Conditions of Business

Waren-Verein der
Hamburger Börse e.V.

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in canned and deep frozen goods, dried fruit, edible nuts,
dehydrated vegetables, spices, seeds for baking,
organic products and similar products

Table of Contents

PART ONE 7

GENERAL PROVISIONS 7

Section 1 Applicability of the General Provisions 7
Section 2 Applicability of German Law and Incoterms 7
Section 3 Business Days 8
Section 4 Calculation of and Adherence to Stipulations as to Time 8
Section 5 Formation of the Contract. Obligations and Rights of the Intermediaries 9
Section 6 Formation of the Contract. Reservation of the Designation of one Contracting Party 9
Section 7 Kind and Quality of the Commodities to be Delivered 10
Section 8 Quantities 10
Section 8a Certificates Proving Customs Tariff Preferences. Import Documents 11
Section 9 Place of Performance of the Seller's Obligations 11
Section 10 Time of Performance of the Seller's Obligations 11
Section 11 Amount of the Purchase Price 12
Section 12 Due Date for Payment of the Purchase Price ... 13
Section 13 Cash against Documents. Other Cash Clauses. Payment from Letter of Credit 13
Section 14 Documents Held in Trust 14
Section 15 Force Majeure 14
Section 16 Delay in Performance 14
Section 17 Delay in Effecting a Principal Performance 15
Section 18 Unjustified Refusal of a Principal Performance . 16
Section 19 Commodities not in Conformity with the Contract . Rights of the Buyer 17
Section 20 Commodities not in Conformity with the Contract. The Buyer's Duties 19
Section 21 Shortages 21
Section 22 Documents not in Conformity with the Contract. The Buyer's Duties 21
Section 23 Purchase Subject to Examination 22
Section 24 Purchase after Approval of Sample 22
Section 25 Inspection Costs 23

Section 26 Transfer of Inspected Commodities from one Warehouse to Another 23
Section 27 Suspension of Payments 23
Section 28 Reservation of Title 23
Section 29 Sale on Condition that the Seller Receives Delivery 24
Section 30 Arbitration 25
Section 31 Experts 26

PART TWO 27

ADDITIONAL PROVISIONS FOR SPECIFIC TYPES OF TRANSACTIONS 27

I. CONTRACTS WITH DOCUMENTS FOR MARINE TRANSPORT 27

Section 32 Definition. Applicable Provisions 27
Section 33 Shipping by the Seller or by a Third Party 27
Section 34 (repealed) 28
Section 35 Place of Performance. Passing of the Risk 28
Section 36 *) Inspection Forbidden 29
Section 37 Quantities. Weighing Fees 29
Section 38 Reservation of the Right to Designate the Port of Destination 29
Section 39 Time for Shipment 30
Section 40 Carriage 31
Section 41 Advice of Shipment 31
Section 42 Documents 32
Section 43 Call 34
Section 44 Shipment not in Conformity with the Contract. Carriage not in Conformity with the Contract 35
Section 45 Documents not in Conformity with the Contract 36
Section 46 Inspected Parcels 36
Section 47 Delay in the Forwarding of Documents 37
Section 48 Commodities not in Conformity with the Contract. The Buyer's Rights 37
Section 49 Commodities not in Conformity with the Contract. The Buyer's Duties 38
Section 50 Shortages. The Buyer's Duties 39
Section 51 Letter of Credit 40

II. IMPORT TRANSACTIONS BY LAND / DISPATCH 41

Section 52 Concept. Applicable Provisions 41
Section 52a (repealed) 41
Section 53 Export Duties. Customs Duties. Unloading Costs 41
Section 54 Place of Performance. Passing of the Risk 41
Section 55 Weight. Burden of Proof 42
Section 56 Reservation of the Right to Designate the Destination 42
Section 57 Time for Dispatch. Time for Delivery 43
Section 58 Advice of Dispatch. Appropriation 43
Section 59 Delivery for Carriage by the Seller or by a Third Party 45
Section 60 Delivery on Call 45
Section 61 Cash against Documents. Letter of Credit 45
Section 62 Commodities not in Conformity with the Contract. The Buyer's Duties 46
Section 63 Shortages. The Buyer's Duties 47
Section 64 Import Duties on Rescission of the Contract 48
Section 65 Demurrage 48

III. IMPORT TRANSACTIONS BY LAND / COLLECTION 49

Section 66 Concept. Applicable Provisions 49
Section 67 Export Duties. Customs Duties 49
Section 68 Carriage 49
Section 69 Time of Performance for Obligations of the Seller 50
Section 70 Delivery on Call 50
Section 71 Cash against Documents. Letter of Credit 51
Section 72 Commodities not in Conformity with the Contract. The Buyer's Duties 51
Section 73 Shortages. The Buyer's Duties 51
Section 74 Import Duties on Rescission of the Contract 52

IV. EX-QUAY TRANSACTIONS 53

Section 75 Applicable Provisions 53
Section 76 Place of Performance. Passing of the Risk 53
Section 77 Tender 53
Section 78 Appropriation 55
Section 79 Concept of the Quay 55
Section 80 Period for Taking Delivery 55
Section 81 Handling and Weight Dues 55

Section 82 Damage in Transit 56
Section 83 Commodities not in Conformity with the Contract. The Buyer's Duties 56
Section 84 Short Weights and other Shortages 57
Section 85 "Duty Paid" 58
Section 86 Ex-Quay Transactions with a Shipping Clause . 59
Section 87 Time for Delivery 59
Section 88 Ex-Quay/Warehouse 59

V. EX-WAREHOUSE TRANSACTIONS 60

Section 89 Applicable Provisions 60
Section 90 Place of Performance. Passing of the Risk 60
Section 91 (repealed) 60
Section 92 Tender 60
Section 93 Period for Taking Delivery 61
Section 94 Costs of Removing the Commodities 61
Section 275 BGB Exclusion of the obligation to perform ... 62
Section 346 para. 3 no. 3 BGB 62
Section 439 BGB Supplementary performance 62
Section 95 HGB 63
Section 376 HGB 64
Section 377 HGB 64

Part One

General Provisions

Section 1
Applicability of the General Provisions

The provisions of Part One apply to all transactions insofar as no special regulations for specific types of business transactions are contained in Part Two.

Section 2
Applicability of German Law and Incoterms

The laws currently in force in the Federal Republic of Germany are applicable so as to supplement these provisions.

The Uniform Law on the International Sale of Goods, dated 17.7.1973 (BGBI. [Federal law journal] 1973 Part I p. 856), and the Uniform Law on the Formation of Contracts for the International Sale of Goods, dated 17.7.1973 (BGBI. 1973 Part I p. 868) as well as the law, dated 5.7.1989 (BGBI. 1989 Part II p. 586), concerning the United Nations Convention on Contracts for the International Sale of Goods, dated 11.4.1980, are not applicable.

Incoterms currently in force are applicable so as to supplement these provisions.

Section 3
Business Days

Business days as defined in these Conditions of Business are Monday, Tuesday, Wednesday, Thursday and Friday insofar as these do not fall on 24th or 31st of December and are not officially recognised holidays at the place of performance or the place where the contractual declaration is made.

Section 4
Calculation of and Adherence to Stipulations as to Time

(1) Stipulated periods of time which are calculated on the basis of business days or other days or longer periods end at 4 p.m. on their last day. Should the last day of such a stipulated period fall on a non-business day the next business day is to be regarded as the last day. If the commencement of such a stipulated period is determined by the occurrence of some event, the day on which the event occurs is not to be included in the calculation of the period of time. If the event occurs on a non-business day or after 4 p.m. on a business day, it is deemed to have occurred on the next business day. If a period of time is set in motion by a declaration, the communication thereof is the determining event.

(2) A stipulated time for making a declaration is adhered to only if the declaration reaches the addressee within the time stipulated. This applies also to a complaint that the commodities do not correspond to the contract description if the time for lodging a complaint is measured in days.

(3) The provisions of para. 1 sentences 1 and 2 do not apply to the calculation and observance of periods for shipment or dispatch or collection.

Section 5
Formation of the Contract.
Obligations and Rights of the Intermediaries

(1) Brokers and agents who take a part in the negotiation or conclusion of a contract are under a duty to use the utmost care on behalf of both contracting parties. All declarations by one party relating to the conclusion of the contract, especially objections by one party to the contents of a contract-note, a confirmation of sale or other written acknowledgement, shall be passed on immediately by the broker or agent to the other party by the fastest possible means.

(2) The basis of the agent's commission or the broker's brokerage is the gross sales price, even where it has been agreed that the buyer shall pay the carriage costs for the seller's account and deduct this amount from the invoice total.

Section 6
Formation of the Contract.
Reservation of the Designation of one Contracting Party

(1) If an intermediary (agent or broker) has reserved the right to designate the name of one party to the contract, the other party is bound by the contract even where it raises well-founded objections against the party which is subsequently designated; in this case the intermediary is regarded as the contracting party. Beyond this section 95 HGB (German Code of Commercial Law)[1] remains unaffected.

