

General terms and conditions of logistics-services providers[©]

The following text is a translation from the German language original. In case of disputes the German language original of the General terms and conditions of logistics services providers are applicable.

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1. Areas of application

1.1 These logistics terms and conditions apply to all (supplementary) logistics services not covered by a transportation contract in accordance with section 2.1 of the General German Freight Forwarding Terms and Conditions (ADSp) – if applicable – or a freight, a forwarding or a warehousing contract but that are provided by a service provider in connection with such a transportation contract.

Such logistics services may be activities for the principal or third parties named by the principal, like, for example, order acceptance (Call Center), treatment of goods, country- or customer-specific adaptation of goods, assembly, repair, quality control, price labelling, shelf service, installation or implementation of goods and commodities or activities in connection with the planning, implementation, control or monitoring of the management of orders, processes, sales, returns, disposals, recycling and information technology.

1.2 Principal is that party that instructs its contracting partner with the provision of logistics services for itself or third parties.

1.3 Service provider is that party that has been instructed to provide logistics services.

1.4 If the ADSp have been agreed, the logistics terms shall have precedence if individual clauses contradict each other or if there is a doubt about which terms and conditions a situation is subject to.

1.5 The logistics terms and conditions do not apply to contracts with end-users.

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2. Electronic data exchange

2.1 Each party has the right to create, transmit and exchange statements and notices electronically (electronic data exchange), for as long as the transmitting party can be identified. The transmitting party is responsible for loss and correctness of the transmitted data.

2.2 If the communication between two data processing systems requires the provision of a common IT-interface by the logistics provider the costs incurred for the necessary work shall be borne by the principal. Furthermore, each party is obliged to take the usual security and monitoring measures and to protect the electronic data exchange against unauthorised access by third parties and to prevent the manipulation, loss or destruction of electronically transmitted data.

2.3 Each party shall appoint one or more contact persons for the receipt of information, statements and questions regarding the contract and communicate their names and contact addresses to the other party. If a party should not appoint a contact person, the person who signed the contract for that party shall be considered the contact person.

2.4 Electronically or digitally created documents shall be considered equal to written documents.

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3. Confidentiality

3.1 Each party is obliged to treat any data and information not publicly accessible as confidential and to use these exclusively for the purpose intended. Only data and information needed by third parties (insurers, sub-contractors) for the execution of their duties may be passed on to them. The same rules of the confidentiality of electronic data and information shall apply.

3.2 The confidentiality rule does not apply to data and information that must be passed on to third parties, especially public authorities, due to legal obligations. The other party is to be informed about such obligation without delay.

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4. Duties of the principal, protection of intellectual property

4.1 The principal is obliged, especially if as "system leader" he determines the procedure for which the service provider has been engaged, to provide the necessary items, information and authorisations required for the performance of the logistics services and give appropriate assistance, especially

- ▶ to provide products and materials,
- ▶ to inform the service provider about specific characteristics of goods and procedures and any legal or other duties connected herewith and, as far as necessary, to provide training courses for his staff and
- ▶ to develop and update descriptions of procedures and materials (assembly instructions, construction plans and other plans) and to monitor their observation by the service provider.

These provisions and the participation must be carried out completely and on time. This includes also all information required for an optimal planning of capacities.

- 4.2 The documents provided under section 4.1 remain the intellectual property of the principal. A right to seizure or retention may not be exercised by the service provider.

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5. Duties of the service provider

- 5.1 The service provider is obliged to provide his services in accordance with the instructions of the principal of section 4. He is entitled, but not obliged, to monitor these.
- 5.2 The service provider who provides logistics services within the operations of the principal or on his instructions within the operations of a third party (e.g., shelf servicing) provides such services in accordance with the instructions of and at the risk of the principal.
- 5.3 The service provider is obliged to inform the principal without delay about any objections or irregularities occurring in the course of carrying out his contractual duties and to document these.

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6. Hindrances, force majeure

- 6.1 Hindrances beyond the control of a contracting party release the parties from their duty to perform for the duration and extent of that hindrance.
- Hindrances are: strikes, lock-outs, force majeure, civil commotion, war or terrorist acts, measures taken by public authorities or any other unforeseeable, unavoidable and grave events.
- 6.2 In the case of exemption according to 6.1 each contracting party is obliged to,
- ▶ immediately inform the other party and
 - ▶ minimise, within reason, the effects on the other party as much as possible.

