

THE GRAND ALLIANCE AGREEMENT II

FMC AGREEMENT NO. 203-011602-011  
(2d Edition)

(A Cooperative Working Arrangement)

Expiration Date: December 31, 2017 ~~2007~~

This Agreement has not been published previously

ARTICLE 2. PURPOSE OF THE AGREEMENT

The purpose of this AGREEMENT is to provide legal authority for the parties to operate as a consortium under the name Grand Alliance (or such other name(s) as they may decide from time to time) and for the chartering and exchange of space on the parties' vessels and for related rationalization, coordination and cooperative activities with respect to the parties' ocean and intermodal services and operations in the Trade.

ARTICLE 3. PARTIES TO THE AGREEMENT

The parties to the AGREEMENT are:

HAPAG-LLOYD AG and HAPAG-LLOYD USA LLC (which shall be treated as a single party for all purposes under this AGREEMENT, except Article 5.K, and be referred to as "HL")

Addresses: Hapag-Lloyd AG  
Ballindamm 25  
20095 Hamburg, Germany

Hapag-Lloyd USA LLC ("HLUSA")  
401 E. Jackson Street, Suite 3300  
Tampa, FL 33602

NIPPON YUSEN KAISHA ("NYK")

Address: 3-2, Marunouchi 2-chome  
Chiyoda-ku, Tokyo 100-0005, Japan

implement or effectuate any agreement regarding chartering or exchange of space, rationalization and related coordination and cooperative activities pertaining to their carrier operations and services, and related equipment, vessels and facilities in the Trade. In furtherance of the foregoing, the parties are authorized to engage in the following activities:

1. Vessels.

(a) Agree upon the type, capacity, speed, and total number of vessels to be used hereunder, the type, capacity, speed, and number of vessels to be contributed by each party, and the terms, conditions and operational details pertaining thereto; provided that the maximum number of linehaul vessels to be contributed for operations hereunder shall be one hundred sixty (~~160~~ ~~100~~), such vessels to have standard operating capacities not to exceed 15,000 ~~9000~~ TEU's.

(b) Agree upon the sailing patterns, ports to be called, vessel itineraries, the number, frequency, and character of sailings at ports, transit times, and all other matters related to the scheduling and coordination of vessels;

(c) Agree upon the chartering, hiring, establishment, use, scheduling and coordination of transshipment, barge and feeder services, in conjunction with linehaul vessel operations hereunder;

(d) Agree upon the chartering of vessels by one or more parties for use in operations hereunder, or the chartering of vessels among the parties;

(e) Coordinate and agree to provide advance notice and agree upon other terms and conditions with respect to a party's withdrawal of a vessel(s) or its introduction of substitute or replacement vessels or newbuildings in the Trade;

in any conference within which the parties operate, in so far as the vote being jointly exercised concerns the AGREEMENT's activities as such.

15. Subchartering. Any space chartering arrangement with a non-party VOCC provided for herein, other than an ad hoc or emergency subcharter, shall not be implemented until it has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984, if such filing is legally required.

16. Market Growth. Aspiration of the parties to pursue individual growth in excess of the natural market growth must not be irresponsible and should be discussed frankly. The parties are authorized to discuss their respective growth aspirations.

17. Suspension of Rate/Contract Authority. The authority contained in Articles 5.A.11 and 5.A.14 above is suspended as of the effective date of the amendment adding this Article 5.A.17 and such authority shall not be exercised again hereunder until such time as this Article 5.A.17 is deleted by an amendment which has been filed with the Federal Maritime Commission and become effective pursuant to the Shipping Act of 1984, as amended.

