

Standard Terms and Conditions of Lufthansa Technik Logistik GmbH and of Lufthansa Technik Logistik Services GmbH (Version 11/11)

1. Area of application

- 1.1. These Standard Terms and Conditions apply to all transport-related contractual services rendered by Lufthansa Technik Logistik GmbH (LTL) or by Lufthansa Technik Logistik Services GmbH (LTLS), in particular in connection with freight forwarding, carriage and warehousing services, as well as to the sale of material by LTL or LTLS.
- 1.2. Insofar as LTL or LTLS render transport-related contractual services LTL or LTLS are contractors. The customer is the contracting party instructing LTL or LTLS with the execution of transport-related contractual services in its own interest or that of a third party. In clauses not relating to a special type of contract the contracting parties are also referred to as customer and contractor.
- 1.3. Insofar as LTL or LTLS sell material they are vendors. The purchaser is the contracting party buying material from LTL or LTLS.

2. ADSp¹

Supplementary to these Standard Terms and Conditions the ADSp – as last revised – shall apply to all transport-related contractual services rendered. In case of inconsistencies these Standard Terms and Conditions and the relevant contract shall take precedence to the ADSp.

3. Remuneration

- 3.1. The validity periods of price agreements between customer and contractor are specified in the relevant contract.
- 3.2. If as of or after the end of the agreed validity period of a price agreement the contractor has not proposed a change of prices, the existing prices shall remain in effect.
- 3.3. If as of or after the end of the agreed validity period of a price agreement the contractor proposes new prices, the parties shall endeavor to come to a new agreement regarding the amount and the validity period of the new prices within 30 days. If the parties fail to come to an agreement within said term, the contractor shall be entitled to terminate the relevant contract by giving two weeks' notice, but no earlier than as of the end of the validity period of the price agreement.

¹ Allgemeine Deutsche Spediteur-Bedingungen = German Freight Forwarders' Standard Terms and Conditions

- 3.4. The contractor shall have the right to adjust prices even during the term of a price agreement if there are significant changes in exchange rates, availabilities or market prices.
- 3.5. All prices are quoted excluding value-added tax which the customer shall have to pay additionally to the contractor.

4. Purchase price

- 4.1. The purchase price is the price quoted by the vendor or, if no specific price is quoted, the one listed in the vendor's current price lists as valid at the time the order is placed.
- 4.2. The vendor reserves the right to raise the price of the goods, after timely notification of the purchaser and prior to delivery of the goods, as necessary due to general price trends that are beyond the vendor's control (such as fluctuations in currency exchange rates, currency regulations, changes in customs duties, significantly increased material or production costs) or due to price increases effected by suppliers.
- 4.3. Unless otherwise specified in the quotation or in the sales price lists or agreed upon in writing between vendor and purchaser, all prices quoted by the vendor are ex works. If the vendor is willing to deliver the goods elsewhere, the purchaser shall have to bear the costs for transportation, packaging and insurance.
- 4.4. Moreover, the sections 3.1. to 3.5. shall apply mutatis mutandis.

5. Terms of payment

- 5.1. The contractor's invoices become due and payable without deductions no later than on the date specified in the respective invoices. If no due date is specified, the amount invoiced shall be due immediately.
- 5.2. If circumstances become known to the contractor inferring that the customer's financial situation has deteriorated significantly, the contractor may declare the entire amount receivable immediately due and payable.
- 5.3. If an invoice is not paid within fourteen (14) days after its due date and receipt of the invoice or an equivalent payment schedule, the customer shall automatically be deemed in default of payment.
- 5.4. Objections, if any, raised by customer with respect to invoices shall be accepted only if submitted in writing no later than fourteen (14) days after receipt of invoice. Otherwise, the prices and services invoiced shall be considered as accepted. If customer raises objections against individual items of an invoice, the rules set out in the sections 5.1. to 5.3. shall still apply to the other invoice items which have not been objected to.

