

## **EXTENDED LIABILITY SERVICE FOR AIR & SEA PERISHABLE SHIPMENTS Terms & Condition 2020**

### **1. DEFINITIONS**

1.1 In these terms and conditions:

**Booking Confirmation** means a communication issued by a K+N Group Company to a Customer confirming one or more Contracts of Carriage, any ELPs applicable to such Contracts of Carriage and the additional carriage charges applicable in respect of the ELPs.

**Carrier** means the party named as contractual carrier in a Contract of Carriage.

**Contract of Carriage** means a contract arranged by a K+N Group Company for the carriage of the Goods naming either a K+N Group Company or a third party (including without limitation any haulier, shipping line or airline) as Carrier.

**Compensation Limit** means the compensation limit indicated in the Booking Confirmation:

<b>ELP LEVEL</b>	<b>COMPENSATION LIMIT (USD)</b>
Level 1	15,000
Level 2	30,000
Level 3	55,000
Level 4	100,000

**Customer** means the party which has paid additional carriage charges for any ELPs.

**Delay** means the estimated transit time in any schedule provided to the Customer by the K+N Group Company which sold the ELP being exceeded by 7 days or more in the case of ocean carriage and 32 hours or more in the case of air carriage.

**ELP Carrier** means the K+N Group Company referred to in Clause 2.

**Extended Liability Service** for air & sea **Perishable** shipments referred to in this document as **ELP** mean the additional rights and benefits confirmed in the Booking Confirmation and detailed in these terms and conditions.

**Goods** means the temperature and/or non-temperature controlled perishable cargo in respect of which an ELP has been purchased.

**K+N Group Company** means Kuehne + Nagel Inc. and Kuehne + Nagel International AG and any company which directly or indirectly controls or is controlled by either of the foregoing.

**Merchant** includes the Customer and any party which lawfully obtains rights against the Carrier under the Contract of Carriage.

**Surveyor** means a qualified surveyor appointed by the ELP Carrier or appointed by the Merchant and approved in writing by the ELP Carrier.

### **2. APPLICATION**

2.1 Where an ELP is purchased in relation to a Contract of Carriage and a K+N Group Company is the Carrier under the Contract of Carriage to which it relates then the Carrier will be liable to

the Merchant on the terms in the Contract of Carriage as enhanced by the ELP indicated in the Booking Confirmation.

- 2.2 Where an ELP is purchased in relation to a Contract of Carriage and a third party is the Carrier under the Contract of Carriage to which it relates then the K+N Group Company which sold the ELP will be liable to the Merchant, by way of a collateral contract, on the terms in the Contract of Carriage as enhanced by the ELP indicated in the Booking Confirmation. For the avoidance of doubt, such ELP [*defined as "the additional rights and benefits confirmed in the Booking Confirmation and detailed in these terms and conditions"*] shall apply solely to such collateral contract, and shall not apply to the Contract of Carriage between such third party and the Merchant.

### 3. STANDARD ELP PRODUCT (OCEAN CARRIAGE & AIR CARRIAGE)

- 3.1 Where the Booking Confirmation indicates that the Standard ELP has been purchased then, subject to clauses 6 and 7, the ELP Carrier agrees as follows in relation to any claims for physical loss or damage to the Goods:

3.1.1 For Contracts of Carriage and collateral contracts (as applicable) incorporating the Hague Rules or the Hague Visby Rules, Article IV 2(a), (b), (c), (h), (l), (n), (o), and (q) and Article V shall not apply to the extent that these provisions exclude or limit the ELP Carrier's liability<sup>1</sup>.

3.1.2 For Contracts of Carriage and collateral contracts (as applicable) incorporating the Montreal Convention 1999, Article 18(2)(a), Article 18(2)(b), Article 18(2)(d), Article 19 and Article 22 shall not apply to the extent that these provisions exclude or limit the ELP Carrier's liability<sup>2</sup>.

3.1.3 It is liable for loss or damage to the Goods caused by temperature variation(s) if:

- (a) the Merchant provides the ELP Carrier with the performing carrier's reefer disc record confirming the temperature variation and/or alternative evidence that there was a variation inside the container<sup>3</sup>;
- (b) a Surveyor confirms the temperature variation; and
- (c) evidence is provided that the Goods have been destroyed or damaged.

- 3.2 Subject to clauses 6 and 7, and in its sole, absolute and unfettered discretion, in respect of which it is the sole judge and without any legal obligation to do so, the ELP Carrier may make (or not make) a payment to the Customer in respect of any liability of the Customer for any general average and/or salvage contribution for the Goods.