(2) Where no designation is effected, the intermediary is to be treated as a party to the contract even if it is he himself, and not the other party, who wishes to uphold the contract.

[1] See p. 63

Section 7
Kind and Quality of the Commodities to be Delivered

The seller shall deliver commodities of the kind and quality described in the contract. Where the contract stipulates the crop from which the commodities are to be supplied the seller shall supply fair average quality from this crop. If the contract for the sale of dried fruits or shell fruits does not stipulate the crop, the seller shall supply from a new crop. Where a contract for the sale of commodities of varying kind and quality, in particular different grades of the same produce, contains no terms as to the proportionate quantities the seller may determine the proportions as he pleases.

Section 8
Quantities

(1) The word "about" in front of a contractual statement of quantity entitles the seller to deliver up to 5 % more or less.

(2) The seller is allowed to deliver part-consignment of an economically reasonable size, except where a specific parcel, which at the time of the contract is already at the place of performance, is sold and the buyer is to take delivery there. If it is stipulated that the commodities are to be transported by containers, at least one full container shall be delivered as part-consignment.

(3) If the buyer has to take delivery of the commodities at the place of performance he may, within the time for accepting delivery, elect to demand delivery by part-consignments of an economically reasonable size.

(4) The delivery receipt given by the buyer is conclusive evidence of the delivery of the quantity stated therein. This provision does not apply to spices.

Section 8a
Certificates Proving Customs Tariff Preferences. Import Documents

If according to regulations agreed by the European Community or otherwise made the utilization of preferential customs tariffs may come into question or if according to these regulations the presentation of certificates or other documents issued from outside the Community is necessary for the import, the seller shall timely deliver to the buyer the documents which are required for proving the right to this preference or for the import; certificates shall be delivered by the printed form provided for in the respective regulation.

Section 9
Place of Performance of the Seller's Obligations

(1) The place of performance for the delivery of commodities is the seller's domicile, unless the circumstances indicate a different place of performance. Where a specific parcel is sold the place of performance is, in case of doubt, the place the parcel is situated when the contract is concluded. For contracts with documents for marine transport (Abladegeschäfte) and import transactions by land / dispatch, ex-quay and ex-warehouse transactions the special provisions of Part Two alone apply (sections 35, 54, 76, 90).

(2) The place of performance for the delivery and presentation of documents is the buyer's domicile. The seller shall bring the documents to the buyer's business premises or to the buyer's named bank.

Section 10
Time of Performance of the Seller's Obligations

(1) Where a time for the delivery of commodities or documents is neither agreed upon nor to be inferred from the

circumstances the buyer may demand delivery immediately. Where no time for accepting delivery is agreed upon or to be inferred from the circumstances the seller may deliver immediately.

(2) Where "prompt" dispatch has been agreed upon for forwarding from one inland place to another inland place the seller shall dispatch the commodities within one week if they are to be carried by road, and within two weeks if they are to be forwarded by inland waterway. For contracts with documents for marine transport (Abladegeschäfte) and import transactions by land / dispatch only the respective special provisions of Part Two (sections 39, 57) apply. In all other cases the word "prompt" denotes a period of three business days.

Section 11
Amount of the Purchase Price

(1) The buyer shall pay the seller the agreed purchase price without discount.

(2) If after the conclusion of a contract of sale a statute or statutory instrument is passed under which the import duties are altered with effect for the agreed time for delivery or a part of this time and in consequence thereof the seller's demonstrable expenses alter, the purchase price shall be adjusted by the amount of this difference. Included in the import duties in the sense of this article are customs duties, skimmed off duties and excise duties. Sentence 1 supra applies mutatis mutandis if the seller's demonstrable expenses alter in consequence of such other regulations as a market organisation or common organisation of agricultural markets may make.

Section 12
Due Date for Payment of the Purchase Price

Where a time for payment of the purchase price is neither agreed upon nor to be inferred from the circumstances the seller may demand payment immediately. As long as an agreed time for taking delivery has not expired the seller may not demand payment of the purchase price until the buyer demands delivery of the commodities.

Section 13
Cash against Documents. Other Cash Clauses. Payment from Letter of Credit

(1) Where "cash against documents" terms have been agreed upon the buyer shall pay the agreed purchase price without delay upon delivery by the seller of all the contractual documents duly constituted in accordance with the contract. The buyer may neither set off nor withhold the purchase price. He has no right to refuse performance. In particular he may not make payment dependent on prior inspection of the commodities not even in the event that the commodities have already arrived at their destination. The buyer's obligation to pay is not affected by any claims, objections or pleas on the grounds that the commodities do not correspond to the contract description. Any claims, objections or pleas of the buyer are only to be considered if particular circumstances make the seller's demand for payment appear to be abusive; seller's demand for payment especially is to be regarded as being abusive if and as far as the buyer has set off a claim which is undisputed or has become res judicata.

(2) If the buyer has contracted on "cash against documents" terms, he shall at the seller's request accept in trust contractual documents in good order, unless the seller makes the permission he gives to the buyer to dispose of or to use the documents dependent on conditions to the fulfilment of which the contract gives him no claim.

(3) Para. 1 is also applicable in cases where payment is to be made from a letter of credit against delivery of documents or if the word "cash" is used in any combination with the agreement on manner of payment.

Section 14
Documents Held in Trust

The buyer must return documents received in trust by 4 p.m. on the business day following their tender if he has not by that time fulfilled the conditions on which the seller had permitted him to dispose of or use them. Documents not in conformity with the contract are to be regarded as approved if the buyer does not return them in time. Where the buyer makes use of a document without first fulfilling the conditions on which the seller permitted him to dispose of or use it, these conditions are to be regarded as approved.

Section 15
Force Majeure

Both contracting parties are released from their obligation to perform where one party is prevented from performing by an unforeseeable, unavoidable event (force majeure) for which it is not responsible and which occurs after the contract is concluded. The party prevented from performing shall immediately inform the other party of the force majeure; if it fails to fulfil this obligation it will be liable in damages for non-performance of the contract.

Section 16
Delay in Performance

A party who by failing to perform on time causes a loss to another contracting party shall reimburse him for such loss.

Money debts shall bear interest of at least 2 percentage points above the current Base Rate (section 247 German Civil Code) per year (p.a.) from the date payment was due.

Section 17
Delay in Effecting a Principal Performance

(1) Principal performances in the sense of this section are: delivery of the commodities, delivery of documents, payment of the purchase price, call for delivery and such performances as are designated as principal in other section of these Conditions of Business.

(2) An obligee may grant an obligor a reasonable period of grace in which to effect an already due principal performance or to declare his readiness to perform the same. If the time has expired, he may elect to withdraw from the contract or to demand damages for non-performance, unless performance has been effected in time or the declaration of readiness to perform, for which declaration the period of grace was granted, has been made; the claim for performance is excluded. The consequences set out in sentence 2 do not follow where the obligee declares at the time that he reserves the right to claim performance. Section 376 HGB (German Code of Commercial Law)[2] remains unaffected.

(3) The respite must amount to at least three business days; it shall be notified in writing, by telegram, by telex, by telefax or by e-mail.

(4) As damages for non-performance the obligee may claim the difference to his disadvantage between the market price on the relevant date and the contract price. The relevant date is the first business day after expiry of the respite. When calculating damages in such a case any agreed "about" clause is not to be taken into account.

[2] See p. 64

(5) The obligee may choose to effect a covering transaction in order to ascertain damages. This covering transaction is to be for the obligor's account if the following conditions are observed:

a) The covering transaction is to be negotiated by an impartial, expert broker.

b) The broker shall first of all invite firms other than the contracting parties, which in his considered opinion come into consideration as business competitors, to make bids. He shall inform the obligor of the most favourable bid and invite him also to make a bid; the obligor shall not be heard if the covering transaction is being effected in order to ascertain damages for non-performance of another covering transaction in which the obligor was as such already a party. The broker shall then inform the obligee of the overall most favourable bid and invite him also to make a bid. A written note is to be made by the broker of the firms consulted and their bids. The covering transaction is to be concluded with the bidder who made the most favourable bid. In the case of a covering purchase the obligee's bid is not to be considered if no other bids have been made.

c) The covering transaction is to be commenced and carried out without delay.

d) In the case of a covering purchase any agreed "about" clause is not to be taken into account.

(6) Other calculations of damages are not excluded by paras. 4 and 5.

Section 18
Unjustified Refusal of a Principal Performance

(1) This section concerns principal performances in the sense of section 17 para. 1.

(2) Where one contracting party has without justification declared to the other party that it cannot or will not perform, the other party may elect between withdrawing from the contract or claiming damages for non-performance. In calculating damages paras. 4 to 6 of section 17 are to be applied. The relevant date in the sense of section 17 para. 4 is the first business day after the declaration as described in sentence 1 reaches the addressee.

