions provide otherwise. This also applies if part of the carriage is performed by sea.

### **Section 452a. Known place of damage**

If it has been established that the loss, damage or event which caused delay in delivery occurred on a specific leg of the carriage, the liability of the carrier shall, contrary to the provisions of the first sub-chapter, be determined in accordance with the legal provisions which would apply to a contract of carriage covering this leg of carriage. The burden of proving that the loss, damage or event which caused delay in delivery occurred on a particular leg of carriage is borne by the person alleging this.

### **Section 452b. Notice of damage. Limitation**

(1) Section 438 applies irrespective of whether the place of damage is unknown, is known or becomes known later. The form and time limit prescribed for the notice of damage shall be deemed to have been observed as well if the corresponding provisions which would have been applicable to a contract of carriage covering the last leg of the carriage have been complied with.

(2) When the limitation period for claims based upon loss, damage or delay in delivery runs from delivery, delivery to the consignee is the relevant point of time. Even if the place where the damage occurred is known, the claim shall be time-barred in accordance with section 439 at the earliest.

### **Section 452c. Removal contract relating to carriage involving various modes of transport**

If the contract of carriage relates to the removal of household goods using various modes of transport, the provisions of the second sub-chapter apply to the contract. Section 452a only applies if provisions of an international convention binding on the Federal Republic of Germany cover the leg of carriage on which the damage occurred.

### **Section 452d. Contractual Modifications**

(1) The provision contained in section 452b paragraph 2 sentence 1 may be modified only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. The other provisions of this sub-chapter may be modified by contractual agreement only to the extent that the provisions referred to therein permit modifying agreements.

(2) Contrary to paragraph 1, however, it may as well be agreed by means of standard form contractual conditions that, in cases where the place of damage is known (section 452a), liability shall be governed by the provisions of the first sub-chapter

1. irrespective of on which leg of carriage the damage occurs, or
2. where the damage occurs on a particular leg of carriage specified in the agreement.

(3) Agreements purporting to exclude the application of mandatory provisions of an international convention binding on the Federal Republic of Germany applicable to a leg of carriage are ineffective.

## **Fifth Chapter      Forwarding Business**

### **Section 453. Forwarding contract**

(1) By virtue of the forwarding contract the forwarder is obliged to arrange for the dispatch of the goods.

(2) The sender is obliged to pay the agreed remuneration.

(3) The provisions of this chapter only apply if dispatching goods is part of the operation of a commercial enterprise. If the nature or size of the enterprise is such that it does not require a commercial business organisation, and if the firm is not entered in the Commercial Register in accordance with section 2, the provisions of the First Chapter of the Fourth Book, with the exception of sections 348 to 350, shall apply to the forwarding business as a subsidiary source of law.

### **Section 454. Arranging for the dispatch of the goods**

(1) The duty to arrange for the dispatch of the goods includes organisation of the carriage, in particular

1. determination of the means and route of transport,
2. choice of performing enterprises, conclusion of carriage, warehousing and forwarding contracts required for the dispatch, as well as providing information and giving instructions to the performing enterprises, and
3. securing the sender's claims to compensation.

(2) The duties of the forwarder also include the provision of other agreed services relating to carriage such as insuring and packaging the goods, labelling them and clearing them through customs. However, it is only if the agreement calls for it that the forwarder shall be obliged to arrange for the conclusion of contracts for these services.

(3) The forwarder concludes the required contracts in his own name or, if he is authorised to do so, in the name of the sender.

(4) In fulfilling his obligations the forwarder shall act in the interest of the sender and carry out his instructions.

### **Section 455. Handling of the goods. Accompanying documents. Duties to report and provide information**

(1) The sender is obliged to package and label the goods as far as necessary and to make available documents as well as provide all the information the forwarder needs to fulfil his duties. If dangerous goods are to be dispatched, the sender shall, in good time and in form of a text, inform the forwarder of the precise nature of the danger and, as far as necessary, of the precautionary measures to be taken.

(2) The sender shall, even if he is not at fault, compensate the forwarder for damage and outlays caused by

1. insufficient packaging or labelling,
2. failure to disclose the dangerous nature of the goods, or

3. absence, incompleteness or incorrectness of the documents or the information required for the official processing of the goods.

Section 414 paragraph 1 sentence 2 and paragraph 2 applies *mutatis mutandis*.

(3) If the sender is a consumer, he shall be obliged to compensate the forwarder for damage and outlays in accordance with paragraph 2 only in so far as he has acted culpably.

#### **Section 456. Due date for payment of remuneration**

The remuneration is payable once the goods have been handed over to the carrier.

