General Austrian Transport Insurance Conditions

(AÖTB 2011)

General Part

Preamble

With the exception of Art. 14 of these terms and conditions, the policyholder is treated in the same way: The insured person, the claimant
authorised persons and the persons for whose actions the policyholder, the insured person or the beneficiary is responsible.

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of the AÖTB

Art. 1 Scope of application

The General Austrian Transport Insurance Conditions (AÖTB 2011) apply to the insurance of goods for the duration of transport by sea, land, inland waterways or air as well as during transport-related storage, taking into account Art. 10, para. 2.

Art. 2 Legal basis

Insofar as no special provision is made in the contractual agreements, Austrian law shall apply.

Art. 3 Insurable interest

1 Any interest, which can be estimated in monetary terms, that someone has in the goods withstanding the risks of transport can be insured, provided it does not violate applicable law. Applicable law also includes economic, trade and financial sanctions or embargoes of the European Union and the Republic of Austria, insofar as these have been enacted by law or regulation.

2 If the interest for which the insurance is taken out ceases to exist before the commencement of the insurance or, if the insurance is taken out for a future interest, the interest does not materialise, the policyholder is released from the obligation to pay the premium; the insurer may demand an appropriate transaction fee.

3 The policyholder's obligation to pay the premium shall not be affected by the fact that the interest for which the insurance was taken out ceases to exist after the commencement of the insurance.

Art. 4 Scope of the insurance

Unless otherwise agreed, the insurer shall bear the risks to which the goods are exposed during the term of the insurance in accordance with the selected form of cover.

Forms of cover

1 Full cover (against all risks)

Subject to the exclusions pursuant to Art. 6, the insurer shall indemnify for loss and damage as a direct consequence of an insured risk.

2 Limited cover

The insurer shall provide compensation for loss and damage as a direct consequence of one of the following events:

a) Stranding

A stranding occurs when the ship carrying the goods runs aground, is grounded, capsizes, sinks, breaks up, collides with other vessels or objects or is damaged by ice.

b) Shipwreck

c) Sacrifice of goods

d) Unloading, temporary storage, loading of goods in a port of refuge that was called at as a result of the occurrence of an insured risk

e) Accident involving a means of transport transporting the goods by land or air

An accident involving a means of transport is deemed to have occurred if the means of transport suffers material damage as a result of a sudden external event involving mechanical force.

f) Emergency landing of aircraft

g) Derailment

h) Impact or crash of aircraft/missiles or their parts or cargo

i) Collapse of warehouse buildings and bridges

j) Fire, lightning strike, explosion

k) Earthquakes, seaquakes, volcanic eruptions and other natural disasters.

In the absence of a special agreement, the form of cover set out in Art. 4, para. 2 "Limited cover" shall apply.

Art. 5 Common inclusions for both forms of cover

The insurer will reimburse:

1 any contribution that the policyholder has to make to general average in accordance with legally or internationally recognised general average rules and recognised by the competent general average inspection body, provided that general average measures should avert a loss for which the insurer is liable;

2 Expenses incurred to avert or minimise the loss when the insured event occurs and costs of loss assessment by third parties, insofar as these are losses for which compensation is payable, but not other expenses and costs.

Art. 6 Common exclusions for both forms of cover

Unless otherwise agreed, the following shall apply:

1 The dangers are excluded:

a) war, civil war, warlike events and the dangers arising from the use or presence of tools of war, irrespective of the state of war

b) strikes, lockouts, riots, looting, acts of terrorism or political violence, other civil unrest and sabotage

c) confiscation, seizure or other intervention by a higher authority

d) the use or application of chemical, biological, biochemical substances or electromagnetic waves as weapons

e) the use or application of computers, computer systems, computer software programmes, computer viruses or process flows or any other electronic system

f) nuclear energy and radioactivity

g) those risks against which the goods have been insured elsewhere (e.g. fire); the policyholder is obliged to provide the insurer, upon request, with all evidence available to him regarding the other insurance.