6. Rights and duties relating to all contracts for the transportation of goods (i.e. freight forwarding, carriage, warehousing)

- 6.1. The customer is obliged to cooperate in every respect, if necessary, and to give all information in full and in time required for the performance of the contractual duties. The customer is, in particular, obliged to inform the contractor about any specific characteristics of the goods and any requirements related thereto imposed by the law, by public authorities or professional associations [*Berufsgenossenschaften*]. The information to be given and the cooperative actions to be taken must be timely and complete. Moreover, the duties to notify and inform set out, in particular, in section 3 of the ADSp shall apply.
- 6.2. In the case of particularly valuable goods or goods with an inherent risk of theft the customer must inform the contractor in writing about their exact value and security measures to be observed (e.g. guarded parking area, second driver etc.) well in advance of their collection to allow the contractor to decide about acceptance of the goods. A particularly high value of goods is already assumed, if the maximum liability limits pursuant to section 9 are exceeded fivefold or if the value of the goods is higher than EUR 50,000, whichever amount is the lowest.
- 6.3. The customer has to wrap and mark the goods for transport in such a way that they are protected from loss and damage, and has to load the goods safely for transportation. Drivers who assist the customer or the consignee in loading or unloading the goods or do these jobs themselves are considered as vicarious agents of the customer. Unless expressly agreed upon in writing, the contractor shall not be obliged to handle the packaging and marking or safe loading of the goods for transportation himself.
- 6.4. The contractor has the right to engage subcontractors to perform his contractual services.

7. Rights and duties relating to purchase agreements

- 7.1. Delivery
 - 7.1.1. Delivery dates confirmed by the vendor are not binding, unless they are expressly declared as being binding.
 - 7.1.2. The vendor's obligation to deliver is subject to the proviso that his sub-suppliers have delivered in full, correctly and in time, unless he is responsible for their failure or delay in delivery.
 - 7.1.3. The observance of delivery dates is subject to the purchaser complying with his contractual obligations in time. Time limits for delivery begin after all details about the execution of the order have been clarified and all documents and other information to be supplied by the purchaser which are required for its execution have been received, and, if stipulated, after security has been provided or an advance payment has been received. The delivery period shall be deemed to have been complied with, if the goods to be delivered leave the speci-

fied shipping station at the agreed time, or if the shipping availability has been reported to the purchaser in time even though the goods cannot be dispatched in time without the vendor's fault.

- 7.1.4. Unless otherwise specified in the confirmation of the order, delivery ex works is agreed. The risk of loss or damage passes to the purchaser when the goods are handed over to the carrier, forwarding agent or any other person carrying out the transportation of the goods. If the transport is delayed due to circumstances which the vendor is not responsible for, the risk already passes to the purchaser on advice that the goods are ready for dispatch.
- 7.1.5. If it becomes evident after the conclusion of the contract that his payment claims are endangered by the lack of financial capability on the purchaser's part, the vendor may refuse delivery of the goods. This right to withhold performance shall not apply if the consideration has been given or security has been furnished.

7.2. Quality of goods

- 7.2.1. The details provided about the goods are mere details about their composition, unless they are expressly specified as guarantees.
- 7.2.2. Deviations which are within the limits customary in the trade for the specific goods are not considered defects.
- 7.2.3. Specifications and information about construction, suitability, use and workmanship, cleaning and treatment of the goods do not dispense the purchaser from performing own examinations and tests.
- 7.2.4. The observance of requirements imposed by the law, public authorities or professional associations concerning the use of the goods is the purchaser's sole responsibility.

8. Security rights / Reservation of title

- 8.1. Customer's set-off and retention rights
 - 8.1.1. The customer may only set off his claims against claims asserted by the contractor if they are undisputed or have been established by the final decision of a court.
 - 8.1.2. The customer may only exercise his retention rights, if his counter-claims are undisputed or have been established by the final decision of a court.
- 8.2. Contractor's security rights
 - 8.2.1. In addition to the statutory liens available to contractor, the contractor shall, with respect to any claims against customer already due and not yet due arising out of the respective contract, be entitled to enforce a lien on the items and other assets in his control pursuant to the respective contract. The customer shall have the right to prohibit the

contractor from exercising his lien, if the customer furnishes him an equivalent security (e.g. absolute bank guarantee).

- 8.2.2. In addition to the statutory right of retention available to contractor, the contractor shall, with respect to any claims against customer already due and not yet due arising out of the respective contract, be entitled to enforce a right of retention on the items and other assets in his control pursuant to the respective contract.
- 8.2.3. Furthermore, the contractor shall be entitled to suspend services until any and all claims due arising out of the respective contract have been settled.
- 8.2.4. The contractor may set off his claims against claims asserted by the customer. Moreover, the contractor may set off claims acquired by way of assignment and claims of Deutsche Lufthansa AG (LH) and Lufthansa Technik AG (LHT).