#### **Section 457. Claims of the sender**

Only after claims arising from a contract concluded in his own name by the forwarder for account of the sender have been assigned to him, may the sender assert such claims. However, in relation to the creditors of the forwarder such claims, as well as their proceeds, are deemed to have been assigned to the sender.

#### **Section 458. Forwarder acting as carrier (Selbsteintritt)**

The forwarder is entitled to perform the carriage of the goods himself. If he exercises this right he has, as far as the carriage is concerned, the rights and duties of a carrier. In this case, he may charge the usual freight in addition to the remuneration for his services as a forwarder.

#### **Section 459. Forwarding at fixed costs**

If a fixed sum is agreed as remuneration which includes the costs of carriage, the forwarder has, as far as the carriage is concerned, the rights and duties of a carrier or sea carrier. In this case, he may claim compensation for his outlays only to the extent that this is customary.

#### **Section 460. Collective consignment (Sammelladung)**

(1) The forwarder is entitled to arrange for the dispatch of the goods together those of another sender on the basis of a contract for a collective consignment concluded for his own account.

(2) If the forwarder exercises this right he has, as far as the carriage as a collective consignment is concerned, the rights and duties of a carrier or sea carrier. In this case, the forwarder may claim such remuneration as is appropriate in the circumstances, not exceeding however the freight usually payable for carriage of the goods if separate.

#### **Section 461. Liability of the forwarder**

(1) The forwarder is liable for any damage resulting from loss of or damage to goods in his custody. Sections 426, 427, 429, 430, 431 paragraph 1, 2 and 4, as well as sections 432 and 434 to 436 apply *mutatis mutandis*.

(2) The forwarder is liable for damage not due to loss of or damage to the goods in his custody if he has acted in breach of a duty he owes under section 454. He is relieved of such

liability if the damage could not have been avoided by exercising the diligence of a prudent businessman.

(3) If conduct on the part of the sender or a particular defective condition of the goods has contributed to the occurrence of the damage, the obligation to pay compensation and the amount of compensation payable depend upon the extent to which such circumstances have contributed to the damage.

#### **Section 462. Responsibility for other persons**

The forwarder is responsible for acts and omissions of his servants to the same extent as for his own acts and omissions provided the servants act within the scope of their employment. The same applies to the acts and omissions of other persons whose services he uses to fulfil his duty to arrange for the dispatch of the goods.

#### **Section 463. Limitation of actions**

Section 439 applies *mutatis mutandis* to the time-bar of claims based on a service which is subject to the provisions of this chapter.

#### **Section 464. Lien**

The forwarder has a lien over the goods for all claims founded on the forwarding contract and for uncontested claims arising from other forwarding, carriage and warehousing contracts concluded with the sender. Section 441 paragraph 1 sentence 2 to paragraph 4 applies *mutatis mutandis*.

#### **Section 465. Subsequent forwarder**

(1) If, in addition to the carrier, a forwarder is involved in the carriage and if the latter has to deliver the goods, section 442 paragraph 1 applies to the forwarder *mutatis mutandis*.

(2) If a preceding carrier or forwarder is payed by a subsequent forwarder, the claim and the lien of the former pass to the latter.

#### **Section 466. Contractual Modifications**

(1) If the sender is a consumer, section 461 paragraph 1 and sections 462 and 463 may not be modified by agreement to his disadvantage, unless the forwarding contract relates to the dispatch of letters or similar items.

(2) In cases other than those specified in paragraph 1 and in which the forwarding contract does not relate to the dispatch of letters or of similar items, the provisions specified in paragraph 1 may be modified only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. The compensation payable by the forwarder for loss of or damage to the goods may, however, be restricted also by standard form contractual conditions to an amount other than that provided for in section 431 paragraphs 1 and 2 if this amount

1. lies between two and forty units of account and is given a prominent appearance by a special printing technique, or
  2. is less favourable to the user of the standard form contractual conditions than the amount provided for in section 431 paragraphs 1 and 2.
- (3) Section 458 sentence 2, section 459 sentence 1 and section 460 paragraph 2 sentence 1 may be modified by agreement only to the extent that the provisions referred to therein permit modifying agreements..
- (4) If the forwarding contract is subject to foreign law, paragraphs 1 and 2 shall nevertheless apply provided that according to the contract the place of taking over of the goods and the place designated for delivery are situated in Germany.

## **Sixth Chapter      Warehousing Business**

### **Section 467. Warehousing contract**

- (1) By virtue of the warehousing contract the warehouse keeper is obliged to store the goods and to keep them in safe custody.
- (2) The depositor is obliged to pay the agreed remuneration.
- (3) The provisions of this chapter only apply if the storing and safekeeping is part of the operation of a commercial enterprise. If the nature or size of the enterprise is such that it does not require a commercial business organisation, and if the firm is not entered in the Commercial Register in accordance with section 2, the provisions of the First Chapter of the Fourth Book, with the exception of sections 348 to 350, shall apply to the warehousing business as a subsidiary source of law.