2 The following damages and damages caused by are excluded:

a) internal spoilage, unless this occurs in connection with damage for which compensation is payable, as well as damage caused by the natural and/or defective nature of the goods and by spontaneous combustion

b) Design, manufacturing or material defects

c) Scratches and abrasions, unless they occur in connection with damage for which compensation is payable

d) Non-functioning, e.g. short circuit, overvoltage, induction, implosion, tube and filament breakage, Hard disc failure, hairline cracks, unless caused by an insured peril

e) Losses due to customary quantity, dimension and weight differences

f) Humidity and/or temperature fluctuations

g) Lack of or defects in packaging suitable for transport - even if stowed in a container - and in the event of self-loading by the policyholder due to defective or improper loading methods

h) Violations of customs or other official regulations, shipping or declaration regulations or regulations of the transport company

i) court order or its enforcement

j) Transport in open means of land transport or inland and sea-going vessels or on deck or as top load of inland and sea-going vessels

k) on the packaging, unless specifically agreed

l) Delay

m) Impairment

n) Indirect damage of all kinds

3 If, according to the circumstances of the case, a loss could have arisen from one or more of the risks or causes specified in paras. 1 and 2, it shall be assumed that the loss has arisen from this until the policyholder provides evidence to the contrary.

Art. 7 Special cases

1 Unless otherwise agreed, the insurance only covers the form of cover specified in Art. 4, Para. 2 "Limited cover":

a) unpackaged goods

b) Returns

c) Goods that have undergone prior transport or storage

d) used goods or goods that are shipped in a damaged condition.

2 Deck cargoes are only insured if this has been specially agreed. For such deck cargoes accepted for insurance, Art. 4, Para. 2 "Limited cover" applies, plus the risks of going overboard and washing overboard.

If goods insured as space cargo are loaded and transported on deck with the knowledge and will of the policyholder, the insurance only applies in accordance with Art. 4, Para. 2 "Limited cover".

3 Goods in containers or barges closed on all sides are insured on deck under the same conditions as in the hold, plus the risks of going overboard and being washed overboard.

Art. 8 Fault

1 The insurer is released from the obligation to indemnify if the damage was caused by the policyholder or the insured person wilfully or through gross negligence.

2 The policyholder or the insured person shall also be released from the obligation to pay benefits if they act fraudulently in the negotiations on the determination of the compensation.

3 The insurer is released from liability if the policyholder or the insured person intentionally or negligently allows the authorised loading capacity of the means of transport to be exceeded.

Art. 9 Suitability of the means of transport

1 The insurance is only valid if a means of transport is used that is suitable and officially authorised to pick up and transport the goods in question.

In the case of transport by sea-going vessels, these must comply with the provisions of the Institute Classification Clause in its latest version and - if necessary - be certified in accordance with the International Safety Management Code (ISM Code) or a valid Document of Compliance (DOC) must be available from the owner or operator of the vessel, as provided for in the 1974 Solas Convention and its amendments.

2 The suitability of the means of transport must be proven by the policyholder at the request of the insurer.

3 If the requirements of paragraph 1 are not met, the transport is insured if the policyholder had no influence on the choice of the means of transport or selected the forwarder or carrier/carrier with the care of a prudent businessman. If the policyholder becomes aware of the unsuitability of the means of transport, he must notify the insurer immediately.

Art. 10 Duration of the insurance

Unless otherwise agreed, the following shall apply:

1 The insurance shall commence at the time when the goods leave their previous place of storage at the consignor's premises or warehouse at the place of departure specified in the insurance certificate for the purpose of immediate transport; it shall continue during the normal course of transport and shall end depending on which of the following cases occurs first;

a) as soon as the goods have been delivered to the destination specified in the insurance certificate;

b) in the event of delivery to another warehouse chosen by the policyholder before or at the destination specified in the insurance certificate.

Delivery shall mean the arrival of the goods after they have been unloaded from the means of transport;

c) with the transfer of risk if the goods are sold due to the occurrence of an insured event;

d) as soon as the goods are transported after unloading at the port of destination or airport of destination to a place of delivery not agreed in the insurance contract.