Section 19
Commodities not in Conformity with the Contract. Rights of the Buyer

(1) If the commodities do not correspond to the contract description at the time when the risk passes to the buyer, he may avail himself, at his option, of the rights contained in paras. 2 to 6, insofar as the further necessary preconditions are satisfied. Concerning a sale of consumer goods of a consumer within the European Union a lack of conformity which becomes apparent within six months of passing of the risk to the consumer shall be presumed to have existed at the time of passing of the risk unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.

(2) The buyer may demand compensation from the seller amounting to the difference in value on the relevant date between the commodities which do not correspond to the contract description and commodities which do correspond to the contract description (depreciation).

(3) The buyer may demand rescission of the contract where the depreciation amounts to more than 10 % of the market price in force on the relevant date for commodities conforming with the contract description. The commodities not conforming with the contract description are to be invoiced back to the seller at this market price. Section 346 para 3 no. 3 BGB

(German Civil Code)[3] apply mutatis mutandis. Moreover the buyer may demand compensation for necessary expenses.

(3a) The buyer may demand, at his option, the removal of the defect by the seller or delivery of commodities free from defects as supplementary performance subject to section 439 BGB (German Cicil Code)[4] where the depreciation amounts to more than 10 % of the market price in force on the relevant date for commodities conforming with the contract description. The buyer may grant a seller a reasonable period of grace in which to supplementary perform. If the time has expired he may demand rescission of the contract subject to para 3 unless supplementary performance has been effected in time.

(4) The relevant date in the sense of paras. 2 and 3 is the day on which the buyer notified the seller that the commodities did not turn out to be in conformity with the contract description. If it comes to the making of a survey report in accordance with the Rules for Experts, the relevant date is that on which the experts drew up the survey report.

(5) The buyer may declare that he will not accept as performance, or permit to be treated as performance, delivery of commodities not conforming with the contract description if these commodities are not of the kind stipulated in the contract (generic defect) .

(6) More extensive legal claims for damages are excluded unless the seller maliciously kept silence with respect to the defect or guaranteed that the commodities are in conformity with the contract description. Legal claims regarding injury to life, body or health on incase of gross fault or concerning a sale of consumer goods of a consumer within the European Union remain unaffected.

(7) If the seller offers to rescind or to supplementary perform the contract, or if a survey report in accordance with the Rules for Experts has established a depreciation of more than 10 %, the seller may request the buyer to declare within three

[3] See p. 62
[4] See p. 62

business days after receiving the request whether he elects to rescind or to supplementary perform the contract. If the buyer does not declare his intention within this time he loses his right to rescind or to supplementary perform the contract. Such of the buyer's rights as are contained in para. 5 remain unaffected.

(8) Each lot tendered in effectuation of a permissible part delivery is to be judged independently. In this sense part deliveries also take place when in fulfilment of a contractual obligation several lots are tendered simultaneously.

(9) Each lot is to be judged as a whole. But where less than 10 % of the lot is not in conformity with the contract and this part can be separated without difficulty from the rest the separated part is to be judged independently.

(10) The provisions of paras. 1 to 4 and 6 to 9 apply also where the contract of sale includes the clause "Payment after approval of the commodities".

(11) The rights contained in paras. 2 – 5 are subject to a limitation period of six months beginning to run from delivery of the commodities unless the seller concealed fraudulently the defect or it concerns a sale of consumer goods of a consumer within the European Union.

Section 20
Commodities not in Conformity with the Contract. The Buyer's Duties

(1) The buyer shall inspect the commodities without delay after delivery by the seller, insofar as this is feasible in the orderly course of business. If the commodities were delivered by container and if the consignee forthwith dispatches the same container including the commodities remaining therein to another place, the buyer shall inspect the commodities without delay after the container has arrived at the place where the final consignee intends to have the commodities unloaded; if the consignee did not forthwith dispatch the container including

the commodities remaining therein to another place, the buyer shall inspect the commodities without delay after they could have been unloaded and taken in stock in the orderly course of business at the place of delivery. Where the buyer takes delivery of the commodities at a factory he needs not commence his investigation until they have arrived at their destination.

(2) If it is apparent that the commodities do not correspond to the contract description, he shall notify the seller without delay that the commodities have not turned out to be in conformity with the contract.

(3) If it is apparent that the commodities are not in conformity with the contract description, the buyer may not remove them, nor have them removed, from the place of inspection before their kind and quality have been established conclusively in a survey report drawn up in accordance with the Rules for Experts or by some other means; the place where the buyer inspected and established the kind and quality of the commodities before lodging a complaint, or otherwise the place where the buyer should at the latest have inspected them, is to be regarded as the place of inspection. If and insofar as the buyer acts contrary to this prohibition the commodities shall be regarded as having been approved.

(4) If the buyer has resold the commodities and moved them accordingly they are treated as having been approved, unless the non-conformity with the contract description was not noticeable in the course of a proper inspection.

(5)The special provisions contained in Part Two of these Conditions of Business apply to contracts with documents for marine transport (Abladegeschäfte), import transactions by land / dispatch, import transactions by land / collections, ex-quay and ex-warehouse transactions. If the buyer fails to notify the seller in time the commodities are to be treated as approved, unless the non-conformity was not noticeable in the course of a proper inspection.

Section 21
Shortages

A shortage need not be notified within the time laid down in section 377 HGB (German Code of Commercial Law)[5] if the buyer is not claiming supplementary delivery of the shortage but only a reduction in the purchase price. The claim for restitution of the excess purchase price paid becomes time-barred six months after delivery.

Section 22
Documents not in Conformity with the Contract. The Buyer's Duties

(1) The buyer shall return documents not in conformity with the contract, together with a statement of the reasons for their return, at the latest on the third business day after their delivery; the buyer may avail himself of reasons notified after the expiry of this time only where a reason given at first was well-founded and the defect was then corrected by the seller. If the buyer fails to return the documents properly and in time they are treated as having been approved, unless they are so defective or so incomplete that the seller must have considered approval out of the question.

(2) Documents not in conformity with the contract are also treated as having been approved where the buyer makes use of them. If the buyer makes use of the documents solely for the purpose of inspecting the commodities, they shall be treated as having been approved only where the sale was made on "cash against documents" terms.

[5] See p. 64

Section 23
Purchase Subject to Examination

(1) A contract of purchase subject to examination is concluded on the condition that the contract shall not take effect if the buyer declares to the seller that he does not wish to take the commodities.

(2) The buyer must make this declaration at the latest on the first business day after tender. If the declaration is not made in time, the contract is regarded as having been concluded unconditionally. If the declaration is not made in time or the taking is declared, the commodities are to be treated as approved, unless the non-conformity was not noticeable in the course of a proper inspection.

(3) The seller is bound to tender to the buyer commodities of the kind agreed upon. The tendering of such commodities is a principal performance in the sense of sections 17, 18; damages are to be calculated by reference to commodities of average quality.

Section 24
Purchase after Approval of Sample

(1) A purchase after approval of sample is concluded on condition that the buyer shall approve the sample.

(2) The seller shall tender to the buyer a sample of commodities of the kind which were sold. The tendering of such a sample is a principal performance in the sense of sections 17, 18; damages are to be calculated by reference to commodities of average quality.

(3) The buyer must approve the sample if it conforms with the contract description. Approving the sample is a principal performance in the sense of sections 17, 18.

Section 25
Inspection Costs

In every case the buyer shall bear the costs of the inspection which he is obliged to make and shall pay the seller for the samples which he draws.

Section 26
Transfer of Inspected Commodities from one Warehouse to Another

If the seller has not given the buyer sufficiently in advance the opportunity to supervise the transportation and re-storage he may not, without the buyer's prior approval, transfer or have transferred to another warehouse commodities which the buyer has already inspected. If the seller is guilty of contravening this regulation, the buyer may elect between withdrawing from the contract and claiming damages for non-performance. section 17 paras. 4 to 7 apply mutatis mutandis.

Section 27
Suspension of Payments

Where a party suspends its payments the other party may, within three business days of learning of the suspension of payments, resolve that pending transactions shall be settled immediately at the price which was in force for an equivalent transaction on the day payments were suspended.

Section 28
Reservation of Title

The seller retains the title to commodities which he has delivered as well as to products processed from them until payment of his individual claims and until settlement of any

balance in his favour on a running account, even where the commodities are to be processed (sections 947, 948, 950, 951 BGB [German Civil Code]). The buyer may sell commodities delivered to him and objects produced by working on them only in the orderly course of business. On concluding the contract of sale the buyer assigns as security to the seller all claims which he has under the sale or on any other legal basis. The buyer is entitled to collect the payments that he has assigned to the seller as long as he fulfils his contractual obligation to pay the seller. Where the total of the claims assigned exceeds the nominal value of the claim to be secured by more than 20% the seller shall select claims totalling the amount of the excess and reassign them to the buyer. If besides assigned claims other kinds of securities have been assigned, the total of all securities assigned has to be taken into account for the arising of a claim for release.

