

# ADSp 2017

The following text is a translation of the German version of the ADSp 2017. In case of doubts, the German version of the ADSp 2017 shall prevail.



The German Freight Forwarders' Standard Terms and Conditions 2017 (*Allgemeine Deutsche Spediteurbedingungen 2017 – ADSp 2017*) are recommended for use as of January 1, 2017 by the Federation of German Industries (BDI), the Federation of German Wholesale, Foreign Trade and Services (BGA), the Federal Association of Road Haulage, Logistics and Disposal (BGL), the Federal Association of Furniture Forwarders and Logistics (AMÖ), the Federal Association of Transport and Logistics in Industry and Trade (BWVL), the Association of German Chambers of Commerce and Industry (DIHK), the German Association for Freight Forwarding and Logistics (DSLVL) and the Confederation of German Retail (HDE). This advice is non-binding and the contract parties are free to make agreements that deviate from the contents of this recommendation.

## 1. Definitions<sup>1</sup>

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### (1.4) Consignee

Legal person to whom the goods shall be delivered according to the Freight Forwarding Contract or valid instruction of the Principal or other persons authorised to dispose of.

### (1.11) Damage Case/Damage Event

Damage Case means, when, due to an external process, a claimant raises a claim on the basis of a Freight Forwarding Contract or in lieu of a freight forwarding claim; Damage Event means, when, due to an external process, several claimants raise claims on the basis of several Freight Forwarding Contracts.

### (1.6) Dangerous Goods

Dangerous Goods are goods that have the potential to endanger people, Vehicles or legal interests of third parties during the course of standard transportation, warehousing or other activities. In particular, hazardous goods are defined as goods that fall into scope of application of statutes and regulations relating to hazardous goods, such as provisions covering dangerous materials, water or garbage.

### (1.1) Delivery

The term of Delivery includes also the delivery in the warehouse business.

### (1.13) Freight Forwarder

Legal person, which concludes a Freight Forwarding Contract with the Principal. Freight Forwarders are particularly carrier according to section 407, Freight Forwarder according to section 453, warehouse keeper according to section 467 and sea freight carrier according to sections 481, 527 HGB.

### (1.14) Freight Forwarding Contracts ("Verkehrsverträge")

Freight Forwarding Contracts undertaken by the Freight Forwarder as contractor for all activities, regardless of whether they are freight forwarding, carriage of goods (by sea), warehousing or other, typical services pertaining to the freight forwarding business, such as customs handling, tracking of goods or cargo handling.

These contracts also apply to all typical logistical services included in freight forwarding, if these are in relation to the transport or warehousing of goods, in particular to activities such as the creation of loading units, consignments, labelling, weighing of goods and returns processing.

<sup>1</sup> For user-friendliness, Section 1 ADSp 2017 ("Definitions") is sorted in alphabetical order. The numbering is according to the German version of the ADSp 2017.



Contracts about the presentation of manned motor Vehicles for use on instruction by the Principal shall also be deemed as Freight Forwarding Contracts ("Lohnfuhrverträge").

#### **(1.12) Interfaces**

After acceptance and before Delivery of the goods by the Freight Forwarder, Interfaces are defined as any transition of the goods from one legal person to another, any transshipment from one Vehicle to another, any (temporary) storage.

#### **1.7 Loading Means**

Means for the aggregation of Packages and for the creation of loading units, such as pallets, container, swap trailers, bins.

#### **(1.16) Material Contractual Obligations**

Material Contractual Obligations are defined as those that initially enable the contractually agreed fulfilment of the Freight Forwarding Contract and on which the contracting partner is entitled to reasonably rely on.

#### **(1.10) Packages**

Single items or units formed by the Principal for the fulfilment of the order with or without Loading Means, which the Freight Forwarder must handle as one ensemble (freight item as defined by sections 409, 431, 504 German Commercial Code (HGB)).

#### **(1.8) Place of Loading/Discharge**

The postal address, if the parties have not agreed on a more precise location.

#### **(1.19) Point of Time**

Agreed Point of Time for the arrival of the Freight Forwarder at the Place of Loading or Place of Discharge.

#### **(1.2) Principal**

Legal person which concludes a Freight Forwarding Contract with the Freight Forwarder.

#### **(1.15) Shipper**

Legal Person, which hands over the goods for transportation according to the Freight Forwarding Contract or on a valid instruction.

#### **(1.3) Theft-Sensitive Goods**

Theft-Sensitive Goods are those exposed to an increased risk of robbery and theft, such as money, precious metals, jewellery, watches, precious minerals, art, antiques, check books, credit cards and/or other payment means, stocks and security papers, documents, spirits, tobacco, entertainment electronic goods, telecommunications goods, IT equipment and accessories as well as smart cards.

#### **(1.18) Time Frame**

Agreed Time Frame for the arrival of the Freight Forwarder at the Place of Loading or Place of Discharge.

#### **(1.9) Time of Performance**

The time (date, time of day) up to a particular performance must be taken place, for example a Time Frame or Point of Time.

#### **(1.17) Valuable Goods**

Good, at the time and place of taking over, with an actual value of at least 100 Euro/kg.

#### **(1.5) Vehicle**

Means of transport for the transportation of goods on traffic routes.

## **2. Scope of application**

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- 2.1** The ADSp cover all Freight Forwarding Contracts undertaken by the Freight Forwarder as contractor.
- 2.2** Statutory provisions which cannot be modified by pre-formulated standard terms and conditions take precedence over the ADSp.
- 2.3** The ADSp do not apply to businesses that are exclusively dedicated to:
- 2.3.1 packaging,
  - 2.3.2 transportation and warehousing of towed or salvaged goods,
  - 2.3.3 transportation and warehousing of removal goods according to section 451 HGB,
  - 2.3.4 storage and digitalisation of files; files are all types of embodied and digitalised business papers, documents, data storage mediums and similar objects for information collection,
  - 2.3.5 abnormal and heavy-load transports, which require a transportation regulation permission or exception, crane services and associated assembly work,
- 2.4** The ADSp do not apply to Freight Forwarding Contracts with consumers as defined in Section 13 German Civil Code (BGB).

## **3. Obligation of the Principal regarding placing of orders, information requirements, special goods**

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- 3.1** The Principal shall timely inform the Freight Forwarder about all essential parameters known to him affecting the carrying out of the order.



These include

- 3.1.1 addresses, type and quality of the goods, the gross weight (including packaging and Loading Means of the Principal) or otherwise specified quantities, marks, numbering, quantities and type of Packages, specific characteristics of the goods (such as live animals and plants, perishability), the value of the goods (for example for customs purposes or the insurance of goods according to clause 21 ADSp) and Delivery times,
- 3.1.2 all public-legal duties and safety regulations, such as duties relating to customs, foreign trade regulations (particularly those relating to goods and people as well as specific country embargos) and legal safety obligations.
- 3.1.3 in case of carriage of goods by sea, all relevant data in the compulsory form relating to safety statutes (e. g. International Convention for the Safety of Life at Sea [SOLAS]).
- 3.1.4 intellectual property rights of third parties, such as trademark and license limitations which are connected to the possession of the goods, including legal or regulatory hindrances capable of prejudicing the processing of the order.
- 3.1.5 specific technical requirements for the means of transport and particular cargo securing means to be supplied by the Freight Forwarder.
- 3.2** In case of Dangerous Goods, the Principal must inform the Freight Forwarder in due time and in text form about the quantity and specific nature of the hazard including – if required – the necessary safety measures. If Dangerous Goods fall into scope of the law on the transport of dangerous goods (*Gesetz über die Beförderung gefährlicher Güter [GGBefG]*) or if other transported and stored goods fall into scope of other Dangerous Goods or garbage related statutes or regulations, the Principal must provide the relevant information, in particular the classification according to the relevant Dangerous Goods laws, and, at the latest, during the handover of the goods, supply the required documentation.
- 3.3** In case of Valuable or Theft-Sensitive Goods, the Principal must inform the Freight Forwarder in text form regarding the type and value of the goods and the current risks involved to enable the Freight Forwarder to assess the acceptance of the order or take appropriate measures for the safe and damage-free completion of said order. In case of acceptance of the order, the Freight Forwarder is obliged to undertake appropriate safety measures for protecting the goods.

