

General Terms and Conditions of Logistics-Service Providers

as of April 2013

The following text is a translation from the original German version. In case of disputes the original German version of the General Terms and Conditions shall apply.



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 agreed – or a freight, a forwarding or warehousing contract but that are provided by a service provider in an economic connection with such a transportation contract.

Such logistics services may be activities for the principle or third parties named by the principle, such as, 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 concerning the planning, implementation, control or monitoring of the management of orders, processes, sales, returns, disposals, recycling and information management.

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

1.3 Contractor is that party that is instructed to provide logistics services.

1.4 If the ADSp have been agreed, the logistic terms shall have precedence if individual clauses contradict each other or there is 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.

2. Electronic data exchange

2.1 Each party is entitled to create, transmit and exchange statements and notices electronically, as long as the transmitting party can be identified. The transmitting party is responsible for loss and accuracy 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 principle shall bear the costs incurred for the necessary work. Furthermore, each party is obliged to take the usual security and monitoring measures, in order to protect the electronic data exchange from unauthorised access by third parties and to prevent 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 enquiries concerning 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 entered into 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.

3. Confidentiality

3.1 Each party is obliged to treat any data and information not publically accessible as confidential and to use these exclusively for the purpose intended. Data and information may only be passed on to third parties, if it is needed for the execution of their duties. The same rules of confidentiality shall apply to electronic data and information.

3.2 The obligation to confidentiality does not apply for 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 immediately about such obligations.

4. Duties of the Principle, protection of intellectual property

4.1 The principle is obliged, especially if as “system leader” he determines the procedure for which the service provider has been engaged, to provide all necessary items, information and authorisations required for the performance of the logistics services and to 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 official requirements connected herewith and, as far as necessary, to provide training for his staff and
- to develop and update guidelines and descriptions of procedures and material (assembly instructions, construction plans and other plans) and to monitor their compliance by the service provider.

These services and cooperation measures are to be carried out completely and in due time. This includes all information required for an optimal planning of capacities.

4.2 The documents provided under section 4.1 remain the principle's intellectual property. The service provider may not exercise the right of lien or retention.

5. Duties of the service provider

5.1 The service provider is obliged to carry out his services according to the instructions of the principle under section 4. He is entitled, but not obliged to monitor these.

5.2 The service provider who performs logistics services within the operations of the principle or on his instructions within the operations of a third party (e.g. shelf servicing), is performing these according to the instructions of and at the risk of the principle.

5.3 The service provider is obliged to inform the principle immediately about any objections and irregularities occurring in the course of executing the contract and to document these.

6. Hindrances of performance, force majeure

6.1 Hindrances of performance beyond the control of a contracting party release the parties from their duties to perform for the duration and extent of that hindrance. Hindrances are: strikes, lockouts, force majeure, civil commotion or disturbances, war or terrorist acts, legal and administrative measures or any other unforeseeable, inevitable and serious events.

6.2 In the case of exemption according to 6.1 each contracting party is obliged

- to inform the other party without delay and
- to minimise the effects, within reasonable bounds, on the other party as much as possible.

7. Modification of contract

7.1 Agreements on prices and services always refer exclusively to the specifically named services and to an essentially unchanged volume of goods, orders or quantities. They assume unchanged requirements for

data processing, quality agreements and process instructions and unchanged costs for energy and personnel as well as public dues.

7.2 If the conditions described in section 7.1 change, either contracting party may request negotiations to modify the contract with effect from the first day of the month following the month of request, unless the changes were known to requesting party at the time of reaching the agreement. The modifications of the contract must be geared to the identifiable changes including the rationalisation of effects.

7.3 Should the contracting parties fail to agree on such changes within one month after the request for changes was made, either party may terminate the agreement by giving a notice of one month if the contract has a duration of one year, or three months if the contract is valid longer. Such a termination may be declared only within one month after failure of the contract modification.

8. Transfer of ownership

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

9. Set-Off, Retention

The right of set-off against existing claims due or the right of retention arising from a contract for logistics services according to section 1.1 and other related demands may only be exercised if no reasoned objection has been made.

10. Right of lien and retention

10.1 The service provider has a right of lien and retention for all payments due to him in connection with his activities for the principle according to section 1.1 of any goods and other values in his possession. The right of lien and retention does not go beyond statutory right of lien or retention.

10.2 The service provider may exercise his right of lien or retention in connection with other contracts concluded with the principle for logistics services according to section 1.1 only if the claims are undisputed or if the principle's economic situation endangers the payments to be made to the service provider.

10.3 The principle is entitled to prevent the exercise of the right of lien and retention, if he offers the service provider suitable security (e.g. bank guarantee).

10.4 Section 4.2 remains unaffected.

10.5 Should the service provider in the course of his duties according to section 1.1 also transfer ownership to the principle, such ownership remains with the service provider until full payment has been made.

11. Acceptance, Deficiencies Delays

11.1 If an acceptance of logistics services is required from the principle, it may, due to the cooperative nature of logistics services, take place through use, resale or further development, delivery to the principle or to third parties specified by him. If the acceptance of logistics services is not possible, completion shall be deemed as acceptance.