Section 29
Sale on Condition that the Seller Receives Delivery

(1) A party which has contracted to sell subject to its receiving correct and punctual delivery, or subject to a similar reservation, is released from its obligation to deliver or to guarantee delivery if it has previously concluded a corresponding contract of purchase and if under this contract it receives an incorrect or late delivery or no delivery at all. A contract of purchase meets this requirement if upon careful consideration the expectation of a correct, complete and punctual delivery was justified, and if the seller, concurrently with the sale, definitely and verifiably intended it to be for the purpose of obtaining the commodities to be delivered by himself. Where the seller entered a contract of purchase for the purpose of obtaining commodities to be delivered by himself under several contracts of sale he is released from his obligations to all the buyers only to the extent that he has not received correct, complete or punctual delivery; where the seller, concurrently with the contract of sale, definitely and verifiably settled an order of succession for the fulfilment of his

obligation to deliver, each contract of sale is to be regarded independently.

(2) Insofar as the buyer recognises that the seller is released from his obligation to perform he may demand that the seller assigns to him all the rights under the contract of purchase if he undertakes to perform the corresponding obligations of the seller.

(3) The seller is under a duty to inform the buyer without delay of any circumstance which puts in doubt the correct, complete or punctual delivery to himself. If the seller fails to do this without delay he will not be released from his obligations.

Section 30
Arbitration

(1) All disputes arising out of a contract concluded subject to these Conditions of Business or with a "Waren-Verein Arbitration" clause shall be decided by a Arbitral Tribunal; no action may be brought in a court of law. This arbitration clause also binds the personally liable partners of the contracting parties. The Arbitral Tribunal is competent to determine the validity of the main contract. The Arbitration Rules drawn up by the Members' Assembly of the Waren-Verein der Hamburger Börse e.V. shall govern the organisation of this Arbitral Tribunal, the procedure to be observed by it, the costs of the proceedings, the competence of ordinary courts (section 1062 ZPO [German Code of Civil Procedure]) and the responsibility of the Waren-Verein der Hamburger Börse e.V., its bodies and its staff including its advisor; for each act of the procedure the latest edition is applicable.

(2) If an arbitration award is annulled or an application for a declaration of enforceability of an award is rejected by the ordinary court for reasons other than the lack of a valid arbitration agreement, the arbitration agreement shall not be exhausted.

(3) Paras. 1 and 2 apply also to the relationship between one contracting party and a broker who has negotiated the contract or an agent who has negotiated or concluded the contract, as well as to the relationship between several participating brokers or agents.

Section 31
Experts

(1) In cases of dispute the depreciation of the commodities or the market price of commodities or a weight deficiency in sales by delivered weight (section 35 para. 4) may be verified by a survey report made in accordance with the Rules for Experts. The disputed condition and quality of commodities or of a sample can only be verified by a survey report drawn up in such a manner.

(2) The Rules for Experts are drawn up by the Members' Assembly of the Waren-Verein der Hamburger Börse e.V. For each act of the procedure the latest edition is applicable. The survey report is binding on the Court of Arbitration unless it is obviously wrong or is based on an incorrect procedure. A survey report made for preparations of vegetables, fruit, fish, crustacees and mollusces as well as provisionally preserved vegetables and fruit can not be questioned, if a party aggrieved by the survey report does not give notice, setting forth the reasons, if being resident outside Europe, the Mediterranean countries or the Black Sea countries within 7 business days, otherwise within 3 business days after receipt of the survey report, of the obvious incorrectness or the incorrect procedure to the other party.

(3) Paras. 1 and 2 apply also where Waren-Verein Arbitration was agreed upon.

Part Two

Additional Provisions for Specific Types of Transactions

I. CONTRACTS WITH DOCUMENTS FOR MARINE TRANSPORT

(Abladegeschäfte)

Section 32
Definition. Applicable Provisions

(1) Where commodities are sold which are to be, or were, shipped for carriage by sea (Abladegeschäft) the provisions of sections 32 to 51 apply. Such transactions are in particular those concluded on FAS, FOB, CFR and CIF basis.

(2) Where "ex-quay", "ex-warehouse", "ex-quay/warehouse", fot, FCA or DAT terms have been agreed at the same time, the provisions of sections 75 to 94 apply first.

Section 33
Shipping by the Seller or by a Third Party

The seller may also deliver commodities which were shipped by a third party.

Section 34
(repealed)

Section 35
Place of Performance. Passing of the Risk

(1) The place of performance for the delivery of commodities is the port of shipment.

(2) The risk passes to the buyer as soon as the commodities

- in the case of CIF, CFR and FOB transactions have been placed on board the ship in the port of shipment,
- in the case of FAS transactions have actually been accepted by the carrier,

and the seller's intention that the commodities are destined for the buyer has become quite clear.

(3) In case of dried fruits and shell fruits the buyer bears the risk of a natural loss in weight occurring during the voyage of only up to 1 % of the shipped weight. Where dried fruits or shell fruits have been sold on "delivered weight" terms the seller bears the full risk of a natural loss in weight until the commodities are discharged onto the quay.

(4) Where commodities sold on "delivered weight" terms are lost during the voyage the loss in weight which would, according to past experience, have taken place during the voyage shall be deducted from the shipped weight, and the purchase price shall be calculated on the basis of the remaining weight; the same applies where the commodities are damaged and gain in weight during the voyage.

Section 36 *)
Inspection Forbidden

After shipping the commodities the seller may no longer inspect or alter them. Nor may he make it possible for a third party to inspect or alter them after they have been shipped.

Section 37
Quantities. Weighing Fees

(1) It shall be presumed that the quantities certified in the bill of lading are correct. Where the weight of dried fruits or shell fruits has decreased during the voyage it shall be presumed that the total loss in weight is due to natural causes.

(2) The buyer can prove a weight deficiency only by presenting a weight list which a public appointed and sworn weigher or a comparable authorized person has issued at his request, which must be made at the latest five business days after completion of discharge of the ship; if experts have received within these five business days a request to determine the kind and quality of the commodities, the period is extended to ten business days. This rule of evidence does not apply if the commodities had been transported by container and the consignee has dispatched the same container from the port of destination to another place forthwith after discharge.

(3) The weighing fee is to be borne by the buyer.

Section 38
Reservation of the Right to Designate the Port of Destination

(1) Where the buyer has by contract reserved to himself the right to designate the port of destination the commodities may

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*****) See also section 46

only be shipped in accordance with his instructions on this point. The buyer is under a duty to send his instructions two weeks before commencement of the time for shipment, but no sooner than on the third business day after the contract is concluded. The sending of these instructions is a principal performance in the sense of sections 17, 18.

(2) The seller's agent and the broker who negotiated the transaction are authorized to receive such instructions.

Section 39
Time for Shipment

(1) Where a period of time has been stipulated for "Abladung", "Verladung" or "Verschiffung" (time for shipment) the commodities must be taken on board ship within this time. It is at the seller's option when he ships the commodities within the time for shipment.

(2) Where "prompt" delivery for shipment, loading or shipment has been agreed the following time stipulations in the sense of para. 1, beginning at the conclusion of the contract, shall be observed:

- 15 days for taking aboard commodities in European ports on the Baltic Seas the North Sea and the Atlantic Ocean with the exception of those in Spain and Portugal,
- 21 days for taking aboard commodities in ports in Spain and Portugal, on the Mediterranean and Black Seas, as well as on the east coast of North America including the Great Lakes,
- 30 days for taking aboard commodities in other ports.

(3) Where commodities are sold "afloat" they must be on board ship at the time the contract is concluded.

(4) Shipment is a principal performance in the sense of sections 17, 18. Where the time for shipment has not been observed the buyer may avail himself of the rights set out in

section 17, without first having granted the seller a period of grace in accordance with section 17 paras. 2 and 3.

Section 40
Carriage

(1) Unless expressly agreed otherwise the commodities may be carried directly or indirectly. Where direct carriage has been expressly agreed the ship may not, during the voyage from the port of shipment to the port of destination. call at any port which is further from the port of destination than is the port of shipment; the ship may only call at other intermediate ports which lie on a route that the ship would reasonably be expected to take, having regard to the shipping conditions prevailing when the contract was concluded.

(2) Transshipments are permissible if the shipper had already destined the commodities for the contractual port of destination on the first shipment.

Section 41
Advice of Shipment

(1) The seller shall inform the buyer of the name of the ship on which the commodities to be delivered under the contract have been shipped (advice of shipment); if the commodities are carried by container, the seller shall at the same time inform the buyer of the number of the container. In the case of spices the seller shall also inform the buyer of the date of the bill of lading and the marking of the commodities.

(2) The seller shall send the advice of shipment at the latest on the third business day after the shipment. If the advice is sent after expiry of this time and in consequence thereof the buyer is demonstrably damaged, the seller has to compensate for the damage. The obligation for the sending of the advice of shipment falls due at the latest on the third business day after expiry of the time for shipment.

(3) Where commodities are sold afloat time begins with the expiry of the day on which the contract was concluded.

(4) On the sending of the advice of shipment the purchase is limited to the commodities designated therein. The seller may only deliver such commodities as have been shipped according to the advice. Minor errors in the advice impose no liability on the seller.

(5) The rendering of the advice of shipment is a principal performance in the sense of sections 17, 18.