- 3.4** The Principal is responsible for supplying the Freight Forwarder with all information, certificates and other documentation required, such as customs classification, for the correct processing of customs or other statutorily required handling of the goods, including, but not limited to, security checks for air freight shipments.

## 4. Rights and duties of the Freight Forwarder

- 4.1** The Freight Forwarder shall act in the interest of the Principal, check the placed order for obvious faults and immediately inform the Principal, if required, about all dangers known by the Freight Forwarder for the fulfilment of the order. If required, the Freight Forwarder shall ask for instructions.
- 4.2** The Freight Forwarder takes care that the Vehicles, loading safety means and, if their presentation is agreed, Loading Means are in a technically perfect condition, comply with statutory provisions and the requirements of the Freight Forwarding Contract. Vehicles and Loading Means shall be equipped with the typical appliances, equipment or methods for the protection of the goods, in particular loading safety means. Vehicles shall have low emissions and noise as well as low energy consumption.
- 4.3** The Freight Forwarder shall deploy reliable, appropriate and, for the particular task in question, suitable and duly employed, qualified and trained drivers and, if required, with a driver certification.
- 4.4** On foreign premises, the Freight Forwarder shall comply with the house rules, plant or construction site regulations in force, if they were announced to the Freight Forwarder. Section 419 HGB remains unaffected.
- 4.5** The Freight Forwarder is entitled to make customs clearance dependent on issuance of a written power of attorney that enables direct representation.
- 4.6** If the Freight Forwarder is assigned with the cross-border transportation of the goods or the import or export customs clearance, the Freight Forwarder is, in case of doubt, also entitled to act in regards to the customs or other statutorily required handling of the goods, if the transport of the goods to the agreed destination would be impossible without such action.

The Freight Forwarder is hereby entitled

- 4.6.1 to open packaging whenever such action is necessary to comply with statutorily required controls (for example, Freight Forwarder as regulated agent), and,



subsequently, to undertake all measures necessary to complete the order, such as repackaging the goods.

- 4.6.2 to advance payments required by customs.
- 4.7** In case of lost or damaged goods or for delay in delivery and upon request by the Principal or Consignee, the Freight Forwarder must procure immediately all required and known information for securing their compensation claims.
- 4.8** In the absence of a separate agreement in the order supplied to the Freight Forwarder, the service does not include:
- 4.8.1 the supply or replacement of pallets or other Loading Means,
- 4.8.2 the loading and unloading of goods, unless otherwise indicated by circumstances or common practice.
- 4.8.3 a transshipment ban (section 486 HGB does not apply),
- 4.8.4 the allocation of a shipment tracking system, unless it is in line for this sector of industry, whereas clause 14 remains unaffected.
- 4.8.5 returns, detours and hidden additional cargo.
- If in deviation to the actual order, one or more Packages are handed over and accepted for transportation by the Freight Forwarder, then the Freight Forwarder and the Principal conclude a new Freight Forwarding Contract on these goods. In case of returns or hidden additional cargo and in absence of a separate agreement, the terms and conditions of the original Freight Forwarding Contract will apply. Clause 5.2 remains unaffected.
- 4.9** Further service and information obligations, for example quality management measures and their auditing, monitoring and evaluation systems as well as key performance indicators need to be expressly agreed.

## **5. Contact person, electronic communication and documents**

- 5.1** Upon request of a contracting party, each side will nominate one or more contact persons to receive information, explanations and enquiries regarding the fulfilment of the contract and exchange names and addresses. This information needs to be updated in case of changes. If either contracting party fails to provide details for a contact person, then the relevant signatory to the contract shall be the designated contact person.

Information obligations, which exceed the obligation in statutory provisions, for example measures of the

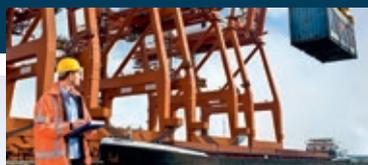
Freight Forwarder in case of disruptions, in particular, an imminent delay during takeover or Delivery, obstacles to carriage and Delivery, damages to the goods or other disruptions (emergency concept) need to be agreed separately.

- 5.2** In the absence of an expressly agreement, contractual statements by warehousing or transport personnel require approval from the respective party to be considered valid.
- 5.3** The Principal takes care of the required declarations to be supplied by the Principal's Shipper or Consignee during the fulfilment of the Freight Forwarding Contract at the Place of Loading and Place of Delivery, and of real actions, such as Delivery and receipt of the goods.
- 5.4** If agreed between the Principal and the Freight Forwarder, the parties will transmit and receive the shipping details, including the creation of the invoice, by electronic means (electronic data interchange/ remote transmission).  
The transmitting party carries the responsibility for the loss, completeness and validity of any sent data.
- 5.5** In case of an agreement according to clause 5.4 ADSp, the parties ensure that their IT system is ready for operation and that data can be processed appropriately, including the usual safety and control measures, to protect the electronic data exchange and prevent unauthorized access, modification, loss or destruction by third parties. All parties are obliged to give timely notification of any changes to their IT systems that could affect the electronic data interchange.
- 5.6** Electronic or digital documents, in particular proof of deliveries, shall be considered equal to written documents.

Furthermore, each party is entitled to archive written documentation in exclusively electronic or digital format and to eliminate originals, the latter always in consideration of the legal regulations regarding the same.

## **6. Packaging and labelling duties of the Principal**

- 6.1** The Principal shall pack the goods, and if required, clearly and permanently label all goods with their required identifications, such as addresses, marks, numbers and symbols relating to the handling and characteristics of the goods. Old identification marks



must be removed or garbled. The same applies for Packages.

**6.2** Furthermore, the Principal is responsible for:

- 6.2.1 identifying all Packages belonging to the same shipment, to ensure easy recognition,
- 6.2.2 ensuring that Packages, if required, cannot be accessed without leaving external traces.

## **7. Securing cargo and supervisory duties of the Freight Forwarder**

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- 7.1 In all cases where loading and discharge occurs at more than one location, the Freight Forwarder takes care for the security of cargo until the last Place of Discharge and at all times, but not before the completion of loading in a transport safety manner.
- 7.2 The Freight Forwarder shall conduct controls at all Interfaces. The Freight Forwarder shall check completeness and identity of the goods, their apparent good order and condition as well as all seals, locks and record any irregularities.

## **8. Receipt**

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- 8.1 The Freight Forwarder shall issue a certificate of receipt with reservations noted, if necessary.  
In case of doubt, the certificate of receipt issued by the Freight Forwarder only confirms the number and type of Packages, but not their content, value, weight or other measurements.
- 8.2 Previously loaded or sealed loading units, such as containers or swap bodies and previously transmitted data, the accuracy of the certificate of receipt regarding quantity and type of loaded Packages is vitiated, if the Freight Forwarder notifies the Principal on differences (in quantity) or damages, immediately after unloading the loading unit.
- 8.3 The Freight Forwarder must request proof of Delivery from the Consignee in form of a Delivery receipt listing all Packages as outlined in the order or other accompanying documentation. Should the Consignee refuse to issue a Delivery receipt, the Freight Forwarder must request instructions from the Principal.  
  