The insurance shall end in all cases no later than 15 days after arrival of the goods at the destination specified in the insurance certificate, but in the case of sea transport no later than 60 days after discharge of the insured goods at the final port of discharge.

2 The insurance shall be suspended during a stay of the goods arranged by the policyholder.

If another stay lasts longer than 30 days before reaching the place of destination or, in the case of sea transport, the port of discharge, the insurance shall be suspended after expiry of this period.

Art. 11 Insured value, sum insured

1 The insured value of the goods shall be the commercial value and, in the absence thereof, the fair market value of the goods at the place of dispatch at the time the insurance commences, plus the insurance costs and the costs incurred until the goods are accepted by the carrier. This value shall also be deemed to be the insured value upon the occurrence of an insured event.

2 The following can also be insured:

a) the costs of transport, in particular the freight and the costs at the place of delivery including customs duties

b) the imaginary profit - i.e. the profit expected by the buyer, insofar as he bears the risk of transport, from the arrival of the goods at the destination - up to the amount of 10 % of the insured value of the goods and the costs insured under a), unless otherwise agreed.

3 A collector's value may not be taken into account when determining the insurance value.

4 The insurance must not lead to enrichment. Even if the sum insured is higher than the insured value at the time of the occurrence of the insured event (overinsurance), the insurer is not obliged to compensate the policyholder for more than the actual loss.

5 If the policyholder concludes the contract with the intention of obtaining an unlawful pecuniary advantage from the overinsurance, the contract is void. The insurer is nevertheless entitled to the premium, unless it was aware of the reason for the cancellation when the contract was concluded.

6 If the insurance is only taken out for part of the insured value (partial or underinsurance), the insurer will only pay compensation in the ratio of the sum insured to the insured value.

Art. 12 Limits of compensation

1 The insurer shall only reimburse the loss incurred up to the amount of the sum insured. Sections 63 and 144 VersVG apply to the reimbursement of expenses, and Sections 834 and 840 UGB apply to sea transport.

2 If, in the case of general average, the premium value is higher than the sum insured, the insurer shall reimburse the general average premium only in the ratio of the sum insured to the premium value.

Art. 13 Insurance certificate

Upon request, the insurer must provide the policyholder with a signed certificate of the insurance contract (policy). A copy of the handwritten signature is sufficient.

This shall also apply in the event that the insurance is taken out in such a way that the goods are only designated by type when the contract is concluded and are only handed over to the insurer individually after the interest has arisen (ongoing insurance).

If a certificate has been issued, the insurer is only obliged to pay in the event of a claim on presentation of the certificate. Payment to the holder of the certificate releases the insurer from any further obligation to pay benefits.

If the document has been lost or destroyed, the insurer is obliged to pay if the document has been declared invalid or security has been provided; the provision of security by guarantors is excluded.

The contents of the document shall be deemed to have been approved by the policyholder if the policyholder does not object immediately after delivery. The policyholder's right to contest the authorisation on the grounds of error remains unaffected.

The insurer is obliged to issue a replacement certificate at the policyholder's request; the policyholder must bear the costs.

Art. 14 Premium

Unless otherwise agreed, the relevant provisions of the latest version of the Insurance Contract Act (VersVG) shall generally apply with regard to the premium.

Art. 15 Duty of disclosure upon conclusion of the contract

1 When concluding the contract, the policyholder must notify the insurer of all circumstances known to him that are relevant to the assumption of risk, even if he considers a notification he has received to be irrelevant or unreliable.

2 In particular, the fact that the nature of the goods may result in total loss or a disproportionately extended scope of loss even in the event of minor damage caused by an insured event is also deemed to be significant.

3 Any deliberately incorrect notification, any concealment, any deception, any deliberately false or distorted information shall entitle the insurer to withdraw from the contract and shall result in the release of benefits.

This does not affect the obligation to pay the premium.

4 The insurer's obligation to indemnify shall remain in force if the insurer was aware of the undisclosed circumstance or the inaccuracy. The same applies if the notification was omitted through no fault of the policyholder.