(6) The seller's agent and the broker who negotiated the transaction are authorized to render and to receive the advice of shipment.

Section 42
Documents

(1) The seller shall deliver to the buyer one of the following documents:

a bill of lading,

a shipping certificate,

a quay receipt or

a delivery order of the shipping company.

The shipping document must designate the port of loading, the day of shipment, the name of the vessel, the port of destination, and the kind and quantity of the commodities; if Carriage by Container was stipulated, the shipping document must designate the number of the container and indicate whether the container is intended for on-carriage from the port of destination. The seller shall also deliver an invoice and if necessary the certificates mentioned in section 8a. In the case of CIF contracts the

insurance policy

is to be attached; this shall show coverage for the commodities to the purchase price plus 10 % anticipated profits in

accordance with the German General Rules of Marine insurance (M.I.R.) together with Supplementary Clauses in the latest current edition or some equivalent coverage and shall contain damage without franchise and with war risks clauses; to the extent that the premium for war risks exceeds 1/2 % the seller shall be reimbursed by the buyer. The contents of all documents must conform with the contract of sale. In the case of spices, bills of lading, shipping certificates and delivery orders may not bear a delivery stamp of the shipping company. In other cases, bills of ladings shipping certificates and delivery orders may be tendered even Where they bear the shipping company's delivery stamp.

(2) Documents which indicate that a delivery for shipment, a carriage, or the kind and quality or quantity of commodities was not in conformity with the contract (incorrect documents), and those documents which in some other respect fail to meet the requirements of para. 1, or those to which not all documents to be delivered in accordance with paras. 1 and 4 or some special agreement have been attached (incomplete documents) need not be accepted by the

buyer as performance. In the case of spices, bills of lading, shipping certificates and delivery orders bearing a delivery stamp of the shipping company are regarded as incorrect documents.

(3) The seller shall deliver the documents to the buyer without delay after the rendering of the advice of shipment. This obligation falls due at the latest when the vessel reaches the port of destination.

(4) If the documents are not tendered until the vessel has been discharged in the port of destination for longer than one business day, they must be accompanied by a certificate from the seller and each previous seller showing how long each has had the documents in his possession after completion of discharge. During this time no seller may hold the documents in his possession for longer than one business day; each seller shall pass them on to his buyer as quickly as possible and by the fastest means which can be expected of him.

(5) If the documents are not tendered until the vessel has been discharged in the port of destination for longer than one business day, the following provisions apply instead of para. 4 as far as dried fruits and shell fruits are concerned: on request declared by the buyer before documents according to contract having been tendered, the said documents must be accompanied by a certificate of the seller and each previous seller who has passed on the documents later than the first business day after completion of discharge and after receiving the respective request, showing how long each has had the documents in his possession after completion of discharge. This obligation of the seller ceases if he has already passed the contractual documents to the buyer before receiving the request and notified the buyer of this without delay. During this time no seller may hold the documents in his possession for longer than one business day. Each seller may pass the documents at his choice to his buyer by mail or through mediation of a bank; the duration of this forwarding is not to be considered as possession of a seller.

(6) The delivery of the documents and the delivery of the certificates described in paras. 4 and 5 are principal performances in the sense of sections 17, 18.

Section 43
Call

(1) Where delivery on call has been agreed upon the quantity called for is to be shipped within 14 days of call; if no cargo space is available within the second half of this period, shipment on the next departing vessel suffices. The buyer may call for instalments of an economically reasonable size. Where no time for the call has been stipulated the buyer must call for delivery within a reasonable time. The call is a principal performance in the sense of sections 17, 18.

(2) Where delivery on call has been agreed and at the same time a time for shipment has been stipulated the buyer may, at his option, call for the whole quantity or instalments of an

economically reasonable size at any time between the commencement of the time for shipment and 14 days before the end of this period. The buyer shall call for the whole quantity not later than 14 days before the expiry of the time for shipment; if a call is not made within this period, the seller is entitled to ship the goods without a call.

(3) If carriage by container is stipulated, at least one full container is to be called as an instalment.

Section 44
Shipment not in Conformity with the Contract. Carriage not in Conformity with the Contract

(1) Where the advice of shipment shows that the commodities described therein were not shipped or are not being carried in time, or that the shipment or carriage fails in some other respect to conform with the contract, the buyer may, at his option, withdraw without further ado from the contract or claim damages for non-performance, or accept the commodities as performance and in addition claim those damages resulting from the breach of the contract. After the advice of shipment has been received the seller can set the buyer a time limit for choosing one of these rights. If the buyer does not inform the seller of his choice in time, he is only entitled to claim damages for non-performance. The time must amount to at least three business days.

(2) If damages for non-performance are claimed, paras. 4 to 6 of section 17 are applicable in calculating them. The relevant date is the first day after the receipt of the buyer's declaration that he chooses to claim damages for non-performance, and at the latest the first business day after expiry of a time set by the seller in accordance with para. 1.

Section 45
Documents not in Conformity with the Contract

(1) Where the seller of spices has offered incorrect documents the buyer may, at his option, without further ado withdraw from the contract or claim damages for non-performance. Further attempts to perform by the seller (second tenders) are excluded. In calculating the damages paras. 4 to 6 of section 17 are applicable. The relevant date is the first business day after the rejection of the incorrect documents. Instead of rescinding and claiming damages for non-performance the buyer may demand delivery of correct documents if he notifies the seller of this within three business days after tender of the documents. Insofar as the seller of spices has offered incomplete documents he may and must complete these or supplement them by means of further documents.

(2) Where the seller of other commodities has offered incorrect or incomplete documents and the buyer has refused to accept such documents, second tenders by the seller are not excluded. The buyer can set the seller a reasonable time for tendering correct and complete documents. If the time has expired he may, at his option, withdraw from the contract or claim damages for non-performance unless performance has been effected in time. The time must amount to at least three business days, and is to be stipulated in writing, by telegram, by telex, by telefax or by e-mail. In calculating the damages paras. 4 to 6 of section 17 are applicable.

Section 46
Inspected Parcels

A parcel which, contrary to section 36, has been inspected need not be accepted by the buyer as performance. Where the seller has tendered such a parcel the buyer can to that extent, at his option, without further ado withdraw from the contract or claim damages for non-performance. In calculating the damages paras. 4 to 6 of section 17 are applicable. The

relevant date is the first business day after the rejection of the documents.

Section 47
Delay in the Forwarding of Documents

Where the seller does not observe the time limit set out in section 42 para. 4 sentence 2 or para. 5 sentence 4, he shall indemnify his buyer for any loss which can be shown to have been caused by the delay. A seller in a chain shall also reimburse his buyer for the loss that the latter can be shown to have suffered through the default of a previous seller.

Section 48
Commodities not in Conformity with the Contract. The Buyer's Rights

(1) If the commodities do not correspond to the contract description at the time the risk passes to the buyer, the provisions of section 19 apply.

(2) Insofar as the commodities are not of the kind described in the contract the buyer may, at his option, without granting a period of grace withdraw from the contract or claim damages for non-performance. In calculating the damages paras. 4 to 6 of section 17 are applicable. The relevant date is the day on which the buyer notifies the seller that the commodities have not turned out to be in conformity with the contract.

(3) If the buyer has rejected the commodities with regard to a generic defect (section 19 para. 5) or if he had demanded rescission of the contract (section 19 para 3), he shall return the commodities to the seller at the place of the port of destination. This provision applies even if the consignee had transferred the commodities before their inspection (section 49) from the port of destination to another place.

Section 49
Commodities not in Conformity with the Contract.
The Buyer's Duties

(1) If the commodities were carried by container and the consignee dispatches the same container including the commodities remaining therein forthwith after the discharge from the port of destination to another place, the buyer shall inspect the commodities without delay after the container has arrived at the place where the final consignee intends to have the commodities unloaded.

(2) If the commodities were carried by container and the consignee did not dispatch the container including the commodities remaining therein forthwith after the discharge from the port of destination to another place, the buyer shall inspect the commodities without delay after they could have been unloaded on the quay of the port of destination or in a warehouse at the place of the port of destination in the orderly course of business.

(3) In all other cases the buyer shall i inspect the commodities without delay as soon as the discharge of the vessel is completed and insofar as this is feasible in the orderly course of business. Where the seller already notifies the buyer before the commodities have been discharged, the time for inspection begins on receipt of this notification. Under no circumstances does the time for the inspection of the commodities begin before the buyer has received the documents.

(4) If it is apparent that the commodities do not correspond to the contract description, the buyer shall without delay notify the seller that the commodities have not turned out to be in accordance with the contract. This time limit is regarded in any event as having been observed if the complaint is received by the seller within three business days after the beginning of the time for inspection. If the buyer fails to notify the seller in time, the commodities are to be treated as approved, unless the non-conformity was not noticeable in the course of a proper inspection. If the buyer has sold the commodities to a third party and has forwarded the documents accordingly, it suffices

to preserve his rights if he forwards without delay the notification received from his buyer. He is, however, responsible to the seller for the punctual sending of the notification by his buyer and subsequent buyers.

