

**General Business Terms and Conditions for Transport, Freight and Freight Forwarding Services with customers**

**DUVENBECK as contractor**

(Status: 1 February 2019)

**1. Scope of application; deviating agreements**

**The DUVENBECK Group with its affiliated companies (all hereinafter “Contractor”) work on the basis of the General German Freight Forwarding Terms and Conditions 2017 (ADSp 2017)** insofar as not otherwise agreed and this is not opposed by any mandatory law. The ADSp 2017 can be called under <http://www.duvenbeck.de/agb> at all times and will be sent free of charge upon request.

General Business Terms and Conditions of the Customer are explicitly excluded.

The mandatory *Provisions of the Convention on the Contract for the International Carriage of Goods by Road (CMR)* shall apply to cross-border transports.

In addition hereto the following General Business Terms and Conditions of the Contractor shall apply:

**2. Conclusion of the contract**

The orders will be placed in writing or orally or by telephone or in an electronic form (via data transmission, web portal or e-mail).

The Contractor shall not assume any liability for missing or incomplete details by the Customer.

**3. Obligations of the Customer/ notification**

3.1. The Customer is obligated to report especially valuable goods or goods at risk of theft as well as goods with an actual goods value of more than 50.00 EUR/kg to the Contractor in a text form without delay before the start of the transport. The Contractor has the right to decide about the acceptance of the order or to refuse this. If the order is accepted by the Contractor, possible (extra or additional costs) costs, which are incurred by additional measures for the transport of the goods, are to be paid by the Customer with corresponding proof. This shall also include the coverage of cargo transport insurance for the account of the Customer. If the Customer fails to provide the detail of the value, the Contractor will not be liable for the thus resulting damages or further claims, if this is permitted by law.

3.2. The Customer guarantees that the goods to be transported by the Contractor do not contain any hazardous goods or hazardous substances. If this should change the Customer undertakes to notify the Contractor of such a change with a commission through the individual order. The Contractor is not obliged to transport hazardous goods or hazardous substances. It is, moreover, not obliged to compensate damages or reimburse expenses, which are incurred by the fact that it refuses such a transport.

If the Customer fails to point out the dangerous nature of the goods to the Contractor, it is obliged to compensate the thus suffered damages. Damages or reimbursement of expenses of the Customer are – insofar as permitted by law - excluded.

3.3. A notification of at least 1 workday (Mondays to Fridays, except public holidays) shall principally apply to the transports before loading until 12 (noon).

3.4. The pick-up or take-over times of all notified shipments are oriented to the individual agreement with the Contractor and must lie in the usual goods acceptance and issue times (8am to 4pm).

Deviating times are only agreed if these are explicitly approved by the Contractor in writing before the start of the transport.

3.5. The shipment weight that is to be transmitted is the weight of the shipment including packaging and used loading aids (= gross weight of the shipment). Missing, deficient or incomplete details as well as thus resulting costs shall be for the expense of the Customer. The goods will be handed over to the Contractor packed secured against access and for transport and suitable for the demands for the handling and transport in the truck so that a danger to these goods themselves as well as other shipments and goods is excluded.

3.6. The obligations, which arise from the contractual relationship with the Contractor, are respectively subject to the compliance and adherence to the respective valid national and international statutory stipulations or requirements of a higher authority with regard to safety and traceability of the trade and/or the transport chain. The Customer explicitly confirms that it is aware of all statutory obligations that are relevant for its business operation and these shall be complied with by it in full and to an unlimited extent. This shall relate to all stipulations under foreign trade law and customs law, in particular with regard to valid person, country or goods embargos. Insofar the Contractor can assume that all shipments that are handed over have already been subjected to such an inspection by the Customer.

**4. Obligations of the Contractor**

4.1. The Contractor shall send the Customer the transport time. This is to be understood as a standard term and shall in no way represent a guaranteed delivery deadline. Normal traffic and weather circumstances will be presumed with the details of the term; with force majeure the Contractor shall be released from the service obligation for the duration of the force majeure. For example, strikes, lock-outs, restrictions to the energy supply, official impediments such as security measures of all kinds or the compliance with statutory/official regulations shall fall under force majeure.

4.2. A fixed delivery deadline or guaranteed delivery will only become part of the contract if the Customer commissions this delivery deadline or a fixed delivery date in a text form before the start of the transport and the Contractor has explicitly confirmed the acceptance of this order in a text form before the start of the transport. With the agreement of such a delivery deadline this shall, if applicable, involve additional costs, which will be charged to the Customer separately.