### **Section 468. Handling of the goods. Accompanying documents. Duties to report and provide information**

(1) If dangerous goods are to be stored, the depositor shall, in good time and in form of a text, inform the warehouse keeper of the precise nature of the danger and, as far as necessary, of the precautionary measures to be taken. He shall also package and label the goods as far as necessary, as well as make available documents and provide all the information the warehouse keeper needs to fulfil his duties.

(2) If the depositor is a consumer, contrary to paragraph 1

1. the warehouse keeper is obliged to package and label the goods as far as necessary,
2. the depositor is only obliged to inform the warehouse keeper in general terms of the danger posed by the goods; the information does not have to be provided in any particular form.

In such a case the warehouse keeper shall inform the depositor of his duty under sentence 1 No. 2 and of the administrative provisions to be observed by the depositor concerning the official handling of the goods.

(3) The depositor shall, even if he is not at fault, compensate the warehouse keeper for damage and outlays caused by

1. insufficient packaging or labelling,

2. failure to disclose the dangerous nature of the goods, or
3. absence, incompleteness or incorrectness of the documents or the information specified in section 413 paragraph 1.

Section 414 paragraph 1 sentence 2 and paragraph 2 apply mutatis mutandis.

(4) If the depositor is a consumer, he shall be obliged to compensate the warehouse keeper for damage and outlays in accordance with paragraph 3 only in so far as he has acted culpably.

#### **Section 469. Collective storage**

(1) The warehouse keeper may only mingle fungible goods with goods of the same kind and quality if the depositors concerned expressly consent to this.

(2) If the warehouse keeper is entitled to mingle goods, the owners of the stored goods will be fractional co-owners once the goods have been stored.

(3) The warehouse keeper may deliver to each depositor the portion due to him without having to seek the approval of the other depositors concerned.

#### **Section 470. Receipt of the goods**

If the goods sent to the warehouse keeper are in an apparently damaged or faulty condition when he receives them, the warehouse keeper shall take steps to secure the depositor's claims for compensation and shall inform the depositor without delay.

#### **Section 471. Preservation of the goods**

(1) The warehouse keeper shall, during business hours, allow the depositor to inspect the goods, take samples and carry out the acts necessary for their preservation. However, the warehouse keeper is entitled, and in cases of collective storage also obliged, to carry out himself the work necessary for the preservation of the goods.

(2) If, after the goods have been received, their condition has changed in a way which is likely to lead to their being lost or damaged or to causing damage to the warehouse keeper or if such a change is likely, the warehouse keeper shall without delay inform the depositor or, if a warehouse warrant has been issued, the last legitimated holder of the warehouse warrant known to him, and shall ask for instructions. If the warehouse keeper cannot obtain instructions within a reasonable period, he shall take such measures as seem to be appropriate. In particular, he may have the goods sold in accordance with section 373; if he exercises this entitlement and if a warehouse warrant has been issued, the warehouse keeper shall address the threat of sale provided for in section 373 paragraph 3, and the notification provided for in paragraph 5 of the same provisions, to the last legitimated holder of the warrant known to him.

#### **Section 472. Insurance. Storage with a third party**

(1) The warehouse keeper is obliged to insure the goods at the request of the depositor. If the depositor is a consumer, the warehouse keeper shall advise him that the goods can be insured.

(2) The warehouse keeper is entitled to store the goods with a third party only if the depositor has given him express permission to do so.

### **Section 473. Duration of storage**

(1) The depositor may demand delivery of the goods at any time. However, if the warehousing contract was concluded for an indefinite period, he may only terminate the contract by giving one month's notice, unless there is an important reason entitling the depositor to terminate the contract without notice.

(2) The warehouse keeper may demand that the goods be taken back on expiry of the agreed storage time or, if the storage was for an indefinite period, on termination of the contract by one month's notice of termination. If an important reason exists, the warehouse keeper may demand that the goods be taken back even prior to the expiry of the storage time and without notice.

(3) If a warehouse warrant has been issued, the notice of termination and the demand that the goods be taken back shall be addressed to the last legitimated holder of the warehouse warrant known to the warehouse keeper.

### **Section 474. Reimbursement of expenses**

The warehouse keeper is entitled to reimbursement of expenses incurred on account of the goods, in so far as it was reasonable in the circumstances for him to regard them as necessary.