11.2 The principle 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 section 2). To meet the deadline, the timely dispatch suffices, provided that the notice reaches the provider.

11.3 If the principle fails to notify the service provider, the logistics service shall be deemed to being performed according to contract unless the service provider maliciously concealed the deficiency.

11.4 Claims for delays shall expire, if they are not made by the principle to the service provider within twenty-one days after the service has been provided.

12. Deficiency claims by the principle

12.1 Whether a service is deficient depends on the substance of the contract and legal regulations. The service provider gives guarantees for quality or durability only if this is specifically stated in the contract.

12.2 If the logistics service is deficient, the principle is entitled to subsequent fulfilment. The service provider is entitled to choose between the correction of the deficiency or new delivery/provision. If the attempt of subsequent fulfilment is unsuccessful, the principle is entitled to a second attempt of subsequent fulfilment. Further claims for subsequent fulfilment cannot be made.

12.3. If both attempts of subsequent fulfilment are unsuccessful or – due to the nature of the service – subsequent fulfilment is not possible, the principle may exercise his rights concerning rebates, cancellations and compensations as follows:

12.3.1 If the principle claims a price reduction it is limited to the compensation for the single deficient logistics service noted.

12.3.2 If the principle exercises his right of cancellation it refers only to the single deficient logistics service noted. The principle is also entitled to the right of extraordinary termination, if the conditions of section 13 are fulfilled.

12.3.3 The principle may demand compensation instead of the performance of the services, if the conditions of section 14 are fulfilled.

12.3.4 Should the principle perform the service himself, any claims of the principle for compensation shall be limited to an amount up to 20,000 Euro.

13. Extraordinary Termination

13.1 If one of the parties twice violates significant contractual obligations leading to significant operational disruptions, the other party has the right to terminate this contract within reasonable notice after it allowed the violating party in writing reasonable time to eliminate the violation of duties and this time has expired without the violating party having fulfilled their duties.

13.2 The right to extraordinary termination for cause remains unaffected.

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 of the contractor is limited to foreseeable, typical damage and

14.1.1 to the amount of 20.000 Euro per claim

14.1.2 in the case of more than four claims of damage with the same cause (e.g. assembly faults) or production/delivery goods with the same deficiencies to 100,000 Euro irrespective of the number of actual claims.

This limitation of liability applies also to differences between nominal and actual quantities delivered to the service provider; such differences are to be determined by striking balance 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 apply also to extra-contractual claims against the service provider, his employees and other parties involved in fulfilment.

14.3 the above exemption and limitations of liability do not apply

14.3.1 to fatal injuries, injuries to limb and damages to health

14.3.2 where legal liability stipulations, such as the product liability law, are binding.

14.4 Upon payment of a liability surcharge the parties may agree to replace the above limits of liability with other sums.

15. Qualified responsibility

The above exemptions from and limitations of liability do not apply

15.1 to violation with intent or gross negligence

- of significant contractual duties by the service provider, his managerial staff or any other party 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.

16. Indemnification

The principle shall indemnify the service provider and his employees and vicarious agents against all third parties claims arising from the product liability legislation and other regulations protecting third parties, unless the service provider or his employees or vicarious agents brought about the claim of the third party with gross negligence or intent.

17. Limitation

17.1 Any claims based on a contract according to section 1.1 expire after one year.

17.2 The limitation period for all claims shall commence on expiry of the day of delivery and, regarding contractual services, on expiry of the day of acceptance according to section 11.1.

17.3 the above limitation does not apply

- in cases specified in section 15
- in the case of fatal injuries, injuries to limb and damages to health
- if mandatory legislation regarding limitation has overriding effect

18. Liability insurance

18.1 The service provider is obliged to effect and maintain liability insurance cover with an insurer of his choice at standard market rates sufficient to cover his liability to the extent specified under section 14.

18.2 It is permitted to agree on a maximum compensation sum per claim and year and also to agree on a contribution to the claims settlement at the expense of the service provider.

18.3 Upon request of the principle the service provider is obliged to prove the liability insurance cover with a confirmation by the insurer.

19. Place of performance, place of jurisdiction and applicable

19.1 The place of performance for all participants is the location of the branch office of the service provider that received the order.

19.2 The place of jurisdiction for all legal disputes arising from the contract or connected to it shall for all participants, considered they are proper traders, be the location of the branch office of the service provider that received the order; for 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 principle or his legal successors German law shall apply with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

20. Final clauses

20.1 When determining (In determination of) the amount of compensation to be paid by the service provider his financial situation, the type, scope and duration of the business relationship, any possible causative or contributory actions of the principle according to §254 BGB (German Civil Code) his extent of monitoring and control of procedures applied in favour of the contractor 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

resulting from the services provided for the principle.

20.2 If a contractual party ceases to meet his financial obligations or insolvency procedures are filed against it the other party has the right to withdraw from the unfulfilled part of the contract.

20.3 Should any one clause of these General Terms and Conditions of Logistics be invalid or become invalid, it shall not affect the validity of the remaining clauses of the contract. The contractual parties are obliged to replace the invalid clause with an alternative that comes as close as possible to the economic purpose intended by the initial clause.