If the insurer's obligation to pay benefits remains in force, it shall be entitled to a higher premium corresponding to this higher risk (additional premium) if the special circumstance is associated with a higher risk.

Art. 16 Change in risk

1 The policyholder may not change the risk after conclusion of the contract without the consent of the insurer, in particular not increase it or allow it to be changed by a third party.

2 In particular, a change in risk applies:

a) a significant delay in the commencement or completion of the insured transport,

b) the significant deviation from the specified or usual transport route,

c) the change of destination or port of destination,

d) the transport of goods in lighter vehicles without this being customary in the area.

3 If the policyholder violates the provisions of paragraphs 1 and/or 2, the insurer may terminate the insurance relationship for the transport in question without observing a period of notice. This shall result in the cancellation of benefits.

The insurer's obligation to indemnify shall remain in force if the change in risk has occurred without the policyholder's knowledge. However, the policyholder is obliged to notify the insurer of the change in risk as soon as he becomes aware of it.

4 If the policyholder has not notified the insurer of a change in risk that is associated with an increase in risk, the insurer shall be released from the obligation to indemnify, unless,

a) the breach of the duty of disclosure is based neither on intent nor on gross negligence, or the increase in risk had no influence on the occurrence of the insured event or on the scope of the insurer's obligation to pay benefits.

5 The insurer is free to agree an additional premium for the increase in risk, unless the increase in risk was

a) by the interest of the insurer or

b) prompted by an imperative of humanity or

c) by an insured event threatening the goods.

Art. 17 Modification of carriage

1 If the goods are transported by a means of transport other than that agreed in the insurance contract without the insurer's consent, or if they are reloaded although direct transport is agreed in the insurance contract, the insurer shall be released from its obligation to indemnify. The same applies if only a specific means of transport or a specific transport route is agreed.

2 The obligation to pay benefits remains in force if, after commencement of the insurance, the transport is changed or abandoned as a result of an insured event or without the consent of the policyholder.

3 In all other respects, the provisions on the change in risk shall apply mutatis mutandis.

Art. 18 Obligations

1 The policyholder must notify the insurer immediately of the claim and of any accident involving the means of transport or the cargo.

2 In the case of sea transport, the Insured must notify the Insurer in writing of any loss for which the Insurer is liable within 15 months of the termination of the insurance or, if the vessel is lost, after the expiry of the period of loss. The deadline is met by sending the declaration.

These provisions do not apply to the general average contributions to be paid by the policyholder.

3 The policyholder is obliged to take care to avert and minimise a loss and, if the circumstances permit, to obtain and follow the instructions of the insurer.

In particular, the following immediate measures must be taken:

a) If loss and/or damage is suspected or recognisable in the course of transport or upon delivery of the goods, the transport company, the warehouse keeper, the port authority, etc. must be held liable in writing without delay and requested to inspect the goods together. A written protest or a qualified reservation must be made.

b) If loss and/or damage is not recognisable on delivery, the carrier, warehouse keeper, port authority, etc. must be held liable in writing immediately after discovery, but at the latest within the periods stipulated in the respective conditions of carriage, and requested to conduct a joint inspection.

The average adjuster named in the policy or in the insurance certificate must be called in immediately to assess the loss. If the insurer has not named a specific average adjuster or if it is not possible to appoint one, the nearest "Lloyd's Agent" shall be entrusted with the assessment of the loss.

4 Upon request, the policyholder must provide the insurer with all information and documents necessary to determine the insured event and the extent of the insurer's obligation to indemnify.

The following original documents in particular must be submitted to the insurer upon request as proof of loss and for the assertion of claims for compensation:

- Policy or insurance certificate,
- all transport documents,
- Delivery invoice including packing and weight list,
- Average certificate including the average adjuster's fee note,
- all documents proving the loss and/or damage,
- all correspondence regarding loss and/or damage and/or legal defence,
- Confirmation of immediate notification to the competent security authority in the event of damage caused by fire, theft, burglary and robbery, provided that the transport was carried out by the policyholder himself,
- Claims calculation,
- Declaration of assignment.