The Principal can demand the Delivery receipt for a period of one year after the goods have been delivered.
- 8.4 As receipt for takeover or Delivery of the goods counts any signed document which gives evidence

for fulfilment of the order, such as Delivery notes, forwarders certificate of receipt, consignment note, sea way bill, consignment bill or a bill of lading.

- 8.5 The certificate of receipt and Delivery receipt can also be issued electronically or digitally, unless the Principal requests the issuing of a consignment note, sea way bill, consignment bill or bill of lading.

## **9. Instructions**

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Upon conclusion of the contract, the Freight Forwarder must follow all instructions regarding the cargo, unless carrying out such instructions poses disadvantages to his business or damages to consignments of other Principals or Consignees. If the Freight Forwarder intends not to follow an instruction, then the Freight Forwarder shall inform the instructor immediately.

## **10. Freight payment, cash on Delivery**

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- 10.1 Notifications by the Principal to the effect that the order should be executed freight collect or for the account of the Consignee or a third party, for example according to Incoterms, do not exempt the Principal from his obligation to pay the Freight Forwarder its remuneration and outlays, including freights, customs charges and other expenses. Freight collect instructions, for example according to section 422 HGB, Article 21 CMR, remain unaffected.

## **11. Default of loading and Delivery times, demurrage**

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- 11.1 In cases where the Principal must load or unload the Vehicle, the Principal has the obligation to do so within the agreed, otherwise within a reasonable loading and unloading time.
- 11.2 If, in case of carriage of goods by road, the parties agree on a Time Frame or Point of Time or is such notified by the Freight Forwarder without objection by the Principal, Shipper or Consignee, the loading and unloading time – irrespective of the number of shipments per Place of Loading and Discharge – for full truck loads, but with the exception for bulk goods, for Vehicles with 40 tons maximum permissible weight shall be maximum 2 hours per loading and per unloading in general. The times shall be reduced appropriately for Vehicles with a lower maximum permissible weight in the individual case.



**11.3** The loading or unloading time begins with the arrival of the road vehicle at the designated Place of Loading and Discharge (for example, by notifying the gate keeper), and ends when the Principal has completed all its duties.

However, if a Time of Performance has been agreed for the arrival of road Vehicles at the Place of Loading and Discharge, the loading and unloading time does not begin before the agreed presentation time.

**11.4** In cases where the contractually agreed loading and unloading time are not maintained due to reasons beyond the Freight Forwarder's scope of responsibility, the Principal must pay the Freight Forwarder the agreed, otherwise commonly accepted, demurrage fees.

**11.5** The aforementioned provisions apply accordingly, when the Freight Forwarder is obliged to load and unload the goods, and when the Principal is exclusively committed to prepare the goods for loading or to accept them after unloading.

## 12. Performance hindrances and *force majeure*

**12.1** If the Freight Forwarder is unable to take over the goods, or unable to take them over on time, the Freight Forwarder must immediately notify and seek instructions from the Principal. Section 419 HGB applies accordingly. The Principal remains entitled to terminate the Freight Forwarding Contract, whereas the Freight Forwarder is not entitled to ask for compensation according to section 415 (2) HGB.

**12.2** Performance hindrances that do not fall within the scope of responsibility of either contracting party, free said parties of their performance duties for the duration of the hindrance and the extent of its impact. Such performance hindrances are defined as *force majeure*, civil unrest, war or acts of terrorism, strikes and lock-outs, transport route blockades, and any other unforeseeable, unavoidable and serious events. In case of a performance hindrance, the contracting parties are obliged to notify the other party immediately. Additionally, the Freight Forwarder is obliged to ask the Principal for instructions.

## 13. Delivery

**13.1** If, after arrival at the Place of Discharge, it becomes apparent that the unloading cannot take place within the time of unloading, the Freight Forwarder must immediately notify the Principal and request for relevant instructions. Section 419 HGB applies accordingly.

**13.2** If, the Freight Forwarder cannot adhere to the agreed Time of Performance or – in the absence of an agreement – to a reasonable time for Delivery, the Freight Forwarder shall request instructions from the Principal or the Consignee.

**13.3** Should the Consignee not be located at his residence, business premises, or in an institution in which he is a resident, the goods, always assuming there are no obvious doubts regarding the entitlement to receive the goods of the person in question, may be delivered to:

**13.3.1** at the residence: on an adult family member, a person employed by the family or an adult resident permanently sharing the accommodations,

**13.3.2** at business premises: on a person employed there,

**13.3.3** in institutions: on the head of the institution or a correspondingly authorised attorney-in-fact.

**13.4** In cases where the Freight Forwarder and Principal have agreed on Delivery without the presentation to an actual person (for example, night, garage or assembly line deliveries), Delivery is deemed to have taken place on the actual physical deposit of the goods at the agreed location.

**13.5** The Delivery can only take place under supervision of the Principal, Consignee or a third party authorised for reception. Clauses 13.3 and 13.4 ADSp remain unaffected.

## 14. Information and restitution duties of the Freight Forwarder

**14.1** The Freight Forwarder is obliged to provide the Principal with the required reports and, on demand, to provide information on the status of the transaction and after carrying out the business to render account for it. However, the Freight Forwarder is only obliged to reveal costs, if the Freight Forwarder works on Principal's account.

**14.2** The Freight Forwarder has the duty to give anything to the Principal what he has received by carrying out and managing the business.

## 15. Warehousing

**15.1** The Principal has the duty to pack and mark the goods, if required, and to make available all documents and information to the Freight Forwarder for an appropriate storage.



**15.2** The Freight Forwarder decides in its sole discretion if warehousing takes place in its own facilities or, if not otherwise agreed, those of third parties. Whenever warehousing takes place at third party warehouses, the Freight Forwarder must supply timely information regarding its name and location to the Principal or, whenever a warehouse warrant has been issued, to make a note of the information on the same.

**15.3** The Freight Forwarder takes care for the duly maintenance and care of the warehouse and storage space, the drives on the premises and for securing the goods, in particular theft protection. Additional security measures, for example measures exceeding the statutory fire protection laws, must be expressly agreed.

**15.4** Unless otherwise agreed:

**15.4.1** takeover of the goods for warehousing begins with the unloading of the goods from the Vehicle by the Freight Forwarder and the Delivery ends with the completion of the loading of the goods by the Freight Forwarder.

**15.4.2** inventory management is via the Freight Forwarder's inventory accounting,

**15.4.3** there is one physical inventory inspection per year. On instruction of the Principal, the Freight Forwarder shall conduct further physical inventories against compensation.

**15.5** With taking over the goods and if appropriate examination means are available, the Freight Forwarder is obliged to conduct a receiving inspection on types, quantities, marks, numbering, quantities of Packages as well as outer visible damages according to section 438 HGB.

**15.6** The Freight Forwarder shall conduct regular inspections with appropriate personnel for securing the goods.

**15.7** In case of stock shortfall and imminent changes at the goods, the Freight Forwarder shall immediately inform the Principal and ask for instructions. Section 471 (2) HGB remains unaffected.

**15.8** Additional service and information obligations require an explicit agreement.

## **16. Remuneration**

**16.1** The services according to the Freight Forwarding Contract are compensated with the agreed remuneration, if this remuneration includes the costs for transportation and warehousing. Supplemental claims for

costs occurred during regular transportation or warehousing and which were foreseeable at the time of the offer, cannot be claimed separately, unless otherwise agreed. Calculation errors are at the expense of the calculator. Sections 412, 418, 419, 491, 492, 588 until 595 HGB and comparable provisions of international conventions remain unaffected.

## **17. Compensation claims and right of recourse**

**17.1** The Freight Forwarder is, if not caused by his fault, entitled to ask for refund of expenses properly incurred, in particular those relating to average contributions, detention or demurrage charges, including additional packaging for protecting the goods.