(5) Where in the case of para. 1 the carrier charged with the on-carriage has delivered the commodities to the final consignee, the commodities are deemed to have been approved if the buyer or a subsequent buyer transfers the commodities to a place outside the destination before a survey report in accordance with the Rules for Experts has been drawn up; the commodities are not deemed to have been approved if their non-conformity with the contract description was not noticeable in the course of a proper inspection. The same provision applies in the case of para. 2 if the buyer or a subsequent buyer has removed the commodities from the place at which they were unloaded before a survey report in accordance with the Rules for Experts has been drawn up. The same provision applies in the case of para. 3 if a buyer or a subsequent buyer has removed the commodities from the quay before a survey report in accordance with the Rules for Experts has been drawn up.

(6) Should circumstances for which the buyer is not responsible prevent him from inspecting the commodities or sending notification, he shall without delay inform the seller of this fact. If the buyer fails to inform the seller in time he may not invoke these circumstances. If the seller was responsible for such a circumstance, the buyer need do nothing to fulfil the obligations laid out in paras. 1 to 4, unless and until the seller notifies him that this obstacle has been removed.

Section 50
Shortages. The Buyer's Duties

The last buyer shall forward the weight list to his seller within ten business days of its date. The other buyers in the chain shall forward the weight list without delay to their respective sellers. If the times for forwarding the weight list are not

observed, the weight stated in the bill of lading is treated as accepted; each buyer is responsible for the punctual forwarding of the weight list by his buyer and subsequent buyers. The claim for compensation for shortages is time-barred six months after completion of discharge of the vessel.

Section 51
Letter of Credit

(1) Where the parties have agreed upon a letter of credit arrangement for the payment of the purchase price the buyer is responsible for the bank's notifying the seller of the availability of the money ten days before commencement of the period for shipment; where the contract is concluded later than on the eleventh day before the commencement of this period the buyer is responsible for the bank's notifying the seller immediately of the availability of the money.

(2) Ensuring that the notification is received in time is a principal performance in the sense of sections 17, 18.

II. IMPORT TRANSACTIONS BY LAND / DISPATCH

Section 52
Concept. Applicable Provisions

Where it is agreed that the seller shall dispatch the commodities by rail over a national frontier (railway import transaction) or where it is agreed that the seller shall dispatch the commodities by road over a national frontier (truck import transaction), the provisions of sections 52 to 65 apply.

Section 52a
(repealed)

Section 53
Export Duties. Customs Duties. Unloading Costs

(1) The duties connected with the export from the supplying country are to be borne by the seller, even where such duties are levied in transit.

(2) The costs for unloading are invariably to be borne by the buyer.

Section 54
Place of Performance. Passing of the Risk

(1) The place of performance of the obligation to deliver is the place of loading. For railway import transactions the risk passes over to the buyer as soon as the railway authority has accepted the commodities for carriage with the waybill. For truck import transactions the risk passes over to the buyer as soon as the carrier has accepted the commodities for carriage.

In either case the risk does not pass over to the buyer until in addition the seller's intention that the commodities accepted for transport are destined for the buyer has become evident. In the case of dried fruits and shell fruits the buyer bears the risk of a natural weight depreciation occurring during transit of only up to 1 % of the loaded weight; transit is at an end when the waggon or the truck arrives at the place where the final consignee intends to have the commodities unloaded.

(2) Section 9 para. 1, sentence 3, remains unaffected.

Section 55
Weight. Burden of Proof

The loaded weight declared by the consignor on the waybill or on the consignment note is presumed to be correct. Where the weight of dried fruits or shell fruits has decreased during transit it shall be presumed in the buyer's favour that the total weight depreciation is due to natural causes; transit is at an end when the waggon or the truck has arrived at the place where the final consignee intends to have the commodities unloaded.

Section 56
Reservation of the Right to Designate the Destination

(1) Where the buyer has by contract reserved to himself the right to designate the place of destination or the name of the consignee or both (destination) the seller may only dispatch the commodities in accordance with the buyer's instructions on this point. The buyer is under a duty to send such instructions two weeks before commencement of the time for dispatch or the time for delivery but not earlier than on the third business day after conclusion of the contract. The sending of these instructions is a principal performance in the sense of sections 17, 18.

(2) The seller's agent and the broker who negotiated the transaction are treated as authorised to accept the buyer's instructions as to the destination.

Section 57
Time for Dispatch. Time for Delivery

(1) in the case of railway import transactions, where a period of time for dispatch has been agreed upon, the commodities must have been accepted for carriage with the waybill by the railway authority Within this period; the relevant date is the one stamped on the waybill with the date-stamp of the forwarding station. In the case of truck import transactions, where a period of time for dispatch has been agreed upon, the commodities must have been accepted for carriage by the carrier and have been loaded on to the truck by this time. It is at the seller's option when he has the corn modifies accepted for carriage within this time. Dispatch is a principal performance in the sense of sections 17, 18. Where the period of time for dispatch is not observed the buyer may avail himself of the rights contained in section 17 without first granting the seller a period of grace in accordance with section 17 paras. 2 and 3.

(2) if "prompt" dispatch has been agreed upon, the seller shall dispatch the commodities within ten days of the conclusion of the contract of sale.

(3) if the seller has undertaken the obligation of delivering the commodities within a certain period of time, he is under a duty to place the commodities at the disposal of the buyer at the place of destination within this period.

Section 58
Advice of Dispatch. Appropriation

(1) The seller shall notify the buyer of the particulars of loading (advice of dispatch). That is to say

- in the case of railway import transactions: the quantity loaded, the date stamped on the waybill with the date-stamp of the forwarding station, the number of the waggon on which the commodities were loaded and if applicable the number of the container.
- in the case of truck import transactions: the quantity loaded, the date of loading, the name of the carrier, the official registration number of the truck on which the commodities were loaded and if applicable the number of the container.

(2) The seller shall render the advice of dispatch at the latest on the third business day after the loading. If the advice is rendered after expiry of this time and in consequence thereof the buyer is demonstrably damaged, the seller has to compensate for the damage. The obligation for the rendering of the advice of dispatch falls due at the latest on the third business day after expiry of the time for dispatch.

(3) Rendering of the advice of dispatch is a principal performance in the sense of sections 17, 18.

(4) The purchase is confined by the advice of dispatch to the commodities designated therein. The seller may only deliver such commodities as have been forwarded according to the advice of dispatch. Minor errors in the advice of dispatch impose no liability on the seller.

(5) The seller's agent and the broker who negotiated the transaction are treated as authorised to accept and render the advice of dispatch.

(6) The seller is under a duty to render the advice of dispatch stipulated in para. 1 to the buyer even if in accordance with an assignment or instructions of the buyer the commodities are dispatched directly to a third party.

Section 59
Delivery for Carriage by the Seller or by a Third Party

The seller may also deliver commodities which were delivered for carriage by a third party.

Section 60
Delivery on Call

(1) Where delivery on call has been agreed upon the seller shall dispatch the quantity called for within two weeks of call. The buyer may call for instalments of an economically reasonable size. If no time limit has been agreed upon for the call, the buyer must call for delivery of the commodities within a reasonable time.

(2) Where delivery on call has been agreed upon and in combination with this a time for dispatch has been stipulated the buyer may, at his option, call for the whole quantity or instalments of an economically reasonable size at any time between the commencement of the time for dispatch and two weeks before the end of this period. The buyer is under a duty to call for the whole quantity at the latest two weeks before expiry of the time for dispatch; if the call has not been made in time the seller may dispatch without call.

(3) If carriage by container is stipulated, at least one full container is to be called as an instalment.

(4) The call is a principal performance in the sense of sections 17, 18.

Section 61
Cash against Documents. Letter of Credit

(1) Where "cash against documents" terms have been agreed upon the buyer shall pay the contractual purchase price upon delivery of the following documents:

— in the case of all import transactions against delivery of the certificates mentioned in section 8a if necessary,

— in the case of railway import transactions against delivery of the duplicate of the waybill and the seller's invoice,

— in the case of truck import transactions against delivery of the first copy of the consignment note (Article 5 CMR) and the sellers invoice; the consignment note must contain an entry by the sender to the effect that from the time when the consignment note is drawn up, the consignee shall have the right of disposal (Article 12, para. 3 CMR). In the case of dispatch in countries not adhering to the Convention on the Contract for the International Carriage of Goods by Road (CMR), payment is to be effected against delivery of equivalent documents.

Where letter of credit terms have been agreed upon, payment from this letter of credit is to be made upon delivery of the same documents.

(2) The buyer has no actionable claim for the delivery of the waybill duplicate or of the first copy of the consignment note (Article 5 CMR) or of an equivalent document. The delivery of these documents is merely a precondition of the buyers obligation to perform first contained in para. 1.