5 The policyholder may neither relinquish nor restrict his claims against third parties or rights serving to secure the claims.

6 In the event of general average, the policyholder may not recognise the general average without the insurer's consent, nor may the inclusion or final premiums be secured or paid without the insurer's consent.

A breach of the above-mentioned obligations may result in the insurer being released from its obligation to indemnify (§ 6 VersVG).

Art. 19 Compensation

1 Loss of goods

If the goods are totally lost, if they are taken away from the policyholder with no prospect of recovery or if they are destroyed in their original condition as determined by experts, the insurer shall pay compensation taking into account Art. 11 less the value of salvaged, realisable items (residual value).

2 Missing

If the goods are lost with the means of transport, the insurer shall pay compensation as in the case of total loss, unless it is more likely than not that the loss is the result of an uninsured risk.

A means of transport is lost if 60 days have elapsed from the time of its planned arrival at its final destination, or 30 days within Europe in the geographical sense, and no news of it has been received by the time of the claim. If the communication link is disrupted by war, warlike events, civil war or civil unrest, the period shall be extended depending on the circumstances, but may not exceed six months.

3 Damage

a) If the goods or parts of the goods are damaged and if restoration is not possible or not economically viable, the insurer shall indemnify the commercial value, taking into account Art. 11, failing which the fair market value that the goods would have had in undamaged condition at the place of delivery, less the value that they would have had there in damaged condition (residual value).

   The value of the goods in a damaged condition can also be determined by private sale or public auction if the insurer requests this immediately after becoming aware of the circumstances relevant to the amount of the loss; in this case, the proceeds shall take the place of the value of the damaged goods.

   Damaged items can never be relinquished to the insurer without the insurer's consent. Non-acceptance of the insured goods by the consignee shall not constitute grounds for a claim for compensation. The costs arising from non-acceptance of the insured goods shall not be borne by the insurer.

b) If restoration is possible and economically viable, the insurer shall reimburse the necessary costs of restoring or replacing the damaged or lost parts at the time of the loss assessment, taking Art. 11 into account.

   The value of the old material shall be taken into account. If individual parts are replaced, the insurer is authorised to make an appropriate deduction "new for old" in accordance with their type, age and condition.

   Additional costs, in particular those arising from the fact that changes or improvements are made when repairing a damaged item or restoring it to its previous condition, as well as overhauls, shall be borne by the policyholder. Temporary repairs shall only be reimbursed in accordance with Art. 5, Para. 2.

4 Sale of the goods before the end of the insured trip

If, after the inception of the insurance, the voyage of the vessel is abandoned or not completed for any other reason without the Insurer being released from his obligation to indemnify, the Insurer may demand that the Assured, with his co-operation, sell the goods privately or by public auction if the goods cannot be transported further without disproportionate costs and within a reasonable period of time. If the insurer demands the sale, it must immediately take place.

In the event of sale, the policyholder may demand the difference between the sum insured and the proceeds. The same applies if the goods have to be sold en route as a result of an accident for which the insurer is responsible.

5 Interest not incurred, costs saved

If an insured interest for imaginary profit, added value, customs duties, freight or other costs has not yet arisen when the insured event occurs, the portion of the sum insured attributable to this shall not be taken into account when determining the loss. The same applies to costs that are saved as a result of an insured event.

6 Other replacement

The policyholder must take into account what he has obtained elsewhere to compensate for the loss.

If compensation for the damage cannot be demanded from a third party commissioned to handle the transport because its liability is limited or excluded beyond the customary extent, the

Insurer from the obligation to indemnify to the extent that he could have obtained compensation without limitation or exclusion of liability.

This does not apply if the policyholder was unable to influence the limitation or exclusion of liability.

