

Hamburg Süd ECO Delivery Terms

These Hamburg Süd ECO Delivery Terms apply to the carriage of goods subject to the terms set out below:

1. Definitions

The definitions set out in Hamburg Süd's Terms and Conditions for Carriage ("Terms for Carriage"), available at https://www.hamburgsud-line.com/liner/media/hamburg_sud_liner_shipping/starting_page/terms_conditions/bl/2021-02_HS_BL_A4_verso.pdf shall be adopted and have the same meaning where used in these Hamburg Süd ECO Delivery Terms unless otherwise defined herein.

"Contract of Carriage" means any contract of carriage, evidenced by a Transport Document and any booking confirmation issued for carriage of goods entered into between Hamburg Süd as Carrier and the Merchant whether or not such Transport Document has been physically issued but provided that Goods have been accepted for carriage and the Shipper is entitled to demand a Transport Document.

"Customer" means the party purchasing Hamburg Süd ECO Delivery, any person or entity which falls within the 'Merchant' definition as set forth in Hamburg Süd's Terms for Carriage, or any party subrogating the aforementioned parties' rights in full.

"Hamburg Süd ECO Delivery" means a value-added service enabling a beneficial cargo owner to reduce the carbon dioxide and greenhouse gas footprint for its ocean containerised supply chains.

"Transport Document" means a Hamburg Süd "bill of lading" (whether or not negotiable) or "sea waybill".

2. Application

2.1 Hamburg Süd ECO Delivery is an add-on service that can only be purchased and applied in conjunction with a Contract of Carriage.

2.2 The Parties agree that these Hamburg Süd ECO Delivery Terms will apply, prevail, and govern the services rendered in connection with Hamburg Süd ECO Delivery, if:

- (i) the Customer has purchased and made a booking request for the subject shipment on or before tendering the Goods to the Carrier; and
- (ii) the Carrier has confirmed, by a booking confirmation or otherwise, that Hamburg Süd ECO Delivery will apply to the requested shipment(s) (the **"Applicable Shipment"**).

2.3 Notwithstanding any existing terms of any service contract, Contract of Carriage, whether evidenced by a Transport Document or otherwise, these terms shall co-exist with, and logically amend, vary and supplement the relevant parts of the terms of the Contract of Carriage in so far as necessary, which shall in all other respects remain in full force and effect.

3. Services

3.1 The Carrier shall, in consideration of receipt of payment of the Hamburg Süd ECO Delivery surcharge, pay and procure biofuel bunkers required for carriage of applicable shipments.

3.2 The biofuel bunkers shall be supplied and burned onboard unspecified vessels within the Carrier's network. The Carrier shall in its sole discretion select which vessels within its fleet and which voyages within its network that will be supplied and using the biofuel bunkers. The Customer acknowledges and accept that this is a general commitment and no representation or warranty is made by the carrier as to whether the customer's individual shipments may or may not be transported on a vessel deploying and using the biofuel bunkers.

3.3 Upon completion of the services the Carrier will provide a certificate stating number of containers shipped in FFE and the amount of CO2 saved as a result of the use of biofuel bunkers.

4. Liability

4.1 In relation to any and all claims arising out of the ECO Delivery services, Carrier's liability howsoever arising, shall be limited to the charges paid by the Customer for Hamburg Süd ECO Delivery. Without prejudice to the Contract of Carriage and any loss, damage or claim arising from the carriage which shall remain applicable and in full force and effect, the parties acknowledge and agree that the remedies provided under this section shall be the Customer's sole and exclusive remedy for any claims relating to Hamburg Süd ECO Delivery.

5. Exclusions

5.1 For avoidance of doubt and without prejudice to the terms of the Contract of Carriage, Carrier shall in no event be liable for any delay, loss, damage or failure in performance if such has been caused due to events beyond Carrier's reasonable control of a party including, without limitation, lockouts, circumstances arising from the threat thereof; acts of God, terrorism, war, hostilities, riots, civil disorder, insurrection, embargo, governmental actions (whether informal or formal government acts), pandemic, epidemic or other similar disruptions or interference with trade, marine disaster, fire and or other casualty.

5.2 Notwithstanding any separate contractual obligations that may exist between the parties or any other provision in this Agreement, in no event shall the Carrier be liable, directly or indirectly to the Customer for any special, consequential, indirect (including, but not limited to, loss of production, deferral of production, lost profits, lost sales, lost benefit of utilization, loss of reputation, loss of market share, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and lost opportunity costs etc.), multiple, exemplary, liquidated or punitive and/or other extraordinary damage suffered by the Customer. The foregoing limitation shall apply regardless of the form of action, whether the damages or other relief sought are based on breach of warranty, breach of contract, tort (including negligence), strict product liability or any other legal or equitable theory, even if the Carrier has been advised of the possibilities of such damages. The prohibition of the foregoing types of damages shall also apply whether the damages are characterized as "contract damages", "tort damages" or otherwise.

5.3 Hamburg Süd ECO Delivery does not apply for any shipments to or from Cuba, North Korea, Crimea, Syria, Iran and/or Sudan.

5.4 Save as provided for in these Hamburg Süd ECO Delivery Terms, the defences available to the Carrier as set out in or applicable to the Contract of Carriage remain in full force and effect.

6. Fees and Charges

6.1 The services shall be charged and invoiced as a surcharge, Hamburg Süd ECO Delivery 'ECOFUEL', as set out in the invoice covering the Applicable Shipments.

6.2 Unless otherwise agreed, all prices and rates are exclusive of VAT and any other indirect taxes which may be levied and payable by the Customer.

7. Miscellaneous

7.1 The Customer or any person or entity falling within the definition of Merchant and who has the right to claim under the Contract of Carriage, shall have the benefit of these Hamburg Süd ECO Delivery Terms to the exclusion of all other third parties.

7.2 Except as expressly provided for in clause 7.1 above, a person who is not a party to the Contract of Carriage shall not have any rights under the Contracts (Rights of Third Parties) Act 1999, or otherwise, to enforce any term of these Hamburg Süd ECO Delivery Terms.

7.3 No servant or agent of the Carrier shall have the power to waive or vary any of these Hamburg Süd ECO Delivery Terms unless such waiver or variation is in writing and is specifically authorised or ratified in writing by the Carrier.

7.4 If any provision or part-provision of these Hamburg Süd ECO Delivery Terms is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

7.5 Carrier reserves the right to make additions, revisions, or modification to the services as it deems necessary at any time without any prior notice to the Customer.

8. Law & Jurisdiction

8.1 Clause 17 of the Hamburg Süd Terms for Carriage regarding Law and Jurisdiction shall apply to the Hamburg Süd ECO Delivery Terms and is hereby incorporated as if set out in full herein.