B. Cargoes. Without limitation, the cargoes subject to this AGREEMENT include containerized cargo (whether moving in dry, reefer, open top or other containers) and noncontainerized cargo for shipment on the parties' vessels, whether such cargoes are moving in all-water or intermodal service, whether moving by direct, feeder, relay or transshipment service, and whether moving under a through bill of lading or otherwise, and without restriction regarding the origin and/or destination of the cargo (subject to such operational restrictions and efficiency targets as the parties may adopt from time to time).

include records, statistics, studies, compilations, projections, costs, cargo carryings, marketing and market share information, statistical data, and documents of any kind or nature, whether prepared by a party or parties, or obtained from outside sources relating to matters authorized by this Article 5. The parties are also authorized to agree upon confidentiality requirements.

H. Administration. The parties are authorized to establish such committees, as they deem necessary, to consider, review, make, and implement administrative, operational and policy decisions relating to matters within the scope of this AGREEMENT, or to establish and maintain one or more joint coordination centers to perform such functions, including, but not limited to, scheduling, allocating space, forecasting, terminal operations, equipment and intermodal activities, cargo acceptance policy, hazardous cargo procedures, and stowage planning.

I. Cooperation in Other Trades. If a party is operating in a trade covered by Article 4.B hereof, and a second party is considering entry into such trade, prior to entry into such trade the second party ~~may shall~~ consult with the party already in such trade (which may include the Information Exchange activities of Article 5.G with respect to such trade) to determine if any of the arrangements hereunder in the Trade should be expanded to such additional trade.

J. Exclusivity. Except as otherwise provided herein or as the parties may otherwise agree, no party shall engage in space chartering or other rationalization of vessels or ocean terminals with any non-party VOCC in the Trade; provided, however, that if a party desires to develop further services in the Trade it may do so (subject to the agreement of all other parties, not to be unreasonably withheld) on the condition that it offers all the other parties the opportunity of participation on terms as set out herein, ~~notwithstanding the foregoing proviso or~~

~~Article 5. A hereof, a party may develop and implement existing or new arrangements in the trade to and from Europe outside of this AGREEMENT until such time as satisfactory arrangements for said service to and from Europe may become available hereunder.~~ Except as otherwise agreed, any party that operates an existing service that covers all or part of the Trade at the time this AGREEMENT becomes effective may continue to do so and may modify said service from time to time.

K. Employment of U.S. Flag Ships.

1. Notwithstanding any other provision of this AGREEMENT, HLUSA shall retain authority to determine the routes, schedules and space availability of its U.S.-flag vessels covered under this AGREEMENT as may be required to fulfil its obligations under its contracts with the United States government; provided, however, that HLUSA shall to the extent practicable provide the other parties with prompt notice of any change in U.S.-flag vessel routes, schedules or space availability and advise and consult with the other parties regarding such routes, schedules and space availability. Furthermore, in the event that any U.S.-flag vessel(s) covered by this AGREEMENT and employed by HLUSA or space on such vessel(s) is activated under any stage of the Voluntary Intermodal Sealift Agreement (“VISA”) and contracts implementing VISA, HLUSA may make such vessel(s) or space thereon available to the U.S. government without liability to any party hereunder, notwithstanding any other provision of this AGREEMENT.

Commission or any other governmental entities with mandatory jurisdiction over this AGREEMENT and to respond to any requests for information from the FMC, and such persons are also authorized to delegate such authority:

1. A designated senior executive of each Party; or
2. Legal counsel for each Party.

This AGREEMENT and any subsequent modification hereto may be executed in writing by separate counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

ARTICLE 7: MEMBERSHIP AND WITHDRAWAL

A. Any party may withdraw from this AGREEMENT without cause by giving one (1) year's prior written notice to the other parties; provided that such notice shall not be given prior to December 31, 2016 ~~2006~~. The Federal Maritime Commission shall be notified promptly of any such withdrawal.

B. Notwithstanding Article 7.A hereof, a party may withdraw from the agreements ~~for those services to or from Europe will have an initial period of thirty (30) months, after which~~ upon not less than six months notice of withdrawal may be given. Any party giving notice of withdrawal from any trade lane within the scope of this AGREEMENT (including without limitation under the foregoing sentence) must give the same notice with respect to all other trade lanes.