### **Section 475. Liability for loss or damage**

The warehouse keeper is liable for any damage resulting from loss of or damage to the goods occurring during the time between receipt of the goods for storage and their delivery, unless the damage could not have been avoided by exercising the diligence of a prudent businessman. This applies even if the warehouse keeper stores the goods with a third party in accordance with section 472 paragraph 2.

### **Section 475a. Limitation of actions**

Section 439 applies *mutatis mutandis* to the time-bar of claims based on warehousing which is subject to the provisions of this chapter. In case of total loss the limitation period starts to run at the end of the day on which the warehouse keeper reports the loss to the depositor or, if a warehouse warrant has been issued, to the last legitimated holder of the warehouse warrant known to the warehouse keeper.

### **Section 475b. Right of lien**

(1) The warehouse keeper has a lien over the goods for all claims founded on the warehousing contract and for uncontested claims arising from other warehousing, carriage or forwarding contracts concluded with the depositor. The lien extends to claims from an insurance policy and to accompanying documents.



(2) If a warehouse warrant made out to order has been transferred by endorsement, the lien exists in relation to the legitimated holder only in respect of the remuneration and outlays which are evident from the warehouse warrant or which were known to him on acquiring the warrant, or, at that time, were unknown to him as a result of gross negligence.

(3) The lien persists as long as the warehouse keeper has possession of the goods, in particular as long as he has the right of disposal over them by means of a bill of lading, consignment bill or warehouse warrant.

#### **Section 475c. Warehouse warrant**

(1) Having received the goods, the warehouse keeper may issue a warehouse warrant (Lagerschein) concerning the obligation to deliver the goods, and this should contain the following particulars:

1. place and date of issuance of the warehouse warrant;
2. name and address of the depositor;
3. name and address of the warehouse keeper;
4. place and date of storage;
5. description in common use of the nature of the goods and the method of packaging, and, in the case of dangerous goods, their description as required by the regulations concerning dangerous goods, or, in the absence of such requirement, their generally recognised description;
6. number of packages and their special marks and numbers;
7. gross weight of the goods or their quantity otherwise expressed;
8. in a case of collective storage, a note to this effect.

(2) Other particulars deemed useful by the warehouse keeper may be entered in the warehouse warrant.

(3) The warehouse warrant shall be signed by the warehouse keeper. A reproduction of the personal signature by means of printing or stamp shall be sufficient.

#### **Section 475d. Effect of the warehouse warrant**

(1) The warehouse warrant determines the legal relationship between the warehouse keeper and the legitimated holder of the warehouse warrant.

(2) The warehouse warrant gives rise in particular to the rebuttable presumption that the goods and their packaging have been taken over as described in the warrant in respect of their apparent condition and as regards the number of packages and their special marks and numbers. If the gross weight of the goods or their quantity otherwise expressed or their content has been checked by the warehouse keeper and the result of the inspection has been entered in the warehouse warrant, the latter shall be *prima facie* evidence that the weight, quantity or content corresponds to the statement in the warehouse warrant. If the warehouse warrant has been transferred to a third party acting in good faith, the presumption in sentences 1 and 2 is irrebuttable.

(3) The provisions of the warehousing contract continue to determine the legal relationship between the warehouse keeper and the depositor.

**Section 475e. Delivery in exchange for the the warehouse warrant**

(1) If a warehouse warrant has been issued, the warehouse keeper is obliged to deliver the goods only in exchange for the return of the warehouse warrant on which delivery has been certified.

(2) The delivery of only part of the goods shall be effected in exchange for a deduction note being entered on the warehouse warrant. The note shall be signed by the warehouse keeper.

(3) The warehouse keeper is liable to the rightful holder of the warehouse warrant for any damage occasioned by delivering the goods without having the warehouse warrant returned to him or without entering a deduction note.

**Section 475f. Entitlement by virtue of the warehouse warrant**

The person to whom the goods are to be delivered according to the warehouse warrant, or to whom a warehouse warrant made out to order has been transferred by endorsement, is *prima facie* entitled to take delivery of the goods. The warehouse keeper is not obliged to inquire into the authenticity of the endorsements.

**Section 475g. Title function of the warehouse warrant made out to order**

If a warehouse warrant has been issued by the warehouse keeper which may be transferred by endorsement, and if the goods have been taken over by the warehouse keeper, the handing over of the warehouse warrant to the person it identifies as entitled to take delivery of the goods shall have the same effect with regard to the acquisition of rights in the goods as would the handing over of the goods themselves.

**Section 475h. Contractual modifications**

If the depositor is a consumer, sections 475a and 475e paragraph 3 may not be modified by agreement to his disadvantage.