



Non-obligatory recommendation. Other conditions can be agreed.

**GENERAL EUROPEAN CONDITIONS FOR CONTRACTS CONCERNING THE CARRIAGE OF PUSHBARGES
BY PUSHBOATS 2015**

(EUROPEAN PUSH CONDITIONS 2015)

Prepared jointly by the Association for European River Shipping and Waterways [Verein für europäische Binnenschifffahrt und Wasserstrassen e.V., VBW], Duisburg-Ruhrort, and the International Association the Rhine Ships Register [Internationale Vereniging het Rijnschepenregister, IVR, the association promoting the interests of inland waterways and keeping a register of vessels in Europe, Rotterdam.

§ 1 Definitions

The following definitions apply for the purposes of these conditions:

- a) Pushboat: a vessel with engine propulsion built or specially fitted to push other vessels;
- b) Pushbarge: a vessel built or specially fitted to be propelled by pushing;
- c) Push-unit: a fixed combination of one or more pushboats with one or more pushbarges, whereby the barge(s) are coupled ahead of and/or alongside the pushboat(s). Insofar as the parties are agreed that these conditions apply, this also includes other combinations of pushing and pushed vessels;
- d) Pushboat entrepreneur: the party that undertakes to carry out the pushing, regardless of whether this party is the owner of the pushboat or is operating a pushboat owned by a third party;
- e) Pushbarge entrepreneur: the party for which the push boat entrepreneur undertakes to push the barge, regardless of whether this party is the owner of the pushbarge or is operating a pushbarge owned by a third party;
- f) Carriage: the agreed movement of pushbarges by pushboats including , insofar as agreed, shifting, coupling and uncoupling at the berth or at the loading and discharging station and including taking a pushbarge into the push-unit and subsequently separating same from the push-unit, also by transfer of a pushbarge to another pushboat
- g) Damage: property damage and loss caused by delay.

§ 2 Damage to the pushbarges during the carriage by pushboats.

1. The pushboat entrepreneur is liable to the push barge entrepreneur for damage to the pushbarge and/or its cargo caused by his own fault or the fault of the crew of the pushboat, as long as the pushbarge and/or its cargo is under the direct control of the crew of the pushboat during the

carriage. Under the conditions set out in the first sentence of this paragraph, the pushboat entrepreneur is also liable for loss caused by delay.

2. The pushboat entrepreneur is only liable for damage that occurs to the barge and/or its cargo after departure of the pushboat if the pushbarge has not been properly moored due to fault on the part of the crew of the pushboat and this results in the damage.

3. The previous pushboat entrepreneur is only liable for damage that occurs to the pushbarge and/or its cargo after transfer of the pushbarge to another pushboat entrepreneur if a contract for carriage has been agreed between that entrepreneur and the subsequent entrepreneur.

§ 3 Damage to the pushboat and other vessels of the push-unit, caused by one of the pushbarges in the unit

The pushbarge entrepreneur is liable vis-à-vis the pushboat entrepreneur for any damage caused during carriage to other vessels in the push-unit and/or their cargoes by defects in the pushbarge, regardless of whether the latter incurs damage himself or is obliged to pay compensation to a third party. This does not affect any direct claim from the party incurring a loss.

§ 4 Partial negligence

If damage is caused to a vessel in the push-unit and/or to its cargo by the fault of both the pushboat entrepreneur and the pushbarge entrepreneur, both shall be liable in proportion to the degree of the faults committed.

§ 5 Burden of proof

1. The pushbarge entrepreneur shall prove that the claimed damage to the pushbarge was not present when it was taken into the push-unit.

2. The pushboat entrepreneur shall prove that the claimed damage to the carried pushbarges is not due to his own fault or that of the crew of the pushboat.

3. If the pushbarge entrepreneur, the receiver or the shipper fails to notify the pushboat entrepreneur of any externally visible damage to the pushbarge immediately after uncoupling, the pushbarge is deemed to have been delivered in an undamaged condition. There is no prescribed format for such a notification to the party that uncouples the pushbarge.

§ 6 Notification

As soon as the Master of the pushboat becomes aware, during carriage, of damage to a pushbarge or of the unseaworthiness or insufficient equipment of same, he must inform the pushbarge entrepreneur at once.

§ 7 Damage to third parties

In the **internal** relationship between the pushboat entrepreneur and the pushbarge entrepreneur, the party at fault will be liable in the event of any damage which occurs outside the push-unit (damage to third parties). To that extent, the party at fault shall indemnify the other party or parties against third party liability. Any further liability governed by national or international law remains unimpaired.