### 4. ADDITIONAL ELP PRODUCT A (OCEAN CARRIAGE & AIR CARRIAGE)

- 4.1 Where the Booking Confirmation indicates that the Additional ELP A has also purchased then, subject to clauses 6 and 7, the ELP Carrier accepts liability for the following losses insofar as they arise directly from delay whether or not the Goods have been lost or damaged:

4.1.1 Loss of the sale contract and/or loss of profit on an agreed sale;

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<sup>1</sup> 2(a) negligent navigation, (b) fire without fault and privity of Carrier, (c) perils of the sea, (h) quarantine restrictions, (l) saving or attempting to save life, (n) insufficiency of packing, (o) insufficiency or adequacy of marks, and (q) any other cause arising without the actual fault or privity of the carrier. Article V is the requirement that surrendering rights must be embodied in a bill of lading

<sup>2</sup> 18(2)(b) – defective packing of that cargo performed by a person other than the carrier or its servants or agents; 18(2)(d) – an act of public authority carried out in connection with the entry, exit or transit of the cargo; 19 – delay, unless the carrier took all measures that could be reasonably required to avoid the damage or it was impossible for the carrier to take such measures; 22 – monetary limits of liability

- 4.1.2 Any contractual penalties for which the Merchant is liable pursuant to the contract/agreement for sale of the Goods; and
- 4.1.3 any reasonable costs incurred by the Merchant in arranging the onward carriage of the Cargo in the event that the Contract of Carriage cannot be fulfilled without Delay.

## 5. **ADDITIONAL ELP PRODUCT B (INLAND TRANSPORTATION)**

- 5.1 Where the Booking Confirmation indicates that the Additional ELP B has also purchased then, subject to clauses 6 and 7, the ELP Carrier is liable:
  - 5.1.1 for any physical loss or damage to the Goods arising during the relevant Contract of Carriage for inland transportation; and
  - 5.1.2 for loss or damage to the Goods caused by temperature variation(s) if:
    - (a) the Merchant provides the ELP Carrier with the performing carrier's reefer disc record confirming the temperature variation and/or alternative evidence that there was a variation inside the container
    - (b) a Surveyor confirms the temperature variation; and
    - (c) evidence is provided that the Goods have been destroyed or damaged.

## 6. **DEFENCES & INAPPLICABILITY**

- 6.1 Where any ELP is purchased then the Merchant agrees that the ELP Carrier will not be liable for any loss, damage or liability arising directly or indirectly from the following causes:
  - 6.1.1 Act of God;
  - 6.1.2 Inherent vice in the Goods;
  - 6.1.3 Jettison of the goods during a sea voyage as part of a general average act;
  - 6.1.4 Rust, oxidation, scratching, denting or discoloration in case of used, unpacked or unprotected items;
  - 6.1.5 Shipments to/from or through Afghanistan, Cambodia, Cuba, Haiti, Iran, Iraq, Laos, the Palestinian Authority Areas in Israel, Lebanon, Myanmar, Nepal, North Korea, Pakistan, Syria, Venezuela, Yemen, Bhutan;
  - 6.1.6 Inland transit for pre and on-carriage services from/to Countries of Africa (except for South Africa, Kenya, Egypt, Tunisia, Morocco, Algeria, Ghana, Namibia, Angola);
  - 6.1.7 Any coverage for US/EU/OFAC/UK/UN sanctioned countries;
  - 6.1.8 Insufficient packaging unless arranged or performed by a K+N Group Company;
  - 6.1.9 Any unexplained losses or mysterious disappearances; and/or
  - 6.1.10 Any claims caused by the negligence, fraud or willful misconduct of or on behalf of the Merchant or, if different, the consignor or consignee;
- 6.2 Notwithstanding any Booking Confirmation and additional carriage charges payable, ELPs will not apply to following commodities: bulk cargo, livestock, securities of any kind, cash, jewellery,

antiques, fine art products, furs, painting, china ware and similar, explosives, weapons and radioactive materials<sup>4</sup>.

## 7. **COMPENSATION LIMITS**

7.1 The aggregate liability of the ELP Carrier under Clauses 3 and 5 shall be limited to the lower of:

- (i) the commercial value of the Goods or part(s) thereof to which the claim relates, as evidenced by the commercial invoice; or
- (ii) the relevant Compensation Limit.