**17.2** If the Principal instructs the Freight Forwarder to receive goods and if, on reception of the goods by the Freight Forwarder, freight, cash on delivery, customs duties, taxes, or other expenses and charges are demanded, the Freight Forwarder is entitled – but not obliged – to pay these costs according to the circumstances he has properly assessed, and to claim reimbursement from the Principal, unless otherwise agreed.

**17.3** On request, the Principal must immediately indemnify the Freight Forwarder for expenditures, such as freight, average contributions, customs duties, taxes and other fees demanded from the Freight Forwarder, in particular acting as a person authorised to dispose or as possessor of goods belonging to third parties, unless the Freight Forwarder is responsible for their accrual.

## **18. Invoices, foreign currencies**

**18.1** Remuneration claims of the Freight Forwarder require the reception of an invoice or payment schedule in accordance to statutory requirements. If not otherwise agreed, the maturity is not dependent on presenting a delivery receipt in case of an uncontested Delivery.

**18.2** Regarding foreign Principals or Consignees, the Freight Forwarder is entitled to ask whether to receive payment in the relevant foreign currency or in Euro (EUR).

**18.3** If the Freight Forwarder owes foreign currency or has advanced foreign currency amounts, the Freight Forwarder is entitled to ask for payment in either the relevant foreign currency or in Euro (EUR). In case of



Euro (EUR), currency conversion is made according to the official exchange rate on the day of payment, which shall be evidenced by the Freight Forwarder.

- 18.4** Payment according to a credit memo procedure must be expressly agreed. In case of doubt, all credit memos are to be issued immediately, upon completion of services. Clause 18.1 first sentence ADSp is not applicable for credit memo procedures.

## 19. Set-off, Retention

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In the face of claims arising from the Freight Forwarding Contract and associated non-contractual claims, set-off or retention is only permitted when the claim is due, uncontested, ready for decision or legally established.

## 20. Lien and retention rights

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- 20.1** The Freight Forwarder is entitled to secure its demands arising from freight forwarding services according to the legally permitted regulations regarding lien and retention rights.
- 20.2** Lien rights can be exercised according to the legally established provisions, providing:
- 20.2.1** the threat and the required notifications about the exercise of the legitimate lien and the sale of the pledged items by the carrier shall be forwarded to the Consignee,
- 20.2.2** the time limit of one month as specified in section 1234 BGB is superseded by a time limit of one week.
- 20.3** The Principal is entitled to prohibit the exercise of the lien by granting an equivalent security for its claims, such as a directly enforceable bank guarantee.

## 21. Insurance of goods

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- 21.1** The Freight Forwarder arranges the insurance of the goods (e. g. goods in transit or warehousing insurance) with an insurer of its choice, when the Principal assigns the Freight Forwarder to do so prior to handing over the goods.
- 21.2** The Freight Forwarder shall arrange insurance for the goods, if this is in the interest of the Principal. The Freight Forwarder can assume that insurance is in the interest of the Principal, in particular when:
- 21.2.1** the Freight Forwarder has arranged insurance for a previous Freight Forwarding Contract for the same

Principal in the course of an ongoing business relationship,

- 21.2.2** the Principal has declared a value of the goods for the purpose of insurance.
- 21.3** The assumption that insurance is in the interest of the Principal according to clause 21.2 ADSp is discounted, in particular when:
- 21.3.1** the Principal has prohibited the purchase,
- 21.3.2** the Principal is a Freight Forwarder, carrier or warehouse keeper.
- 21.4** In case of purchasing insurance cover, the Freight Forwarder shall observe instructions of the Principal, in particular the amount insured and risks to be covered. In the absence of such an instruction, the Freight Forwarder must assess the type and scope of insurance in its sole discretion and purchase insurance cover at the usual market conditions.
- 21.5** If, due to the nature of the goods to be insured, or for another reason, the Freight Forwarder is unable to purchase insurance cover, the Freight Forwarder will notify the Principal immediately.
- 21.6** If the Freight Forwarder purchases an insurance after conclusion of the Freight Forwarding Contract and upon instruction of the Principal or recovers a claim or acts otherwise on behalf of the Principal regarding carrying out insurance claims or averages, the Freight Forwarder is entitled to a reasonable remuneration according to local standards, otherwise, an appropriate remuneration, in addition to the compensation of its expenses, even in the absence of a prior agreement.

## 22. Liability of the Freight Forwarder, Subrogation of claims of reimbursement

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- 22.1** The Freight Forwarder is liable for damages according to the statutory provisions. However, the following provisions shall apply, in as much as they do not contradict mandatory regulations, in particular the law of pre-formulated terms and conditions.
- 22.2** In all cases, where the Freight Forwarder is fault-based liable for losses or damages to the goods ("Güterschaden") according to clause 23.3 and 24, the Freight Forwarder must only pay the value and reimburse the costs according to sections 429, 430, 432 HGB instead of damage compensation.
- 22.3** In case of inventory divergences, the Freight Forwarder is entitled to balance the inventory with positive stock balance differences and stock shortfall of the



same Principal for value evaluation in cases as set out in clause 24 ADSp.

- 22.5** If the Freight Forwarder has claims, for which the Freight Forwarder is not liable for, against a third party in case of damages, or in cases when the Freight Forwarder has claims exceeding the sum for which the Freight Forwarder is liable, the Freight Forwarder must subrogate such claims to the Principal upon request, unless the Freight Forwarder has a separate agreement to pursue claims on behalf and at the expense of the Principal. Sections 437, 509 HGB remain unaffected.

## 23. Liability limitations

- 23.1** Except in case of damages during carriage of goods by sea or ordered warehousing, the Freight Forwarder's liability for damages to goods is limited according to section 431 (1), (2) and (4) HGB, to:

- 23.1.1** 8.33 *Special Drawing Rights* (SDR) for every kg, whenever the Freight Forwarder is:
- a carrier, as defined by section 407 HGB,
  - acting as principal ("*Spediteur im Selbsteintritt*"), fixed costs freight forwarder (*Fixkostenspediteur*) or consolidator ("*Sammelladungsspediteur*"), according to sections 458 to 460 HGB or
  - care, custody and control Freight Forwarder ("*Obhutsspediteur*") according to Section 461 (1) HGB.

- 23.1.2** 2 instead of 8.33 SDR for every kg, whenever the Principal has agreed to a Freight Forwarding Contract which is subject to a variety of transport means and includes carriage of goods by sea and an unknown damage place.

In case of a known damage place, the liability according to section 452a HGB is subject to the liability exclusion and liability limitation of the ADSp.

- 23.1.3** Whenever Freight Forwarder's liability according to clause 23.1.1 ADSp exceeds an amount of EUR 1.25 million per Damage Case, this liability is furthermore limited to EUR 1.25 million per Damage Case, or to 2 SDR for every kg, whichever amount is higher.

- 23.2** The liability of the Freight Forwarder for damages to the goods in its custody for Freight Forwarding Contracts which are subject to carriage of goods by sea and cross-border transportation is limited to the maximum statutory liability amount. Clause 25 ADSp remains unaffected.

- 23.3** For all cases out of scope of clauses 23.1 and 23.2, such as section 461 (2) HGB, 280 ff BGB, the liability of the Freight Forwarder for damages to goods is limited according to section 431 (1), (2) und (4) HGB to a maximum of:

- 23.3.1** 2 SDR per kg for Freight Forwarding Contracts relating to carriage of goods by sea or a transportation by a variety of transport means, but including carriage of goods by sea,

- 23.3.2** 8.33 SDR per kg for all other Freight Forwarding Contracts.

- 23.3.3** Furthermore, the Freight Forwarder's liability is limited to the maximum amount of EUR 1.25 million for each case of damage.