4.3. The basis of the capacity planning by the Contractor is the transmitted shipment and quantity structures or assumptions and presumptions made. With changes to the shipment and quantity structures the Contractor will make an effort to depict the service within the total capacity limits of the Contractor and will inform the Customer in time, should it not be possible to realise the service in the planned scope.

## 5. Remuneration

5.1. The Customer undertakes to pay the freight charges regulated in the offer.

5.2. If the Customer terminates the order then it undertakes to pay the Contractor a carriage charge in the amount of two thirds of the agreed freight charge, unless the termination is due to reasons, which are to be attributed to the scope of risks of the Contractor.

5.3. Changes to the quantities, structures and process requirements or services shall entitle the Contractor to an adjustment to the costs, which will be communicated to the Customer.

5.4. Cost increases which cannot be influenced by the Contractor, e.g. diesel/ toll costs, public duties, energy costs, tariff-bound wage increases, etc. shall also lead to an entitlement to adjustment of the remuneration during a fixed-price-period from the time of the cost increase. Diesel costs are subject to an indexation, which in case of market changes will effect a surcharge on the freight rates.

5.5. The invoicing shall be principally carried out weekly, the approval of the Customer presumed, in an electronic form. Invoices are payable within 14 days from the invoice date. In the event of a default of payment the Contractor will reserve the right to charge interest on default and default flat rates within the scope of the statutory regulations. An offsetting of counter-claims against claims of the Contractor is not permitted.

## 6. Liability

6.1. The Contractor works and is liable based on the General German Freight Forwarding Terms and Conditions 2017 (ADSp 2017), insofar as this is not opposed by any mandatory law (e.g. CMR).

**6.2. In deviation from Subclause 23.1.1. ADSp 2017 the liability for cargo damages (damages or losses) with national transports is consistently limited to a maximum of EUR 5.00 per kg or 2 special drawing rights (SDR) per kg of the good affected by a damage, depending on which amount is higher.**

6.3. For other financial losses including their consequential damages the Contractor will not be liable insofar as this is not opposed by any mandatory law. In particular financial losses from contractual penalties or flat rate agreed damages, which the Customer owes to its contractual partners, do not represent any damage and are excluded from the liability of the Contractor, insofar as this is not opposed by any mandatory law. For damages, which are caused by a faulty data transmission by the Customer as well as for missing quantities from locked shipping units, which are delivered undamaged, the Contractor will not assume any liability insofar as this is not opposed by any mandatory law.

6.4. A liability of the Contractor for small damages up to EUR 50.00 per individual damage is, insofar as permitted by law, excluded.

6.5. The aforementioned liability exclusions shall not apply insofar as liability is mandatory by law, as well as:

- for wilful and grossly negligent breaches of obligations and wilful and grossly negligent breaches of obligations by legal representatives and vicarious agents;
- for the contractual cardinal obligations; contractual cardinal obligations are those obligations, which protect essential contractual legal positions of the contractual partner, which the contract has particularly has to grant it according to its contents and purpose. Cardinal obligations are further those contractual obligations, the fulfilment of which makes the proper execution of the contract possible at all and on the compliance with which the contractual partner has relied upon as a rule and may rely upon;
- in the event of the injury to life, body or the health, also by its legal representatives or vicarious agents;
- in the event of the default, insofar as a fixed delivery or a fixed service date is agreed;
- in the event of the assumption of a guarantee or a condition risk within the meaning of Section 276 BGB;
- with the liability according to the German Product Liability Act or other liability facts determined by law.

## **7. Miscellaneous**

7.1. The law of the Federal Republic of Germany shall apply. The exclusive place of jurisdiction is the registered seat of the Contractor, insofar as the Customer is a merchant and if this is not opposed by any mandatory regulations.

7.2. Insofar as the CMR applies, the parties agree upon the aforementioned place of jurisdiction as an additional place of jurisdiction within the meaning of Art. 31 Para.1 CMR.

7.3. The place of performance is the registered seat of the Contractor. If it has several branches the place of performance shall be the branch, to which the order is directed.

7.4. Should one provision of this agreement be invalid in full or in part or subsequently lose its legal validity, this shall have no effect on the validity of the other provisions. This shall otherwise have no effect on the validity of the concluded contracts. The parties will in such a case replace the null and void, invalid or unworkable provision by a valid or workable provision, which shall as far as possible correspond with the sense and purpose of the provision that is to be replaced and the other regulations of the contract.