8.3. Reservation of title

Insofar as in the performance of his obligations the contractor has to transfer the ownership of the goods to the customer, the goods remain the property of the contractor until complete payment of the invoiced amounts.

9. Liability of the contractor relating to the contract of carriage

- 9.1. Transports within Germany and multimodal transports
 - 9.1.1. If carriage of goods is performed within Germany as defined by §§ 407 et seq. of the German Commercial Code and if it is performed by various modes of transport and if the place where the loss or damage occurred is unknown in accordance with § 452 of the German Commercial Code, the contractor's liability for the damage caused by the loss or damage to the goods transported from the time he accepted the goods for transport until the time of their receipt by the consignee **shall be limited to €5 per kilogram of gross weight of the consignment**, in derogation of § 431, para. 1 of the German Commercial Code. The same shall apply if the provisions of §§ 407 et seq. of the German Commercial Code are to be applied to the relevant leg of carriage as prescribed in § 452 a of the German Commercial Code.
 - 9.1.2. If only individual packages or parts of the consignment have been lost or damaged, the maximum liability shall be calculated on the basis of the gross weight of the whole consignment if the whole consignment is rendered valueless, or of that part of the consignment that is rendered valueless if only part of the consignment is rendered valueless.
 - 9.1.3. The limitation of liability provided for in section 9.1.1. shall not apply, if the damage or loss has been caused by an act or omission of the contractor or a person referred to in § 428 of the German Commercial Code acting intentionally or recklessly knowing that damage to the goods would be probable.

- 9.2. International road cargo transports are subject to the provisions of the CMR.
- 9.3. International air cargo transports are subject to the provisions of the applicable international agreement, such as, for example, the Montreal Convention.
- 9.4. Warehousing
 - 9.4.1. In the case of warehousing upon instruction, the contractor's liability for the loss of or damage to goods stored shall be limited to €5 per kilogram of gross weight of the consignment and, in addition, to a maximum of €5,000 per claim. If the claim of the customer is based upon the difference between the nominal and actual inventory as specified in section 15.6 of the ADSp, the maximum liability shall be limited to €25,000, irrespective of the number of events causing the inventory discrepancy.
 - 9.4.2. Section 9.1.2. shall apply mutatis mutandis.
 - 9.4.3. In the case of warehousing upon instruction, the contractor's liability for claims other than for damage to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, shall be limited to €5,000 per claim.
 - 9.4.4. The limitations of liability in the case of warehousing upon instruction provided for in section 9.4.1. and 9.4.3. shall not apply, if the damage or loss has been caused by an act or omission of the contractor or a person referred to in § 428 of the German Commercial Code acting intentionally or recklessly knowing that damage to the goods would be probable or by violation of fundamental contractual obligations in which case damage claims shall be limited to foreseeable typical damage.
- 9.5. The limitations of liability specified in section 9.1.1. as well as in section 9.4.1. and in section 9.4.3. shall apply as well to non-contractual claims.

10. Claims for defects and liability of the vendor

- 10.1. Claims for defects
 - 10.1.1. The purchaser shall only be entitled to claims for defects, if he has complied properly with his obligations of inspection, notification and rejection in accordance with § 377 of the German Commercial Code. The complaint specifying the defect must be done in writing.
 - 10.1.2. If the goods are defective, the vendor shall have at his own option the right to subsequent fulfillment of the contract by correcting the defects or by delivering substitute items. If the subsequent fulfillment entails disproportionate costs, in particular disproportionate transport, traveling, labor or material costs, and if the purchaser insists on subsequent fulfillment, even though the vendor has informed him of the dis-

proportionate costs, the vendor shall be entitled to invoice the disproportionate portion of the costs separately.

10.1.3. If the subsequent fulfillment at the vendor's option is unsuccessful, cannot reasonably be expected to be tolerated by the purchaser, is refused or delayed by the vendor beyond a reasonable amount of time due to reasons which the vendor is responsible for, the purchaser shall be entitled to reduce the price or revoke the agreement, without prejudice to any damage claims he may have.

10.1.4. Claims not directed towards damages expire one year after delivery of the goods. This shall not apply to intentional violations, breaches of warranty.

10.1.5. In addition, claims directed towards damages shall be subject to the provisions of section 10.2.

10.2. Liability of the vendor

10.2.1. Damage claims against the vendor or persons employed by the vendor in performing his obligations are excluded unless fundamental contractual obligations are violated. The vendor's liability in the event of a violation of fundamental contractual obligations shall be limited to foreseeable typical damage.