7.2 Without prejudice to clause 7.1, for ELP Levels 3 and 4 in the Compensation Limit table, if no temperature recorder is used inside the container<sup>5</sup>, the ELP Carrier shall only be liable under clauses 3 and 5 to pay 75% of the amount of the damages which would otherwise be due<sup>6</sup>.

7.3 The aggregate liability of the ELP Carrier under Clause 4 shall be limited to the lower of:

- (i) 30% of the commercial value of the Goods or part(s) thereof to which the claim relates, as evidenced by the commercial invoice; or
- (ii) 30% of the Compensation Limit.

7.4 If the Merchant has a claim against the Carrier under the Contract of Carriage which entitles the Merchant to recover more than the Compensation Limit then the Merchant is free to pursue the Carrier under the Contract of Carriage. If the Merchant recovers more from the Carrier than the Merchant can recover under these terms and conditions then no damages will be payable under these terms and conditions.

## 8. **RECOVERIES**

8.1 Where the ELP Carrier is liable to the Merchant under these terms and conditions and the Merchant is paid damages by the ELP Carrier then the Merchant will immediately assign and/or transfer to the ELP Carrier its rights, if any, against the Carrier arising under the Contract of Carriage.

## 9. **CLAIMS PROCEDURE**

9.1 Any claim must be notified to the ELP Carrier within 72 hours of the Merchant becoming aware of the loss, damage or delay, as the case may be.

9.2 The ELP Carrier will not be liable to pay any compensation under these terms and conditions unless the following documents are presented:

- 9.2.1 A copy of the Contract of Carriage;
- 9.2.2 Delivery notes for all carriers in the transport chain and proof of delivery;
- 9.2.3 Commercial invoice;
- 9.2.4 Freight invoices (if not included in the commercial invoice);
- 9.2.5 Packing list;

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<sup>4</sup> ELPs should be sold to those shipping these commodities.

- 9.2.6 Any available photographic or video evidence in relation to the claim, including photographs of any damage to the Goods;
  - 9.2.7 Written evidence of any financial losses claimed;
  - 9.2.8 Written evidence of any Delay in respect of which a claim is being made; and
  - 9.2.9 For any claim for USD2,500 or more, a written report by a Surveyor confirming that loss/damage/delay (as the case may be) occurred and that the ELP Carrier caused it.
- 9.3 Where any of the documents listed at clause 9.2 above do not exist, the Merchant must provide a written statement signed by the Merchant (if the Merchant is a physical person) or an authorized officer of the Merchant (if the Merchant is a legal person) confirming that the document(s) do not exist and explaining why. In such a case, the ELP Carrier may require alternative documentary evidence to confirm that they are liable to pay the claim as presented.
- 9.4 The ELP Carrier will not be liable to pay any claim unless all sums due to the ELP Carrier from the Merchant have been paid in full.
- 9.5 The claim notification and all relevant documents and information in accordance with this paragraph 7 should be submitted electronically to [Freshclaim@nacora.com](mailto:Freshclaim@nacora.com) citing the KN Extended Liability Service Declaration reference in the subject heading.

## 10. MISCELLANEOUS

- 10.1 The law and jurisdiction provisions of the Contract of Carriage shall apply to this ELP and any applicable Additional ELP(s) and shall be incorporated in full herein / therein.
- 10.2 No servant or agent of the ELP Carrier or Carrier shall have the power to waive or vary any terms of these terms and conditions unless such waiver or variation is in writing and expressly authorized or ratified in writing by the ELP Carrier.
- 10.3 If any of these terms and conditions are inconsistent with any compulsorily applicable international convention or national law, the relevant term(s) shall be null and void only to the extent of such inconsistency.
- 10.4 To the extent required by law or any international convention, the ELP Carrier and Customer agree that the terms and conditions herein are deemed to have been embodied in any bill of lading, air waybill or similar document issued by the Carrier.
- 10.5 Save as provided for in these terms and conditions, the defenses available to the ELP Carrier contained in the Contract of Carriage remain in full force and effect.
- 10.6 The terms and conditions herein comprise an extension to liability under:
- 10.6.1 where a K+N Group Company is the Carrier under a Contract of Carriage, such Contract of Carriage (as referred to in clause 2.1), or
  - 10.6.2 where a third party is the Carrier under a Contract of Carriage to which an ELP relates, the collateral contract between the K+N Group Company which sold the ELP and the Merchant (as referred to in clause 2.2),

and do not constitute insurance.