Section 62
Commodities not in Conformity with the Contract. The Buyer's Duties

(1) As soon as the waggon or the truck or if applicable the container has arrived at the place where the final consignee intends to have the commodities unloaded, the buyer shall inspect them without delay, insofar as this is feasible in the orderly course of business. If it is apparent that they do not accord with the contract description, the buyer shall notify the seller without delay that the commodities have not turned out to be in conformity with the contract. If the buyer fails to notify the seller in time, the commodities are deemed to have been

approved, unless their non-conformity with the contract description could not be observed on proper inspection. Where the buyer has resold the commodities on terms that his buyer shall take delivery of them from the railway authority or from the carrier, it is sufficient to preserve his rights if he forwards without delay the notification received from his buyer. He is, however, responsible for the sending in due time of the notification from his buyer and subsequent buyers.

(2) Where the railway authority or the carrier has delivered the commodities to the consignee they are deemed to have been approved if the buyer or a subsequent buyer in the sense of para. 1 transfers them to a place outside the place of destination before a survey report in accordance with the Rules for Experts has been drawn up. The commodities are not deemed to have been approved if their non-conformity with the contract description could not be observed in proper inspection.

Section 63
Shortages. The Buyer's Duties

Where the seller delivers less than he has invoiced to the buyer, the latter must lodge a complaint about the short-delivery as soon as the waggon or the truck or if applicable the container has arrived at the place where the final consignee intends to have the commodities unloaded. If the buyer fails to lodge a complaint without delay, the quantity stated in the invoice is deemed to have been accepted. Where the buyer has resold the commodities on terms that his buyer shall take delivery of them from the railway authority or from the carrier, it is sufficient to preserve his rights if he forwards without delay the notification received from his buyer. He is, however, responsible for the sending in due time of the notification from his buyer and subsequent buyers.

Section 64
Import Duties on Rescission of the Contract

Import duties paid by the buyer are only to be included in the expenses which he may recover from the seller on rescission of the contract if the non-conformity of the commodities with the contract description could not be observed on proper inspection.

Section 65
Demurrage

Each buyer may demand that the seller arranges matters so that the buyer will not be charged with demurrage for the period of time including the first business day after the tendering of the goods.

III. IMPORT TRANSACTIONS BY LAND / COLLECTION

Section 66
Concept. Applicable Provisions

Where it is agreed that the buyer shall collect the commodities and where it is envisaged by the parties that the commodities are then to be forwarded over a national frontier the provisions of sections 66 to 74 shall apply.

Section 67
Export Duties. Customs Duties

The duties connected with export from the supplying country are to be borne by the seller, even where such duties are levied in transit.

Section 68
Carriage

(1) The seller may and must keep the commodities in a container ready for collection only if this has been specially stipulated. Such agreement may be implied from the circumstances, especially from the quantity of packages sold. As far as dried fruits or shell fruits are concerned, the contents of each container must be specially marked.

(2) In case of doubt the buyer is to have the commodities collected from the seller by motor vehicle.

Section 69
Time of Performance for Obligations of the Seller

Where a period for taking delivery is agreed the buyer can demand delivery of the commodities at any time within this period at his option. However, he must notify the seller of the collection in reasonable time; a notification period of three business days is deemed under all circumstances to be sufficient.

Section 70
Delivery on Call

(1) Where delivery on call has been agreed upon the seller shall hold ready for collection the quantity called for within two weeks of call. The buyer may call for instalments of economically reasonable size. If no time limit has been agreed upon for the call, the buyer must call for delivery of the commodities within a reasonable time.

(2) Where delivery on call in combination with a period for taking delivery or for delivery has been agreed upon the buyer may, at his option, call for the whole quantity or instalments of an economically reasonable size at any time between the commencement of this period and two weeks before the end of this period. The buyer shall call for the whole quantity at the latest two weeks before the end of the period for taking delivery or for delivery.

(3) If carriage by container is stipulated, at least one full container is to be called as an instalment.

(4) The call is a principal performance in the sense of sections 17, 18.

Section 71
Cash against Documents. Letter of Credit

(1) Where "cash against documents" terms have been agreed upon the buyer shall pay the contractual purchase price upon delivery of a seller's invoice and a certificate of receipt duly issued by the railway authority or the carrier or a forwarding agent authorized by the buyer. The certificate of receipt must contain clear indication of the railway authority or the carrier or a forwarding agent; it must bear the stamp or the signature of the railway authority or the carrier or a forwarding agent. Where letter of credit terms have been agreed upon, payment from this letter of credit is to be made upon delivery of the same documents.

(2) The buyer has no actionable claim for the delivery of the certificate of receipt mentioned in para. 1. The delivery of this document is merely a precondition of the buyer's obligation to perform first contained in para. 1.

Section 72
Commodities not in Conformity with the Contract. The Buyer's Duties

The provisions of section 62 shall apply analogously.

Section 73
Shortages. The Buyer's Duties

The provisions of section 63 shall apply analogously.

Section 74
Import Duties on Rescission of the Contract

Import duties paid by the buyer are only to be included in the expenses which he may recover from the seller on rescission of the contract if the non-conformity of the commodities with the contract description could not be observed on proper inspection.

IV. EX-QUAY TRANSACTIONS

Section 75
Applicable Provisions

(1) Where it is agreed that the seller shall deliver the commodities ex-quay the provisions of sections 75 to 88 shall apply.

(2) These provisions apply also where commodities are sold with a stipulation as to the time, place or other circumstances of the shipping (shipping clause).

Section 76
Place of Performance. Passing of the Risk

The place of performance of the obligation to deliver is the place in the port where the quay from which the commodities were sold is situated. The risk passes to the buyer on taking delivery of the commodities, at the latest on expiry of the time for taking delivery. The buyer bears the risk of removing the commodities.

Section 77
Tender

(1) The seller shall tender the commodities to the buyer by forwarding to him one of the following documents:

a) a stamped bill of lading,

b) a delivery order stamped by the shipping company or the shipping company's representative,

c) a dock warrant with the acceptance stamp of the dock authority,

d) a warehouse receipt or an irrevocable delivery order of the quay warehouse concern,

moreover an invoice and if necessary the certificates mentioned in section 8a.

Where no "cash against documents" or other prepayment terms were agreed the seller may forward a delivery order signed only by himself instead of the documents designated in a) to d).

(2) Where commodities are sold ex-quay with a shipping clause the buyer may demand the presentation of a bill of lading or other document to prove correct and punctual shipment.

(3) Where the commodities are in a free port and they are sold "duty free" or it is agreed in a similar manner that the buyer shall not be liable for import duties the seller shall at the same time forward to him a customs clearance form. In the clearance form, the seller or a prior seller shall name a customs declarant or other firm and instruct them to effect customs clearance and to pay import duties. If the customs clearance form is issued by the seller he shall date it with the date of tender. The date of an entry form issued by a prior seller may not lie longer than five weeks in the past.

(4) The seller may tender only such commodities as are available on the quay in the ordinary course of trade at the time of tender. If the contract contains the shipping clause that the commodities are to be shipped by a container intended for and appropriate to on-carriage from the port of destination, the seller is not obliged to unload the commodities from the container.

(5) If the seller offered incorrect or incomplete documents and if the buyer refused to accept such documents, further attempts to perform by the seller (second tender) are not excluded. Second tenders are not excluded even where the sale is ex-quay with a shipping clause.

(6) The tender is a principal performance in the sense of section 17, section 18.

Section 78
Appropriation

The purchase is confined by the tender to the commodities designated therein. The seller may deliver only such commodities as correspond to the tender. Where commodities are sold with a shipping clause this appropriation also takes effect on dispatch of the advice of shipment.

Section 79
Concept of the Quay

The seller may tender the commodities from any quay in the stipulated port.

Section 80
Period for Taking Delivery

(1) The buyer shall take delivery of the commodities with in two weeks of tender (period for taking delivery). Taking delivery is a principal performance in the sense of sections 17, 18.

(2) Until expiry of the third business day after tender, the commodities are stored at the seller's expense; where cash against documents has been agreed this period runs until the fourth business day after tender. On expiry of this period the commodities are stored at the buyer's expense.

Section 81
Handling and Weight Dues

The seller and the buyer shall each bear half of the cargo dock dues or corresponding dues. Weight fees or corresponding dues are to be borne by the seller. If the buyer has the commodities weighed in a manner differing from the usual one

on the quay, the additional costs caused thereby are for his account.

Section 82
Damage in Transit

(1) Commodities which have been damaged in transit and whose value has in consequence depreciated by more than 5 % need not be accepted by the buyer as performance if the seller could have detected this damage on proper inspection. If a parcel was partially damaged in transit, the buyer must accept the undamaged part as performance if the seller pointed out the damage to him at the time of tender. If the seller has failed to point out the damage, the buyer may reject the whole parcel and demand performance whereby the seller tenders to him the undamaged part after sorting it. The buyer may, at his option, accept the commodities as performance and claim to recover the value depreciation.

(2) Where the value of the commodities damaged in transit has depreciated by not more than 5 % the buyer may claim to recover the value depreciation.

(3) In both cases the buyer may, at his option, accept the damaged commodities as performance against payment of the full purchase price, and demand at the same time that the seller assign to him the claims against the marine insurer and transfer to him the insurance policy.