- 23.4** The liability of the Freight Forwarder for all other damages than damages to the goods with the exception of damages during ordered warehousing or damages to personal injury or goods of third parties is limited to three times the amount that would be payable for the loss of goods according to clauses 23.3.1 or 23.3.2 ADSp. Furthermore, the Freight Forwarder's liability is limited for each case of damage to the maximum amount of EUR 125,000.

- 23.4.1** Sections 413 (2), 418 (6), 422 (3), 431 (3), 433, 445 (3), 446 (2), 487 (2), 491 (5), 520 (2), 521 (4), 523 HGB as well as any relevant mandatory liability provisions in international conventions shall remain unaffected.

- 23.4.2** Clause 23.4 ADSp is not applicable on statutory provisions, such as Article 25 *Montreal Convention* (MC), Article 5 *Règles uniformes concernant le Contrat de transport international ferroviaire des marchandises* (CIM) or Article 20 *Convention de Budapest relative au contrat de transport de marchandises en navigation intérieure* (CMNI), which extend Freight Forwarder's liability or permit to extend.

- 23.5** If Freight Forwarder's liability according to Articles 23.1, 23.3 and 23.4 ADSp exceeds the amount of EUR 2.5 million per Damage Event, then Freight Forwarder's liability is, irrespective of how many claims arise from a single Damage Event, further limited to a maximum amount of EUR 2.5 million per Damage Event or to 2 SDR per kg for lost or damaged goods, whichever amount is the higher. When there is more than one claimant, the Freight Forwarder's liability shall be proportionate to individual claims.



## 24. Liability limitations for ordered warehousing, inventories and declaration of value

**24.1** In the case of ordered warehousing, the liability of the Freight Forwarder for damages to goods is limited to:

**24.1.1** 8.33 SDR for every kg corresponding to sections 431 (1), (2) and (4) HGB,

**24.1.2** a maximum of EUR 35,000 per Damage Case.

**24.1.3** EUR 70,000 per year, in cases where the damage claimed by the Principal bases, contrary to clause 24.1.2 ADSp, on a difference between calculated stock and actual stock of the inventory, irrespective of the amount and type of inventory taking and the amount of Damage Cases causing the difference in inventory.

**24.2** Upon payment of an agreed supplement and prior to warehousing of goods, the Principal can specify a value in text form for an increased liability that differs from the maximum amounts stipulated in clause 24.1. In this case, the specified value replaces the relevant maximum amount.

**24.3** In case of warehousing upon instruction, the Freight Forwarder's liability for other damages, excluding damages to personal injury or goods of third parties, is limited to EUR 35,000 per case of damage.

**24.4** In case of warehousing upon instruction, but excluding personal injury or damages to goods of third parties, the Freight Forwarder's liability is always limited to EUR 2.5 million per Damage Event, irrespective of how many claims arise from a single Damage Event. When there is more than one claimant, the Freight Forwarder's liability shall be proportionate to individual claims. Clause 24.2 ADSp remains unaffected.

## 25. Exclusion of liability for carriage of goods by sea and inland waterway transportation

**25.1** In accordance with section 512 (2) No. 1 HGB, it is agreed that:

The Freight Forwarder in its position as carrier is not responsible for any fault or neglect on the part of its servants or of the ship's company, insofar as the corresponding damage was caused in the course of steering or otherwise operating the ship, or was caused by fire or explosion on board the ship and the measures taken were not predominantly for the benefit of the cargo.

**25.2** According to Article 25 (2) CMNI it is agreed that the Freight Forwarder in its position as carrier or actual carrier is not liable for damages and losses arising from:

**25.2.1** an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the Freight Forwarder complied with the obligations set out for the crew in Article 3 (3) CMNI, unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result,

**25.2.2** fire or an explosion on board the vessel, where it is not possible to prove that the fire or explosion resulted from a fault of the Freight Forwarder or the actual carrier or their servants or agents or a defect of the vessel,

**25.2.3** the defects existing prior to the voyage of his vessel or of a rented or chartered vessel if he can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.

**25.3** Clause 22.4 ADSp remains unaffected.

## 26. Non-contractual liability

In accordance with sections 434, 436 HGB, the above mentioned liability exclusions and limitations also apply to non-contractual claims. Clause 23.4.1 ADSp applies accordingly.

## 27. Qualified fault

**27.1** Liability exclusions and limitations listed in clauses 22.2, 22.3, 23.3 and 23.4 in conjunction with 23.5, 24 as well as 26 ADSp do not apply when the damage has been caused by:

**27.1.1** intent or gross negligence of the Freight Forwarder or vicarious agents or

**27.1.2** infringement of Material Contractual Obligations, whereby such claims are limited to predictable and typical damages.

**27.2** Divergent from clause 27.1.2 ADSp, only the liability limitations of clause 24.1 and 24.2 ADSp do not apply in case of gross negligent or intentional infringements of Material Contractual Obligations only.

**27.3** Sections 435, 507 HGB remain applicable within their scope of application.



**27.4** Clause 27.1 ADSp is not applicable on statutory provisions, such as Article 25 MC, Article 36 CIM or Article 20, 21 CMNI, which extend Freight Forwarder's liability, allow extending or expanding the imputation of fault of servants or third parties.

## **28. Liability insurance of the Freight Forwarder**

**28.1** The Freight Forwarder is obliged to purchase and maintain liability insurance at the usual market conditions with an insurer of his choice that, as a minimum, covers the ordinary liability amounts of its freight forwarding liability according to ADSp and statutory provisions. The agreement of maximum insurance amounts per Damage Case, Damage Event and year is permitted as well as the agreement of reasonable deductibles for the Freight Forwarder.

**28.2** Upon request, the Freight Forwarder is obliged to provide evidence of the liability insurance and its validity by presentation of an insurance confirmation within a reasonable Time Frame. In absence of such a presentation, the Principal is entitled to terminate the Freight Forwarding Contract extraordinarily.

**28.3** The Freight Forwarder is only entitled to rely on the liability limitations of the ADSp, when the Freight Forwarder provides an appropriate insurance cover at the time of order.

## **29. Liability of the Principal**

**29.1** The liability of the Principal pursuant to sections 414, 455, 468, and 488 HGB is limited to EUR 200,000 per Damage Event.

**29.2** The aforementioned liability limitation does not apply in case of personal injuries, such as injury of life, body and health, if the damage was caused by gross negligence or wilful intent of the Principal or its vicarious agents, or infringement of Material Contractual Obligations, whereas the latter is limited to predictable and typical damages.

## **30. Applicable law, place of fulfilment, place of jurisdiction**

**30.1** The legal relationship between the Freight Forwarder and Principal is governed by German law.

**30.2** The place of fulfilment for all involved parties is the location of the Freight Forwarder's branch office dealing with the order or the enquiry.

**30.3** The place of jurisdiction for all disputes arising from the Freight Forwarding Contract, an enquiry or in relation to it, is and all involved parties the location of the Principal or Freight Forwarder's branch office dealing with the order or enquiry, as far as all these parties are merchants. The aforementioned place of jurisdiction shall be deemed as an additional place of jurisdiction pursuant to Article 31 CMR and Article 46 § 1 CIM, but not in case of Article 39 CMR, Article 33 MC, Article 28 Convention for the Unification of certain rules relating to international carriage by air (WC).

## **31. Confidentiality**

**31.1** Contractual parties are obliged to maintain confidentiality regarding all unpublished information received during the execution of the Freight Forwarding Contract. This information can only be used for the exclusive purpose of contract fulfilment. The parties shall commit other legal persons with an equivalent confidentiality obligation, if these legal persons are deployed for contract fulfilment.