C. Notwithstanding any other provision of this Article 7, if at any time during the term of this AGREEMENT there shall be a change in the control or a material change in the

ownership of any one party (the party so affected being referred to in this Article 7.C only as the Affected Party) and the other parties are unanimously of the opinion arrived at in good faith that such change is likely to materially prejudice the cohesion or viability of the services, then the other parties may unanimously within six months of the coming into effect of such change give not less than ~~six~~ twelve month's notice in writing to the Affected Party terminating the period of the AGREEMENT in relation to the Affected Party.

D. Notwithstanding any other provision of this Article 7, if at any time during the term of this AGREEMENT any party should become bankrupt or declare insolvency or have a receiving order made against it, suspend payments, or continue its business under a receiver for the benefit of any of its creditors, or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken, for the winding-up of the party (otherwise than for the purposes of and followed by a resolution previously approved in writing by the other parties), or any event similar to any of the above shall occur under the laws of the party's country of incorporation (the party so affected being referred to in this Article 7.D only as the Affected Party) and the other parties are unanimously of the opinion that the result may be materially detrimental to the services, or that sums may be owed by the Affected Party to any other party or parties may not be paid in full or their payment may be delayed, then, by unanimous decision of the other parties, any further participation of the Affected Party in the AGREEMENT or any part thereof may, with immediate effect, either be terminated or suspended for such period as the other parties, in their sole discretion, deem appropriate.

B. The parties may meet, from time-to-time and at such places as they may decide, for the purpose of implementing this AGREEMENT. Actions under this AGREEMENT may also be taken pursuant to telephone, facsimile or other electronic or written polls of the parties.

ARTICLE 9: DURATION AND TERMINATION

This AGREEMENT shall continue in effect until December 31, 2017 ~~2007~~ unless the parties agree by unanimous vote to extend or terminate the AGREEMENT. In the event of termination, the conditions of Article 7.E of the AGREEMENT shall apply.

ARTICLE 10: MODIFICATIONS

The terms of this AGREEMENT may be modified upon the unanimous agreement in writing of the parties. Copies of such modifications shall be promptly filed with the appropriate governmental authorities prior to implementation thereof.

ARTICLE 11: NOTICE

Each notice required to be given to a party hereunder shall be in writing.

ARTICLE 12: NON-ASSIGNMENT

No party hereto shall assign or transfer this AGREEMENT or all, or any part of, its rights or liabilities hereunder to any person, entity or corporation (except subsidiaries, parent companies

or fellow subsidiaries) without the prior unanimous written consent of the other parties. Each party shall warrant that any subsidiary or fellow subsidiary to which any assignment is made shall not be sold to another party without the unanimous written consent of the other parties.

ARTICLE 13: GOVERNING LAW AND ARBITRATION

This AGREEMENT shall be subject to the U.S. Shipping Act of 1984, as amended, but shall otherwise be governed by and interpreted under English law. Each party hereby submits to the jurisdiction of the English courts. Any dispute between the parties arising out of, or in connection with, this AGREEMENT shall, if amicable settlement is not possible, be referred to arbitration in London, England in accordance with the Arbitration Act 1996 together with LMAA (London Maritime Arbitration Association) terms. The parties agree to appoint a single/sole arbitrator, having appropriate commercial and consortia experience, within 21 days of any party seeking an appointment. If any party should so request, a panel of three (3) arbitrators shall be appointed. Should there be no agreement on the appointment within the said 21 days, then the LMAA President will appoint a single/sole arbitrator (or panel of three arbitrators, as appropriate) at the request of any party. When the amount in dispute is \$100,000 ~~200,000~~ or less, arbitration will proceed on documents and written submissions only; provided, however, that oral evidence will be allowed exceptionally and at the discretion of the arbitrator(s). The parties agree that any awards made pursuant to this provision in respect of any dispute or difference relating to a portion of the Trade to or from a country belonging to the European Union shall be notified to the European Commission.