

# CYBER DISRUPTION PROTECTION - ENHANCED LIABILITY SERVICE (ELS)

## 1. DEFINITIONS

### 1.1 In these terms and conditions:

**Air Carriage** means the carriage of Goods (ii) wholly by air or (ii) by one or more modes of transport, when the cross border element of the carriage is by air.

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

**Carriage** means the carriage of the Goods by Air Carriage or Sea Carriage which is covered by a Contract of Carriage in respect of which an ELS has been purchased.

**Carrier** means the performing carrier in a Contract of Carriage appointed by K+N Group Company. For the avoidance of doubt, the term "Carrier" does not include any K+N Group Company.

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

**Compensation Limit** means the following compensation limit:

Sea Carriage - per LCL Container: a maximum of USD\$1,500
Sea Carriage or Air Carriage - per FCL Container: a maximum of USD\$3,000
Subject to a maximum of USD\$30,000 per <b>Contract of Carriage</b>
Subject to a maximum liability of USD\$50,000 per <b>Customer per event and per year</b>

**Customer** means the party named as customer in the Booking Confirmation and who has confirmed to use the Carrier ELS service offering before commencement of carriage of the shipment(s) concerned and who has paid additional carriage charges for any ELSs.

**Computer System** means information technology and communication systems, networks, services and solutions (including all hardware) that either

[1] form part of such systems and networks, or

[2] are used in the provision of such services and solutions which are leased or made available to or accessible by the Carrier or which are provided for the Carrier's exclusive and secure usage for the purpose of its business.

**Cyber Attack** means a targeted attack initiated from a computer, pad, mobile phone or other suitable electronic device against a website or a Computer System that compromises the confidentiality, integrity or availability of the website or Computer System or information stored on it, but Cyber Attack excludes an attack which is not solely and exclusively targeted against a specific Carrier or a subcontractor of the Carrier.

Cyber attack also excludes Systemic risks, meaning any event by which the information security breach is triggered by:

- a systemic attack on electronic data or information processing systems not exclusively of the Carrier; or
- a malicious program that does not exclusively affect electronic data or information processing systems of the subcontractor of the KN Group Company or Carrier involved.

**ELS Carrier** means the K+N Group Company referred to in Clause 2.1 or 2.2 as appropriate.

**Enhanced Liability Service** or **ELS** mean the enhanced liability service confirmed in the Booking Confirmation, which gives the Merchant the additional rights and benefits detailed in these terms and conditions in relation to the applicable Contract of Carriage.

**FCL** means a full container load (either using a sea container or a ULD (unit load device)).

**Goods** means the cargo carried under a Contract of Carriage in respect of which an ELS has been purchased.

**K+N Group Company** means Kuehne + Nagel International AG and any company which directly or indirectly controls or is controlled by either of the foregoing and **control** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company.

**LCL** means less than a container load.

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

**Sea Carriage** means the carriage of Goods (i) wholly by sea or (ii) by one or more modes of transport, when the cross border element of the carriage is by sea.

## 2. APPLICATION

- 2.1 Where an ELS 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 K+N Group Company which sold the ELS (**ELS Carrier**) will be liable to the Merchant on the terms of the Contract of Carriage as enhanced by the ELS.
- 2.2 Where an ELS 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 ELS will be liable to the Merchant (**ELS Carrier**), by way of a collateral contract, on the terms of the Contract of Carriage as enhanced by the ELS.

## 3. STANDARD ELS PRODUCT (SEA CARRIAGE & AIR CARRIAGE)

- 3.1 In the event that a Cyber Attack prevents a Carrier from performing part or all of the Carriage, the ELS Carrier shall be liable for the following losses suffered or incurred by the Merchant, provided the losses arise directly from the Cyber Attack and relate to the Goods, and whether or not the Goods have been lost or damaged:
  - 3.1.1 expediting costs by the same mode of carriage;
  - 3.1.2 storage, demurrage and detention costs;
  - 3.1.3 additional freight costs;
  - 3.1.4 reloading/re-stuffing costs;

- 3.1.5 costs for issuing new transport documents;
- 3.1.6 other costs reasonably incurred by the Merchant to continue and complete the contracted Carriage due to the Carrier being unable to perform as its services and contractual obligations direct result of the Cyber Attack.

#### 4. DEFENCES & INAPPLICABILITY

4.1 The ELS Carrier will not be liable under Clause 3 for any losses arising directly or indirectly from the following causes:

- 4.1.1 Any loss or damage to Goods, consequences of misdirection of Goods unrelated to a Cyber Attack or any consequential or indirect losses or loss of business;
- 4.1.2 Act of God;
- 4.1.3 Any loss, damage, liability, claim, cost or expense of whatsoever nature caused by, contributed to by, resulting from, arising out of, or in connection with a communicable disease or the fear or threat (whether actual or perceived) of a communicable disease regardless of any other cause or event contributing concurrently or in any other sequence thereto;
- 4.1.4 Error, act, omission, mis-statement or misrepresentation or fraud on the part of the Merchant or, if different, the consignor or consignee;
- 4.1.5 Any trade or activity which is subject to any applicable economic, political or trade sanction, prohibition or restriction, including but not limited to any coverage for direct or indirect transactions whether import, export or transiting countries subject to US/EU/OFAC/UK/UN sanctions;
- 4.1.6 Direct or indirect transactions to/from or through Afghanistan, Azerbaijan, Belarus, Cambodia, Cuba, Haiti, Iran, Iraq, Laos, the Palestinian Authority Areas in Israel, Kazakhstan, Lebanon, Myanmar, Nepal, North Korea, Pakistan, Russia, Syria, Venezuela, Yemen, Bhutan. Please note that this current list is subject to change so Customer must verify at the time of engagement;
- 4.1.7 Any other shipment or carriage contract not containing the carriage of goods by Air Carriage or Sea Carriage;
- 4.1.8 Any claims caused by the willful misconduct of the Merchant or deliberate act or omission by or on behalf of the Merchant;
- 4.1.9 Any loss, damage or expense suffered or incurred by the Merchant arising out of a Cyber Attack against a K+N Group Company, whether or not the K+N Group Company affected by the Cyber Attack was the Carrier;
- 4.1.10 Any loss, damage or expense suffered or incurred by the Customer arising out of:
  - (a) data investigations
  - (b) data administrative fines
  - (c) pro-active forensic services
  - (d) ransom payments.

4.2 Notwithstanding any Booking Confirmation and additional carriage charges payable, the ELS will not be available in respect of, and the additional rights and benefits detailed in these terms and conditions shall not apply to, the 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.

5. **COMPENSATION LIMITS**

- 5.1 The amounts payable by the ELS Carrier under Clause 3 is subject to the Compensation Limits.
- 5.2 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 amounts will be payable under these terms and conditions.

6. **RECOVERIES**

- 6.1 Where the ELS Carrier is liable to the Merchant under these terms and conditions, it is a condition that, before the Merchant is paid damages by the ELS Carrier, the Merchant assigns and/or transfers, to the ELS Carrier its rights, if any, against the Carrier arising under the Contract of Carriage.

7. **CLAIMS PROCEDURE**

- 7.1 Any claim under Clause 3 must be notified within 72 hours of the Merchant becoming aware of the Cyber Attack, which is likely to give rise to a claim under Clause 3.
- 7.2 As a condition to the ELS Carrier being liable under Clause 3, the following documents must be presented:
- 7.2.1 Written notice of Cyber Attack from the Carrier or equivalent evidence from prudent public sources or regulatory bodies;
  - 7.2.2 Copy of the bill of lading, sea waybill, air waybill or other transport document relating to the Contract of Carriage;
  - 7.2.3 Copy of the freight invoice showing the charge for the ELS;
  - 7.2.4 Copy of invoices and all supporting documentation for the losses in respect of which the claim is being made; and
  - 7.2.5 Any additional supporting documents as may be required by the ELS Carrier. Where any of the documents listed at Clauses 7.2.1 to 7.2.4 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 ELS Carrier may require alternative documentary evidence to confirm that they are liable to pay the claim as presented.
- 7.3 The ELS Carrier shall be discharged of all liability under Clause 3 unless the claim is submitted within 6 months of the date of the Cyber Attack alleged to give rise to a claim under Clause 3.
- 7.4 The ELS Carrier will not be liable to pay any claim under Clause 3 unless all sums due to the ELS Carrier from the Customer have been paid in full.
- 7.5 The claim notification and all relevant documents and information in accordance with this Clause 7 should be submitted electronically to [cyberELScclaims@nacora.com](mailto:cyberELScclaims@nacora.com)
- 7.6 The Customer shall cite the KN ELS Booking Confirmation reference in the subject heading.
8. **MISCELLANEOUS**
- 8.1 The law and jurisdiction provisions of the Contract of Carriage shall apply to the ELS(s) purchased in respect of such Contract of Carriage and shall be incorporated in full herein.

- 8.2 No servant or agent of the ELS 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 ELS Carrier.
- 8.3 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.
- 8.4 To the extent required by law or any international convention, the ELS Carrier and Merchant agree that the terms and conditions herein are deemed to have been embodied in any bill of lading, sea waybill, air waybill or other transport document issued by the Carrier.
- 8.5 Save as provided for in these terms and conditions, the defenses available to the ELS Carrier contained in the Contract of Carriage remain in full force and effect.
- 8.6 The terms and conditions herein comprise an extension to liability under a Contract of Carriage and do not constitute insurance.
- 8.7 The Merchant is hereby entitled to have the benefit of the additional rights and benefits detailed in these terms and conditions and shall have the right to enforce these in accordance with applicable law. The rights of either party to agree to rescind, amend or otherwise vary or to waive these terms and conditions or to settle any dispute or other matter arising out of or in connection with these terms and conditions on such terms as they shall in their absolute discretion think fit shall not be subject to the consent of the Merchant. Except as stated in this clause, any person who is not a party to these terms and conditions may not enforce, or otherwise have the benefit of, any provision of these terms and conditions.