§ 8 Supervision over pushbarges before or after carriage

If, after or before carriage, the pushboat entrepreneur or a party appointed by the pushboat entrepreneur charge himself with the supervision over in particular the loading or discharging of the pushbarge, or supervision of the pushbarge after having properly moored the barge in the destined place, this task will not be deemed a part of the contract of carriage unless expressly otherwise agreed.

§ 9 Limitation of liability

For all claims in respect of the contract of carriage, the liability of the pushboat entrepreneur/pushbarge entrepreneur is limited in accordance with the applicable law. This limitation of liability, insofar as applicable, also extends to the crew of the pushboat.

Insofar as the transport of the goods by pushbarge is subject to the Budapest Convention (CMNI), those liability rules apply. The pushboat entrepreneur is not liable for damage:

- a) caused by an act or omission on the part of the Master, the pilot or other person in the service of the pushboat during navigation or during the coupling or uncoupling of a push-unit, provided that the pushboat entrepreneur has complied with the obligations set out in Article 3(3) of the CMNI with regard to the crew, unless the act or omission results from an intention to cause damage or from reckless conduct and in the knowledge that such damage would probably occur;

- b) caused by any fire or explosion on board the pushboat or a pushbarge, where it is not possible to prove that the fire or explosion resulted from fault on the part of the pushboat entrepreneur or his servants or agents or from some defect in the pushboat or a pushbarge;
- c) in respect of defects in the pushboat or a pushbarge that existed before the beginning of the voyage, as long as he can prove that these defects could not have been detected before the beginning of the voyage despite exercising due diligence.

In the case of damage to the pushbarge and/or its cargo that falls outside the scope of the CMNI, and insofar as no deviating arrangements have been made within the permissible legal framework, the compensation payable by the pushboat entrepreneur in the case of loss or damage and/or in the case of delay loss and financial loss will be determined in accordance with the national or international law governing the contract. Insofar as national law does not impose a lower limit on the liability, the compensation payable by the pushboat entrepreneur for damage to the pushbarge and/or its cargo is limited to two units of account per kg gsw. The unit of account per kilogram is the special drawing right (SDR) established by the International Monetary Fund. The carrier's liability for delayed delivery is limited to 3 (three) times the freight.

In the event of damage to the pushboat and to any third-party pushbarge included in the push-unit, and insofar as no deviating arrangements have been made within the permissible statutory framework, the compensation payable by the push barge entrepreneur will be determined in accordance with the international or national law governing the contract. Insofar as international or national law does not impose a lower limit on the liability, the compensation payable by the pushbarge entrepreneur for damage to the pushboat and/or any other pushbarge included in the push-unit is limited to two units of account per kg gsw. The unit of account per kilogram is the special drawing right (SDR) established by the International Monetary Fund.

The exceptions to and limitations of liability set out in these conditions are not applicable if the damage is attributable to any act or omission on the part of the pushboat entrepreneur or the pushbarge entrepreneur or any crew member acting on his behalf resulting from an intention to cause damage or from reckless conduct and in the knowledge that such damage would probably result.

§ 10 Exceptions to the application of any particular national law

If the pushboat entrepreneur undertakes the supervision of the pushbarge and German law is applicable to the contract of carriage, the following provisions will not be applicable, or only under the specified circumstances:

Instead of the liability based on fault (§ 2 in conjunction with § 5.1 and 5.2), the pushboat entrepreneur is liable for damage arising from loss or damage to the pushbarge from the time that control is transferred to him for carriage until the time of delivery, or because the delivery is delayed



(§ 425 (1) of the German Commercial Code [*Handelsgezetzbuch*]), unless the loss, damage or delay is attributable to circumstances - that he was unable to prevent, even with the greatest care - which had consequences he was unable to avert (§ 426 German Commercial Code). He cannot invoke the grounds for exclusion of liability referred to in § 427 of the German Commercial Code. § 4 of these conditions is applicable, in the sense that the liability of each contributory party can be derived from § 425 (2) of the German Commercial Code.

§ 11 Authentic text

These conditions have been issued in the English, German, French and Dutch language as decided by the Committee for River Shipping Law of the Association for European River Shipping and Waterways (VBW) on 20 October 2014 and the Legal Committee of the International Association the Rhine Ships Register (IVR) on 16 December 2014.

In case of doubt, the German text will prevail unless the parties have expressly agreed otherwise.