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7. Modifications of the contract

- 7.1 Agreements on prices and services always refer exclusively to the specifically named services and to a generally steady volume of goods and activities. They assume unchanged requirements for data processing, quality agreements and

procedural instructions and unchanged energy- and personnel costs as well as public levies.

- 7.2 If the conditions described under 7.1 change, either party may request new negotiations to modify the contract with effect from the first day of that month which follows the month in such request was made, unless the changes were already known to the requesting party at the time of reaching the agreement. The modifications of the contract must be based on the identifiable changes including the rationalisation effects.
- 7.3 Should the contracting parties fail within one month after the request for changes was made to agree on such changes, can either party terminate the agreement by giving notice of one month in the case of the contract being valid for one year, or three months if the contract has a longer duration. Such a termination may be declared only within one month after the failure to change the contract.

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8. Change of ownership

Should the contract or its execution lead to a change of ownership according to § 613a BGB (German Civil Code) the contracting parties agree to economic consequences with particular consideration for the duration of the contract.

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9. Settlement, retention

The right of settlement against existing payments due or retention arising from a contract for logistics services according to 1.1 and other demands may only be exercised if no reasoned objection has been made.

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10. Right of seizure and retention, ownership

- 10.1 The service provider has a right of seizure and retention for all payments due to him in connection with his activities for the principal in accordance with section 1.1 for any goods and other values in his possession. This right of seizure and retention does not go beyond the legislation concerning seizure and retention.
- 10.2 The service provider may exercise his right of seizure and retention in connection with other contracts concluded with the principal for logistics services in accordance with section 1.1 only if this is undisputed or if the economic situation of the principal constitutes a threat to the payments to be made to the service provider.
- 10.3 The principal is entitled to prevent the exercise of the right of seizure if he offers the service provider suitable security (e.g., bank guarantee).
- 10.4 Section 4.2 remains unaffected.
- 10.5 In the case of the service provider in the course of his duties according to section 1.1 also transferring ownership to the principal, such ownership remains with the service provider until full payment has been made.

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11. Acceptance, deficiencies, delays

- 11.1 If a formal acceptance of a logistics service is required from the principal, it may, due to the co-operative nature of logistics services, take place through use, re-sale or further development, delivery to the principal or third parties specified by him. If a formal acceptance of a logistics service is not possible, completion shall be deemed as acceptance.
- 11.2 The principal is obliged to notify the service provider about apparent deficiencies at the time of acceptance. The notification must be made in writing or electronically (see 2). Notification is considered to have been made if it was sent in time and provided it reached the service provider.
- 11.3 If the principal fails to notify the service provider the logistics service is deemed to have been performed in accordance with the contract, unless the service provider maliciously withheld information about the deficiency.
- 11.4 Claims because of delays become void if they are not made by the principal to the service provider within twenty-one days after the service was provided.

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12. Deficiency claims by the principal

- 12.1 Whether a service is deficient depends on the specifications of the contract and legal regulations. Guarantees regarding characteristics or durability are given by the service provider only if this is specifically stated in the contract.
- 12.2 If the logistics service is deficient the principal is entitled to the removal of the deficiency. The service provider is entitled to choose between removal of the deficiency or new delivery/provision. If an attempt to remove the deficiency is unsuccessful, the principal is entitled to a second attempt to remove the deficiency. Further claims for removal of the deficiency cannot be made.
- 12.3. If two attempts to remove the deficiency have been unsuccessful or, if -due to the nature of the service- the deficiency cannot be removed, the principal is entitled to exercise his rights regarding rebates, cancellation and compensation as follows:
 - 12.3.1 If the principal claims a rebate it is limited to the remuneration for the protested, deficient logistic service.
 - 12.3.2 If the principal exercises his right of cancellation it refers only to the protested deficient logistics service. The principal also has the right, if the stipulations of section 13 apply, to use his option for extraordinary termination.
 - 12.3.3 In connection with the stipulations of section 14 the principal may demand compensation instead of the performance of the service.
 - 12.3.4 In the case of the principal performing the service himself any claims of the principal shall be limited to up to Euro 20,000 as compensation.

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13. Extraordinary termination

- 13.1 If one of the parties twice violates significant contractual duties with significant operational disruptions, the other party has the right to terminate this contract giving reasonable notice after it allowed the other party in writing reasonable time to remedy the violation of their duties and this time has expired without the other party fulfilling their duty.
- 13.2 The right to extraordinary termination for important reason remains unaffected.