## **32. Compliance**

**32.1** The Freight Forwarder shall comply with minimum wage provisions and minimum conditions for workplaces and confirms the compliance in text form upon request of the Principal. The Freight Forwarder indemnifies the Principal for its liability for minimum wages, if the Freight Forwarder, its subcontractor or hirer during the course of fulfilment of the Freight Forwarding Contract, does not pay the minimum wages and the Principal is demanded to pay.

**32.2** The Freight Forwarder shall ensure in case of transportation services, that himself or its executing subcontractor

**32.2.1** possesses, within the scope of application of the *Güterkraftverkehrsgesetz* (GüKG), a permission according to section 3 GüKG, an entitlement according to section 6 GüKG or a community license or does not use such a permission, entitlement or license unlawfully.

**32.2.2** deploys, within the scope of application of the GüKG driving personnel, which comply with the requirements of section 7b (1) sentence 1 GüKG, if applicable,

**32.2.3** upon request provides all documents, which must be carried during transportation according to statutory

provisions, when the Principal or third parties must comply with statutory controlling obligations,

**32.3** In case of transportation, the Freight Forwarder or its executing subcontractor is obliged to organise the activities of its driving personnel according to the compulsory working, driving and recreation times. During the driving of Vehicles, alcohol and drugs are generally prohibited.

**32.4** Both contracting parties commit to carrying out their contractual duties and to act according to the legal regulations covering their business and to support and obey the principles of the United Nations Global Compact (UNGC), the United Nations Declaration of Human Rights, and the Declaration of the International Labour Organization regarding the 1998 Declaration on Fundamental Principles and Rights at Work, in accordance with national laws and customs. In particular, both parties will commit to:

32.4.1 no child or forced labour,

32.4.2 comply with the relevant national laws and regulations regarding working hours, wages, salaries and to comply with any other obligations for employers,

32.4.3 comply with the current regulations on health and safety at work, and to provide a safe and healthy workplace to ensure the health of employees and to avoid accidents, injuries and work-related illness,

32.4.4 omit all discrimination based on race, religion, disability, age, sexual orientation or sex,

32.4.5 comply with international standards on corruption, such as those published in UNGC and to adhere to local anti-corruption and bribery laws,

32.4.6 adhere to all current environmental protection laws and regulations,

32.4.7 engage its business partners and subcontractors according to the aforementioned principles.

Date: May 15, 2017

# General Terms and Conditions of Logistics-Services Providers 2019 (Logistics GTC)

The following text is a translation of the German version of the Logistic GTC.

In case of doubts, the German version of the Logistic GTC shall prevail.

## Preamble

The General Terms and Conditions of Logistics-Services Providers 2019 (Logistics GTC) were created with the participation of the Institute for Logistics Law and Risk Management (ILRM) and are recommended for use as of July 1, 2019 by the Federal Association of Road Haulage, Logistics and Disposal (BGL), the Federal Association of Furniture Forwarders and Logistics (AMÖ) and the German Association for Freight Forwarding and Logistics (DSLVL). This recommendation is non-binding and the contract parties are free to make agreements that deviate from the contents of this recommendation.

## 1. Scope of application, priority of ADSp 2017

- 1.1** These Logistics GTC apply to all (supplementary) logistics services that are not subject to
- a Freight Forwarding Contract (“Verkehrsvertrag”) according to the German Freight Forwarders’ Standard Terms and Conditions 2017 (ADSp 2017) or
  - a transport, freight forwarding or warehousing contract

but that are provided by the Service Provider and are commercially connected to such a contract, in particular to services within a supply chain.

Such logistics services may be activities for the Principal or third parties named by him, like, for example, order acceptance (call center), goods handling, goods inspection, goods preparation, country and customer-specific adaptation of goods, assembly, repair, quality control, price labeling, shelf service, installation or the placing into operation of goods and commodities or activities in connection with the planning, implementation, steering or control of the order, process, sales, recycling and information management.

- 1.2** Principal is that party that instructs his contracting partner with the provision of logistics services.

- 1.3** Service Provider is that party that has been instructed to provide logistics services.

- 1.4** If the ADSp have been agreed in addition to these Logistics GTC, the terms and conditions of the ADSp shall take precedence, insofar as individual clauses contradict each other.

- 1.5** A reference to the ADSp in these Logistics GTC always includes a reference to the current version in force at the time of conclusion of the contract, unless the parties have agreed to another version of the ADSp.

- 1.6** These Logistics GTC do not apply to freight forwarding contracts with consumers within the meaning of Section 13 German Civil Code (BGB).

- 1.7** These Logistics GTC do not apply to business transactions, which have as their sole object:

- 1.7.1** storage and digitalization of files; files are all types of embodied and digitalized business papers, documents, data carriers as well as similar items serving the purpose of gathering information;
- 1.7.2** heavy or oversized transports, the execution of which requires a permit or exception under applicable transportation regulation, crane services or related assembly work.

## 2. Electronic data exchange

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- 2.1** If agreed between the Principal and the Service Provider, the parties will transmit and receive the shipping details, including invoice generation, by electronic means (electronic data interchange/remote transmission). The transmitting party bears the risk for the loss and correctness of the transmitted data.
- 2.2** In case of an agreement according to Section 2.1, the parties ensure that their own IT system is ready for operation and the usual security and control measures are taken to protect the electronic data exchange from access by third parties and to prevent alteration, loss or destruction of electronically transmitted data. Each party is obligated to notify the other party timely of any changes to its IT systems that could affect the electronic data exchange.
- 2.3** Upon request of a contracting party, each side will nominate one or more contact persons for the purpose of receiving information, explanations and enquiries regarding the fulfilment of the contract and shall inform the other party of the names and addresses of such person/s. This information must be updated in case of changes. If a contracting party fails to provide details for a contact person, then the relevant signatory of the contract shall be the designated contact person.
- 2.4** Electronically or digitally created and storable documents shall be considered equal to written documents, unless the law requires the written form. Furthermore, each party is entitled to archive written documents only electronically or digitally and to destroy the originals in compliance with the statutory provisions.

## 3. Confidentiality

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- 3.1** The parties are obligated to treat as confidential all information received during the execution of the logistics services contract that is not publicly accessible. The information may only be used for the exclusive purpose of providing the services. The parties shall impose this confidentiality obligation on all persons whom they employ in the performance of their contractual duties.
- 3.2** The obligation of confidentiality does not apply to data and information that must be made known to third parties, especially authorities, due to legal obligations. In this case, the other party must be informed of this immediately.

## 4. Obligations of the Principal when placing an order, information obligations, protection of intellectual property

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- 4.1** The Principal shall timely inform the Service Provider of all significant factors known to him which influence the execution of the order and which are attributable to the Principal's area of risk. This applies in particular if he, as "system leader", determines the procedure to be implemented by the Service Provider, for example by means of know-how transfer. In particular, the Principal shall provide all objects, information and authorizations necessary for the performance of the logistics services and shall provide appropriate assistance, especially
- 4.1.1** to provide pre-products, materials and means of production, as far as agreed, in technically and contractually sound condition as well as to maintain such means of production;
- 4.1.2** to inform the Service Provider about specific characteristics of the goods and procedures and related legal, regulatory or trade association requirements and, as far as necessary, to train his employees;
- 4.1.3** to develop and update specifications, descriptions of procedures and materials (production instructions, designs and plans) and to monitor compliance with them by the Service Provider.
- 4.2** The Principal shall draw the Service Provider's attention to special requirements for fire protection, safety and other technical requirements (temperature, humidity, smell).
- 4.3** At the request of the Service Provider, the Principal shall timely inform the Service Provider of all information which is recognizably necessary for the Service Provider's capacity planning and is allocated to his area of risk.
- 4.4** Furthermore, the Principal is responsible for compliance with
- 4.4.1** all obligations under public law, e.g., customs, foreign trade (especially embargos relating to goods, persons or countries) and security/safety laws and regulations;
- 4.4.2** intellectual property rights of third parties, such as trademark and license restrictions associated with the possession of the goods, including legal or regulatory obstacles which jeopardize the execution of the order.
- 4.5** The information and rights transferred according to Sections 4.1 to 4.3 remain the intellectual property of the Principal. A right of lien or retention in this respect cannot be exercised by the Service Provider.