10.2.2. Damage claims expire one year after delivery of the goods.

10.2.3. Any other claims against the vendor or persons employed by the vendor in performing his obligations expire 18 months commencing with the time of knowledge or grossly negligent lack of knowledge of the circumstances giving rise to the claim and of the identity of the person liable for damages, unless there are shorter statutory periods of limitation.

10.2.4. The above exclusions and limitations of liability shall not apply in the event of gross negligence or intention, breaches of warranty or injuries to life or limb or detrimental to health.

10.2.5. The provisions of the Product Liability Act remain unaffected.

11. Customs and excise duties and fees

11.1. Unless the contracting parties decide otherwise by common agreement, the contractor shall pay all customs and excise duties and fees arising from the execution of their contractual relationship.

11.2. If the contractor is obliged under the contract to do the customs clearance, he shall be entitled to execute the customs declaration in the name and on behalf of the customer.

12. Prohibitions and restrictions concerning the receipt of goods and the provision of goods

- 12.1. The customer is importer of record, shipper or respectively exporter of record in terms of prohibitions and restrictions in connection with the import, transit and export.
- 12.2. The customer is responsible for the compliance with the prohibitions and restrictions. As far as certain permits, authorizations or licenses are required for the importation, the shipping or the exportation of goods, these will be provided by the customer himself at his own expense.
- 12.3. As far as prohibitions and/or restrictions need to be complied with, the customer notifies the contractor about these requirements when placing an order. Additionally, the customer provides the contractor with the applicable permits, authorizations, licences or other necessary documentation. If the customer fails to provide the necessary documentation or fails to provide them in due time the contractor is entitled to stop the transportation of goods process in his sole discretion to avoid legal consequences. The customer is obliged to deliver the required permits, authorizations or licenses as well as other documents subsequently without further delay.
- 12.4. If applicable prohibitions and restrictions oblige to register or disclose at the competent authority, this obligation lies with the customer with the exception of providing such information in the customs declaration.
- 12.5. If the contractor has stopped the transportation according to the foregoing regulations the contractor shall only continue transportation if and when he receives the applicable documents and/or the obligation to register or disclose is fulfilled. Delays within the receipt of goods respectively the provision of goods for pick up, caused by failure to comply with these rules are not to be charged to the contractor and are not to be regarded in the agreed delivery times.

13. Confidentiality

The parties undertake to keep confidential all information and/or documents received by the other party and to take all necessary measures to prevent them from becoming accessible to third parties or being made known to them by whatever means, unless they are obliged to do so by law or administrative order or the other party has given its prior consent thereto in writing. This shall apply as well to all information, business secrets and data disclosed or obtained in fulfilling this contract. Insofar as third persons assist in fulfilling the contractor's obligations under this contract, the contractor may pass on to such third parties the information required by them to do so. This obligation to maintain confidentiality shall continue to be valid even after the termination of the respective contract and may only be restricted by written consent of the other party, by law or administrative order.

14. Prohibition to Advertise

Without the written consent of the contractor, customer is not permitted to use the name “Lufthansa” with respect to third parties. The name “Lufthansa” shall not be used in any manner by customer for advertising purposes without written consent. This rule does not apply to companies which themselves bear the name “Lufthansa”.

15. Place of fulfillment, place of jurisdiction, governing law

- 15.1. The place of fulfillment for all parties to the contract is the location of that branch office of the contractor at which the instructions are directed.
- 15.2. The place of jurisdiction for all disputes arising from the contractual relationship or in connection therewith shall be Hamburg, Germany. For any claims or other legal actions brought against the contractor this shall be the exclusive place of jurisdiction. Any other places of jurisdiction prescribed by mandatory legal provisions shall not be affected hereby.
- 15.3. The legal relationship between the contractor and the customer or his legal successors shall be governed by the law of the Federal Republic of Germany; the Convention regarding the International Sale of Goods (CISG) shall not apply.

16. Final provisions

- 16.1. The Standard Terms and Conditions of the customer shall not become part of the contract.
- 16.2. If a clause of the Standard Terms and Conditions and the further agreements reached is or becomes invalid, the validity of the remaining clauses shall not be affected. The contracting parties undertake to replace the invalid provision by another one coming as close as possible to the original purpose and intention of the parties.