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14. Liability of the service provider

- 14.1 The service provider is only liable if he is responsible for the damage caused by him. The resulting legal and contractual liability is limited to the foreseeable, typical damage and
 - 14.1.1 to 20,000 Euro per claim,
 - 14.1.2 in the case of more than four claims with the same cause (e.g., assembly mistake) or production/delivery of goods with identical deficiencies to Euro 100,000 independent of the actually number of claims.

This limitation of liability applies also to discrepancies between standard- and actual quantities delivered to the service provider; such discrepancies are to be set off against each other in the case of both shortages and surpluses.

- 14.1.3 for all claims within a year to 500,000 Euro.
- 14.2 The above exemptions and limitations of liability also apply to extra-contractual claims against the service provider, his employees and other parties assisting him in his work.
- 14.3 The above exemptions and limitations of liability do not apply to
 - 14.3.1 fatal injuries, personal injuries and damage to health
 - 14.3.2 as well as to binding legal stipulations regarding liability, e.g., the law on product liability.
- 14.4 The parties may agree to replace the above maximum sums with others against payment of a liability surcharge.

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15 Qualified responsibility

The above mentioned exemptions from and limitations of liability do not apply to

- 15.1 violation with intent or gross negligence
 - ▶ of significant contractual duties by the service provider, his managerial staff or any other person acting on his behalf,
 - ▶ of other duties of the service provider or his managerial staff
- 15.2 If the service provider maliciously withheld information about the damage/deficiency or guaranteed the quality of the logistics service.

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16. Right to safeguard by the service provider

- 16.1 The principal has to safeguard the service provider and the people/organisations in his employ against all claims arising from the product liability legislation and other regulations protecting third parties, unless the service provider or the people/organisation in his employ brought caused the claim of the third party with gross negligence or intent.

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17. Limitation

- 17.1 Any claims from a contract according to 1.1 expire after one year.
- 17.2 The limitation period starts for all claims with the day of delivery with the day of acceptance in accordance with section 11.1.
- 17.3 The above limitation does not apply
- ▶ in the cases specified in section 15,
 - ▶ in the case of fatal injury, personal injury or damage to health or
 - ▶ if legislation regarding limitation has overriding effect.

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18. Liability insurance for the service provider

- 18.1 The service provider is obliged to arrange and maintain liability insurance cover with an insurer of his choice at market rates sufficient to cover his liability to the extent specified under section 14.
- 18.2 It is permissible to agree on a maximum compensation sum per claim and year and also to agree on a contribution of the service provider to the claims settlement.
- 18.3 Upon request of the principal the service provider has to produce evidence of the liability insurance cover with a confirmation by the insurer.

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19. Place of performance, place of jurisdiction and legislation to be applied

- 19.1 The place of performance for all participants is the place of the branch office of the service provider that received the instruction.
- 19.2 The place of jurisdiction for any disputes arising from the contractual relationship or connected with it shall for all participants, except private persons, be the location of that branch office of the service provider which received the instruction; for any claims against the service provider this shall be the exclusive place of jurisdiction.
- 19.3 For the legal relationship between the service provider and the principal or his legal successors German legislation shall apply with the exception of the UN Regulation for purchases.

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20. Conclusions

- 20.1 When deciding on the total of the compensation to be paid by the service provider his economic situation, the type, scope and duration of the business relationship, possible contributory acts of the principal according to § 254 BGB (German Civil Code) and his intensity of monitoring and control of procedures need to be taken into consideration. In particular, the compensations, costs and expenses to be borne by the service provider must be in a reasonable proportion to the revenue of the service provider connected with the services provided for the principal.
- 20.2 If a contractual party ceases to meet their financial obligations or if insolvency procedures are opened against it the other party has the right to withdraw from the yet unfulfilled part of the contract.
- 20.3 Should any clause of this Logistics General Terms and Conditions be invalid or become invalid it does not affect the rest of the clauses of this contract, The contracting parties are obliged in such a case to replace the offending clauses with such alternatives that come closest to the initial intention.

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The German Association for freight forwarding and logistics recommends to its members the use of these General Terms and Conditions in their business relationships with their principals. The contracting parties are, of course, free to agree on alternative terms.