## 5. Obligations of the Service Provider

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- 5.1** The Service Provider is obligated to provide his services in accordance with the specifications of the Principal as set out in Section 4. He is entitled, but not obligated, to review these specifications.
- 5.2** Insofar as the Service Provider provides the logistics services within the operational organization of the Principal or on his instructions within the operational organization of a third party (e.g., shelf service), he shall comply with the instructions of the Principal (respectively the third party) with regard to operational safety.
- 5.3** The Service Provider is obligated to inform the Principal without delay of any objections or irregularities that have arisen during the execution of the contract and to obtain appropriate instructions.
- 5.4** Any information obligations beyond the legal requirements, e.g., regarding measures taken by the Service Provider in the event of disruptions, in particular an impending delay in logistics services, in the event of damage to goods or other disruptions (emergency concept), require express agreement.

## 6. Performance hindrances and *force majeure*

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- 6.1** Performance hindrances which are not attributable to the area of risk of either contracting party shall release the contracting parties from their performance obligations for the duration of the hindrance and the extent of its impact.
- Such performance hindrances are deemed to be force majeure, civil unrest, acts of war or terrorism, strikes and lock-outs, blockades of transport routes, outages or constraints of electronic data exchange caused by third parties, cyber-crime by third parties, as well as any other unforeseeable, unavoidable and serious events.
- 6.2** In the event of a performance hindrance according to Section 6.1, each contracting party is obligated to notify the other party immediately. Additionally, the Service Provider is obligated to obtain instructions from the Principal.

## 7. Modification of the contract

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- 7.1** Agreements on prices and services always refer exclusively to the named services and essentially unchanged volume of goods, orders and quantity structure. They assume, on the one hand, unchanged data processing requirements, quality agreements and procedural instructions and, on the other hand, unchanged energy and personnel costs as well as public levies.
- 7.2** If the conditions described in Section 7.1 change, either party may request negotiations to modify the contract with effect from the first day of the month following the request for modification, unless the changes were already known to the requesting party at the time the contract was concluded. The modification must be based on the identifiable changes, including rationalization effects.
- 7.3** Should the contracting parties fail to agree on the requested contract modification within one month after the request for contract modification was made, either party can terminate the agreement by giving notice of one month to the end of the month in the case of the contract being valid up to one year, or three months to the end of the month if the contract has a longer term. This termination must be received in text form within one month after at least one party has declared the failure of the contract modification.

## 8. Transfer of Undertakings

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- 8.1** If the contract for logistics services or its execution is related to a transfer of business in accordance with § 613a BGB (German Civil Code), the contracting parties undertake to agree on the economic consequences, taking into account the duration of the contract.
- 8.2** If the contracting parties have not agreed on such provisions, the party entering into the employment contract shall be entitled to an appropriate modification of its remuneration at his reasonable discretion, taking into account the duration of the contract. In all other respects § 315 German Civil Code (BGB) applies.

## 9. Set-off, Retention

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Offsetting or Retention against claims arising from the logistics services agreement according to Section 1.1 and related non-contractual claims are only permitted when the due counterclaim is undisputed, ready for decision or legally binding.

## 10. Right of lien and retention, retention of title

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**10.1** To secure his claims from the contract for logistics services, the Service Provider may invoke the statutory rights of lien and retention to which he is entitled.

If and to the extent that a statutory lien does not exist, the Service Provider shall have a lien on the Principal's property in his possession for all due and undue claims he is entitled to which stem from services according to Section 1.1.

**10.2** The realization of the security shall be effected in accordance with the statutory provisions, provided that the time limit of one month as specified in § 1234 German Civil Code (BGB) is replaced by a time limit of one week.

**10.3** The Principal is entitled to prohibit the exercise of the right of lien and right of retention if he grants the Service Provider an equivalent security with regard to his claims (e.g., directly enforceable bank guarantee).

**10.4** Section 4.5 remains unaffected.

**10.5** If, in the course of providing logistics services, the Service Provider also transfers ownership in things to the Principal, these objects remain the property of the Service Provider until all claims against the Principal to which the Service Provider is entitled to under the contract for logistics services have been settled.

## 11. Acceptance, notification of deficiencies and delay

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**11.1** Insofar as acceptance of the logistics service is required by the Principal, it can, due to the cooperative nature of logistics services, be done through use, resale or further processing of the product, delivery and shipment to the Principal or third parties specified by him. If acceptance of a logistics service is not possible, completion shall be deemed as acceptance.

**11.2** The Principal is obligated to notify the Service Provider of apparent deficiencies at the time of acceptance.

The notification must be made in text form. To meet the deadline it is sufficient to send the notification in time, provided it reaches the Service Provider.

**11.3** If the Principal fails to notify the Service Provider of a claim, the logistics service is deemed to have been performed in accordance with the contract, unless the Service Provider fraudulently concealed the deficiency.

**11.4** Claims due to delays lapse if the Principal does not notify the Service Provider within 21 days of the service having been provided.

## 12. Deficiency claims by the Principal

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**12.1** The deficiency of a logistics service is initially determined by the content of the contract, subsequently by the statutory provisions applicable to the respective logistics service. Warranties regarding characteristics or durability shall only be assumed by the Service Provider if these were agreed in text form.

**12.2** If the logistics service is deficient, the Principal is entitled to supplementary performance. The right to choose between rectification of the deficiency and new delivery/new service is in any case at the discretion of the Principal. If the supplementary performance does not lead to the success owed under the contract, the Principal is entitled to a second supplementary performance. Further claims for supplementary performance are excluded.

**12.3** If the supplementary performance fails twice or if a supplementary performance is not possible due to the nature of the service, the Principal is entitled to exercise his right to reduction, withdrawal and compensation for damages as well as his right to self-execution as follows:

**12.3.1** If the Principal claims a reduction, it is limited to the remuneration for the contested deficient logistics service.

**12.3.2** If the Principal asserts his right of withdrawal, this shall only apply with regard to the individual logistics service that is deficient. The Principal is also entitled to the right of extraordinary termination according to Section 13 instead of the right of withdrawal.

**12.3.3** The Principal may demand compensation instead of performance in accordance with the requirements of Section 14.

**12.3.4** In the case of self-execution, the Principal's claim for reimbursement is limited to an amount of up to EUR 20,000.

### 13. Extraordinary termination

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**13.1** If one of the parties breaches the same material contractual obligation twice within one year and this leads to a significant operational disruption in each case, the other party has the right to terminate this contract by giving reasonable notice in text form after having granted the breaching party in text form a reasonable period of time to remedy the breach of the obligation and this period has expired without the party having fulfilled its obligations.

**13.2** If one of the parties defaults on its contractual payment obligation from two consecutive billing periods, the other party has the right to terminate this contract within one further billing period. Section 13.2 does not apply to compensation payments.

**13.3** The right to extraordinary termination for good cause remains unaffected.

### 14. Liability of the Service Provider

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**14.1** The Service Provider is only liable if he is at fault for the damage caused by him.

**14.2** The Service Provider's liability is limited to

**14.2.1** the amount of EUR 20,000 per damage event for damages to the goods.

**14.2.2** the amount of EUR 125,000 in the case of damage to the goods due to serial damages, notwithstanding Section 14.2.1.