7 Transfer of ownership

a) If the policyholder obtains the sum insured, the insurer may choose whether or not the rights to the insured goods or to the insured goods are to be transferred to him upon payment of the sum insured. The transfer of rights shall be cancelled if the insurer does not choose it immediately after becoming aware of the circumstances of the insured event. If the insurer opts for subrogation, the policyholder remains obliged to minimise the loss if the insurer is unable to do so. He must provide the insurer with the information required to assert the rights and deliver or issue the documents serving as evidence and assist him in obtaining and realising the goods. The insurer shall bear the costs and advance them on request. The part of the net sales proceeds exceeding the sum insured shall be reimbursed to the policyholder.

   If the rights are not transferred, the policyholder must reimburse the insurer for the fair market value or the net proceeds from the sale of recovered goods.

b) After the occurrence of the insured event, the insurer is entitled to release itself from all further liabilities by paying the sum insured. Despite the release, the insurer remains obliged to reimburse the costs that have been used to avert or minimise the loss or to restore or repair the insured property before the policyholder has received his declaration that he wishes to release himself by paying the sum insured. The insurer does not acquire any rights to the insured objects through this payment.

8 Due date for payment by the insurer

Cash benefits from the insurer are due one month after completion of the investigations necessary to determine the insured event and the extent of the insurer's benefits. If the investigations necessary to determine the insured event and the extent of the insurer's benefits have not been completed by the end of one month after notification of the insured event, the policyholder may demand payment on account of the total claim in the amount of the minimum amount that the insurer is required to pay according to the circumstances of the case. The time limit is suspended as long as the completion of the investigations is prevented due to the fault of the policyholder.

If a police or criminal investigation has been initiated against the policyholder or insured person as a result of the claim, the insurer may refuse to pay until the investigation has been concluded.

9 Currency

Compensation claims must always be settled in the currency in which the insurance was taken out. In the case of expenses and contributions to general average in foreign currency, the conversion into the policy currency shall be made at the exchange rate on the date of payment.

Art. 20 Time limit for action

The insurer shall be released from the obligation to pay benefits if the claim for benefits is not asserted in court within six months.

The time limit shall only commence after the insurer has rejected the claim in writing to the policyholder, stating the legal consequences associated with the expiry of the time limit.

Art. 21 Expert proceedings

1 In the event of a dispute, the amount of the damage must be determined by experts.

2 The insurer and the policyholder or insured person must each appoint an expert without delay and notify the opposing party of the appointment. The party that has notified its expert may request the defaulting party in writing to appoint its expert within two weeks of receipt of the request, stating the consequences of failure to do so. If the appointment is not made, the requesting party may have the opposing party's expert appointed by the Main Association of General Insurance Experts.

The experts shall be appointed by a sworn and court-certified expert or by the Federal Chamber of Commerce or, alternatively, by the diplomatic or consular representation of the Republic of Austria in whose territory the goods are located. If the experts cannot agree on the determination of the amount of damage or if they wish from the outset for a third expert to be involved, they shall jointly appoint this expert as chairman, with whom they shall decide by majority vote.

3 The rejection of an expert witness is subject to the standards of the Code of Civil Procedure.

4 The experts must inspect the damage, assess it and draw up a written report. As far as possible and economically justifiable, the parties involved shall be involved in the inspection.

5 The findings made by the experts are not binding if they clearly deviate significantly from the actual facts. In this case, the decision is made by a court judgement.

6 Each party shall bear the costs of its expert; the costs of the umpire shall be borne equally by each party.

Art. 22 Termination

If the insurance contract has been concluded for several transports or for a limited period, the insurer is entitled to cancel the insurance contract after the occurrence of an insured event. The cancellation is 14 days after receipt. For goods in transit when the cancellation takes effect, the insurance shall remain in force until the date on which the insurance cover ends in accordance with Art. 10.

Art. 23 Place of jurisdiction

1 For disputes arising from the insurance contract, the courts of the place where the insurer - in the case of several insurers, the insurer designated as the leading insurer in the policy - has its registered office (principal place of business) in Austria shall have jurisdiction.

2 The nomination of average adjusters and settling agents or the payment of damages outside Austria shall not constitute a place of jurisdiction at the place of payment.