Section 83
Commodities not in Conformity with the Contract. The Buyer's Duties

(1) The buyer shall inspect the commodities on the quay, insofar as this is feasible in the orderly course of business. If it is apparent that they do not conform with the contract description, the buyer shall notify the seller within three

business days after tender that the commodities have not turned out to be in accordance with the contract. A longer period does not apply even if the sale is on "cash against documents" terms. In the case of spices the time for lodging a complaint amounts to seven business days.

(2) If the commodities were tendered by container and the consignee dispatches the same container including the commodities remaining therein to another place within the period for taking delivery, the buyer shall inspect the commodities without delay after the container has arrived at the place where the final consignee intends to have the commodities unloaded. If the commodities were tendered by container and the consignee did not dispatch the same container including the commodities remaining therein to another place within the period for taking delivery, the buyer shall inspect the commodities without delay as soon as they could have been unloaded after expiration of the period for taking delivery on the quay or on a warehouse at the place of the quay in the orderly course of business.

(3) If the buyer fails to notify the seller in times the commodities are to be treated as approved, unless the non-conformity was not noticeable in the course of a proper inspection.

(4) If force majeure or circumstances for which the seller is responsible prevent the buyer from inspecting the commodities or making the declaration, the buyer shall notify the seller of this without delay. In such a case the period laid down in para. 1 commences when the seller notifies the buyer that the obstacle has been removed.

Section 84
Short Weights and other Shortages

(1) The delivery receipt given by the buyer is conclusive evidence of delivery of the quantities stated therein. This provision does not apply to spices.

(2) The buyer may only prove a weight deficiency by presenting a weight list supplied by a public appointed and sworn weigher or a comparable authorized person. This does not apply if the commodities were tendered by container and were not unloaded from the container on the quay.

Section 85
"Duty Paid"

(1) Where commodities are sold on "duty paid" or similar terms the seller shall pay all import duties if the buyer or a subsequent buyer requested the firm specified in the customs clearance form within six weeks of the date of that form to clear the commodities. If this time limit is not observed, the seller need only pay those import duties which he would have had to pay if the commodities had been cleared on the last day of the six week period. Section 11 para. 2 is applicable provided that the time stipulated therein under No. 1 does not end before expiry of the six week period contained in sentence 1.

(2) The seller is responsible for obtaining an import licence, the need for which was known at the time the contract was concluded X for the six week period laid out in para. 1. Furthermore the seller is bound to bear the costs of the customs clearance. Where the quantity sold by him is not cleared all at once he shall only bear the costs up to the third clearance.

(3) The subsequent buyer who identifies himself as the possessor of the seller's customs clearance form acquires directly the right to demand that the seller perform his obligations set out in paras. 1 and 2. The contracting parties are not entitled to cancel or vary the right of the subsequent buyer without his agreement.

Section 86
Ex-Quay Transactions with a Shipping Clause

Where commodities are sold ex quay with a shipping clause the provisions of sections 44, 45 apply also. The seller is released from his obligation to deliver if the commodities are lost after the advice of shipment has been sent; the seller may not in such event claim the purchase price, but the buyer may, at his options demand that the seller, against payment of the full purchase price, assign to him claims against the marine insurer and transfer to him the insurance policy.

Section 87
Time for Delivery

(1) The agreement of a time for delivery does not, in case of doubt, make the purchase a time-bargain. If the time for delivery is agreed to be "without period of grace" a time-bargain is, in case of doubt, presumed.

(2) The agreement of a time for delivery does not mean that only such commodities may be delivered as were set on the quay within the time for delivery.

Section 88
Ex-Quay/Warehouse

Where commodities are sold "ex-quay/warehouse" or on similar terms, the seller may tender them at his option ex-quay or ex-warehouse. If he elects to tender ex-quay the provisions of sections 75 to 88 apply.

V. EX-WAREHOUSE TRANSACTIONS

Section 89
Applicable Provisions

(1) Where it is agreed that the seller shall deliver the commodities ex-warehouse, the provisions of sections 89 to 94 apply. The provisions of sections 75 to 88 for ex-quay transactions are to apply analogously and supplementarily thereto.

(2) The same provisions are similarly applicable where commodities are sold "ex-quay/warehouse" or on similar terms and the seller tenders ex-warehouse.

Section 90
Place of Performance. Passing of the Risk

The place of performance of the seller's obligation to deliver is the place where the warehouse is situated. The risk passes to the buyer when he takes delivery of the commodities, or at the latest at expiry of the time for taking delivery. The buyer bears the risk of removing the commodities.

Section 91
(repealed)

Section 92
Tender

The seller shall tender the commodities to the buyer by delivering a warehouse receipt or an irrevocable delivery order of the warehouse keeper. Where "cash against documents" or

other prepayment terms are not agreed, a delivery order signed only by the seller himself suffices instead of the documents specified in sentence 1. Where cash against documents is agreed, or where the tender is from a warehouse situated in the free port, an invoice is to be attached.

Section 93
Period for Taking Delivery

(1) The buyer shall take delivery of the commodities within two weeks of tender (period for taking delivery). Taking delivery is a principal performance in the sense of sections 17, 18.

(2) The commodities are stored at the seller's expense for the duration of the period for taking delivery.

Section 94
Costs of Removing the Commodities

The buyer bears the costs of removing the commodities.

The Conditions of Business of the Waren-Verein refer at several points - sections 6 (1), 17 (2), 19 (3) and (3a) and 21 - to certain provisions of the German Civil Code (Bürgerliches Gesetzbuch [BGB]) or of the German Code of Commercial Law (Handelsgesetzbuch [HGB]). For better understanding of the text of the Conditions of Business these provisions are printed below:

Section 275 BGB Exclusion of the obligation to perform

(2) The obligor may refuse to perform in so far as performance requires expenditure which, having regard to the subject matter of the obligation and the principle of good faith, is manifestly disproportionate to the obligee's interest in performance. When determining what may reasonably be required of the obligor, regard must also be had to whether he is responsible for the impediment.

(3) Moreover, the obligor may refuse to perform if he is to effect the performance in person and, after weighing up the obligee's interest in performance and the impediment to performance, performance cannot be reasonably required of the obligor.

Section 346 para. 3 no. 3 BGB

There is no duty to pay compensation for value if, in the case of a statutory right of termination, the deterioration or destruction has occurred in the hands of the person entitled even though he has taken the care which he usually takes in his own affairs.

Section 439 BGB Supplementary performance

(1) As supplementary performance, the buyer may, at his option, demand the removal of the defect or supply of a thing free from defects.

(2) The seller must bear all expenditure required for the purposes of supplementary performance, in particular carriage, transport, labour and material costs.

(3) Without prejudice to section 275 (2) and (3), the seller may refuse the form of supplementary performance chosen by the buyer if such performance is possible only with unreasonable expense. In that connection, it is necessary to have regard in particular to the value of the thing when free from defects, the significance of the defect and the question whether the defect could be remedied by the other form of supplementary performance without material detriment to the buyer. The buyer's claim is restricted in this case to the other form of supplementary performance; the seller's right to refuse also that supplementary performance under the conditions laid out in sentence 1 above is unaffected.

If the seller delivers a thing free from defects for the purpose of supplementary performance, he may demand the return of the defective thing in accordance with sections 346 to 348.

Section 95 HGB

(1) Where a party accepts a contract note in which the broker has reserved the right to designate the name of the other party, the party accepting is bound to the contract with the other party which is subsequently designated except where well-founded objections can be raised against the latter.

(2) The designation of the other party has to be effected within the locally customary period of time, in the absence of which it must be effected within a reasonable period of time with due consideration to the circumstances.

(3) Where designation is effected or if well-founded objections can be raised against the designated person or firm, the party is entitled to claim fulfilment of the contract from the broker. If the party does not declare its intentions without delay as to whether it demands fulfilment after having been called upon to do so by the broker, then this claim is excluded.

Section 376 HGB

(1) Where is stipulated that the performance by one of the parties to the contract are to be effected at a fixed date or within a fixed period of time, then, in case the performance does not take place at the fixed date or within the fixed period of time, the other party to the contract may withdraw from the contract or, if the obligor is in delay, instead of performance it can claim damages because of non-performance. It is entitled to claim fulfilment only if it declares to the other party immediately after the fixed date or expiry of the fixed period that it insists on performance.

Section 377 HGB

(1) Where the purchase is a commercial act for both parties, the purchaser shall inspect the commodities without delay after delivery by the seller, insofar as this is feasible in the orderly course of business, and he shall notify the seller without delay if a defect is apparent.

(2) If the buyer fails to notify the seller, the commodities are deemed to have been approved, unless the defect could not be observed on inspection.

(3) Where such defect becomes apparent at a later date, the notification must be made without delay after its discovery; otherwise the commodities are deemed to have been approved also in respect of this defect.

(4) It is sufficient to preserve the rights of the buyer if he forwards the notification in time.

(5) Where the seller maliciously kept silence with respect to the defect he cannot invoke these provisions.