In the case of a series damage, several damage events shall be deemed to be one damage event that occurred at the time of the first of these damage events if they are based either on the identical cause, on the same causes with inner, especially factual and temporal, connection or on logistics services with the same defects.

**14.2.3** the amount of EUR 20,000 per damage event for damages other than to the goods.

**14.2.4** EUR 600,000 for all claims within one year. Section 14.3 remains unaffected.

**14.3** Against payment of a surcharge to be agreed upon prior to the commencement of the logistics service, the Principal may in text form

**14.3.1** specify a value for an increased liability for damages to the goods which exceeds the maximum amounts stipulated in Sections 14.2.1 and 14.2.2. In this case, the specified value in each case shall replace the relevant maximum amount ("value declaration").

**14.3.2** declare an interest in increasing liability for damages other than damages to the goods which exceeds the maximum amounts stipulated in Section 14.2.3. In this case, the declared interest shall replace the relevant maximum amount ("interest declaration")

**14.4** The aforementioned liability exclusions and limitations also apply to non-contractual claims against the Principal and his vicarious agents.

**14.5** The aforementioned liability exclusions and limitations do not apply

**14.5.1** to fatal injuries, personal injuries and damage to health as well as to damages to items that are not the subject of the (additional) logistics service.

**14.5.2** insofar as mandatory statutory liability provisions, such as the product liability act, apply.

### 15. Qualified fault

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**15.1** The liability exclusions and limitations listed in Section 14 do not apply if the damage was caused by:

**15.1.1** intent or gross negligence of the Service Provider or his vicarious agents or

**15.1.2** violation of material contractual obligations, whereby such compensation claims in the latter case are limited to the foreseeable, typical damage.

Material contractual obligations are obligations whose fulfillment is essential for the proper execution of a contract according to Section 1.1 and on whose compliance the contracting partner may reasonably rely.

**15.2** Furthermore, the liability exclusions and limitations listed in Section 14 do not apply if the Service Provider maliciously concealed the damage or assumed a guarantee for the quality of the logistics service.

**15.3** Notwithstanding Section 15.1.2, the liability exclusions and limitations according to 14.2 as well as in case of a value or interest declaration according to Section 14.3 only cease to apply in the event of grossly negligent or intentional breach of material contractual obligations.

## **16. Service Provider's right to indemnification and product liability**

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- 16.1** The Service Provider is entitled to reimbursement of the expenses which he, under the circumstances, reasonably considered necessary in the interest of the Principal and for which he is not responsible.
- 16.2** The Principal shall indemnify the Service Provider against all expenditures, such as maintenance, repair, servicing and disposal costs, customs duties, taxes, levies and other fees which are charged to the Service Provider, in particular as the party entitled to dispose of or as the possessor of third-party goods, unless the Service Provider is responsible for them.
- 16.3** The Principal shall indemnify the Service Provider and his vicarious agents against all claims made by third parties, including by the Principal's insurer, and other costs pursuant to the product liability act and other regulations protecting third parties, unless
- 16.3.1** the Service Provider or his vicarious agents have caused the claim of the third party by gross negligence or intent;
- 16.3.2** the Principal has insured his liability risk according to the product liability act or other regulations protecting third parties with a deductible and has agreed expressly with the Service Provider that he will be reimbursed such deductible by the Service Provider in case of a damage event.
- 16.4** If and to the extent that the Principal insures the inventories which are the subject of a contract according to Section 1.1, under a cargo insurance or against fire, burglary, storm, hail, flood, earthquake and tap water, the Service Provider shall be included in the insurance cover as an insured person, but not as a representative of the Principal.
- If the Principal does not have appropriate insurance cover, he must inform the Service Provider early enough to allow for the Service Provider's own risk assessment.

## **17. Limitation period**

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- 17.1** Claims arising from a contract in accordance with Section 1.1 shall become time-barred after one year.
- 17.2** The limitation period for all claims shall commence at the end of the day of delivery, for contractual services at the end of the day of acceptance according to Section 11.1.

- 17.3** The aforementioned limitation periods shall not apply
- 17.3.1** in the cases referred to in Section 15;
- 17.3.2** in the case of fatal injuries, personal injuries and damage to health or
- 17.3.3** insofar as mandatory statutory limitation provisions are applicable.

## **18. Liability insurance of the Service Provider**

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- 18.1** The Service Provider is obligated to take out and maintain liability insurance at normal market conditions with an insurer of his choice. The usual market conditions shall cover the risk at least to the extent of the maximum liability amounts according to Section 14.
- 18.2** The agreement on a maximum compensation per claim, claim event and year are permissible; likewise the agreement on a reasonable deductible by the Service Provider.
- 18.3** Upon request, the Service Provider shall provide evidence of the existence of a valid liability insurance cover by presentation of an insurance confirmation.

## **19. Place of performance, place of jurisdiction, applicable law**

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- 19.1** The place of performance for all involved parties is the location of the Service Provider's branch to which the order or enquiry is directed.
- 19.2** The place of jurisdiction for all legal disputes arising from or in connection with the contractual relationship is for all involved parties, insofar as they are merchants or of equal standing, the location of the Service Provider's branch to which the order or enquiry is directed; for claims against the Service Provider, this place of jurisdiction is exclusive.
- 19.3** The legal relations between the Service Provider and the Principal or his legal successors shall be governed by German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **20. Compliance**

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- 20.1** The Service Provider undertakes to comply with minimum wage regulations and minimum conditions at the workplace and shall confirm this in text form upon request of the Principal. The Service Provider indemnifies the Principal from his liability for minimum

wages if the Service Provider or a subcontractor or hirer engaged as part of the logistics services contract does not pay employees the statutory minimum wage and the Principal is held liable.

- 20.2** The parties will process the data necessary for the performance of the contract in accordance with the provisions of the applicable data protection laws and undertake to take appropriate data and IT security measures. In particular, the parties shall observe the basic principles of data protection law and take suitable technical-organizational measures that meet the requirements on security and confidentiality of data processing and ensure the protection against unauthorized access by third parties.
- 20.3** Both parties undertake to comply with the legal regulations applicable to their companies. They support and respect the principles of the “Global Compact” (“UNGC”), the United Nations Universal Declaration of Human Rights and the 1998 Declaration on Fundamental Principles and Rights at Work of the International Labour Organization (“Declaration on Fundamental Principles and Rights at Work”) in accordance with national laws and practices. In particular, both parties in their companies commit
- 20.3.1** not to employ children or use forced labour;
  - 20.3.2** to observe the respective national laws and regulations on working hours, wages and salaries and to comply with all other employer obligations;
  - 20.3.3** to comply with the applicable health and safety regulations and provide a safe and health-promoting working environment to ensure the health of employees and to prevent accidents, injuries and work-related illnesses;
  - 20.3.4** to refrain from any discrimination based on race, religion, disability, age, sexual orientation or gender;
  - 20.3.5** to comply with international anti-corruption standards, such as those set out in the UNGC and local anti-corruption and bribery laws;
  - 20.3.6** to comply with all applicable environmental laws and regulations;
  - 20.3.7** to insist on their business partners and subcontractors to also base their actions on the aforementioned principles.

## 21. Final provisions

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- 21.1** When determining the extent of the compensation claims to be satisfied by the Service Provider, the economic circumstances of the Service Provider, the type, scope and duration of the business relationship, possible contributions to causation or fault by the Principal in accordance with § 254 BGB (German Civil Code) and the degree of monitoring and control exerted on the implemented procedures by the Principal must be taken into consideration in favor of the Service Provider. In particular, the replacement services, costs and expenses to be borne by the Service Provider must be in reasonable proportion to the Service Provider's proceeds from the services provided for the Principal.
- 21.2** Should a provision of this Logistics GTC or the further agreements made be or become invalid, this shall not affect the validity of the rest of the contract.

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