

## Klenk Holz GmbH's General Terms and Conditions of Transport

### 1. General information

- 1.1. All freight contracts of Klenk Holz GmbH (hereinafter referred to as "Klenk") are issued on the basis of these General Terms and Conditions of Transport. This shall also apply where the Contractor asks Klenk to submit an offer, as well as for all other contracts which include transport services. The General Terms and Conditions of Transport shall apply regardless of whether national or international road carriage is concerned, and even if transport is carried out on individual parts of the route other than by means of truck.
- 1.2. Klenk hereby rejects all general terms and conditions, terms of delivery, or payment issued by the Contractor which contradict these General Terms and Conditions of Transport or which supplement them. If a commercial letter of confirmation (*kaufmännisches Bestätigungsschreiben*) of the Contractor contains such terms and conditions, and Klenk fails to reject such letter, the terms and conditions shall nevertheless not apply. In particular, the ADSp (The German Freight Forwarders' Standard Terms and Conditions), regardless of their version, shall not become part of the contract, unless Klenk expressly approves their application in writing.
- 1.3. Should a translated version of these General Terms and Conditions of Transport be used, only the German version shall be binding.

### 2. Conclusion of transport contracts

- 2.1. Klenk may submit offers for the conclusion of a transport contract to the Contractor either verbally or electronically (e.g. via the web-based logistics platform TRANSPOREON). Where an offer is submitted via TRANSPOREON, the Contractor shall be obligated to accept the offer (fixed freight contract), unless the agreed weekly minimum number of transports has already been reached. The Contractor shall in any event confirm his acceptance to Klenk; such confirmation may be provided either in text form or electronically via TRANSPOREON.
- 2.2. A request via a web-based logistics platform (such as the TRANSPOREON, or the entry of information in the interface of such a platform shall not constitute a binding offer on the part of Klenk to enter into a freight contract; it is at most only a non-binding invitation to make an offer.

### 3. Prices, payment terms

- 3.1. The agreed freight charge covers all aspects of the performance of the Contract relating to the freight contract. No additional, separate claims for costs arising during the ordinary course of the transport of goods, insurance premiums and other foreseeable additional costs shall be allowed. Prices may not be increased.
- 3.2. To the extent that the Contractor was permitted to incur expenditures either under the contract or at the express instruction of Klenk, Klenk shall reimburse such expenditures. The Contractor shall document the occurrence and amount of such expenditures.
- 3.3. The Contractor's claim for the contractual freight charge shall fall due after delivery of the goods and 14 days after Klenk receives an auditable invoice or issues a credit note. The Contractor shall grant a 3% cash discount if payment is made within 14 days.

The successful delivery shall be documented by presentation of the CMR/acknowledgement of delivery/delivery note and (if applicable) the freight contract issued via TRANSPOREON.

- 3.4. The Contractor shall not be entitled to assign his payment claim against Klenk to third parties, unless with the prior approval of Klenk, which shall not be unreasonably withheld.

#### **4. Period of performance, performance deadline**

- 4.1 The times indicated in the freight contract for the loading and unloading shall be considered as binding. Should the Contractor be unable to pick up the goods, or not within the agreed performance period, he shall notify Klenk without undue delay. In such an event, Klenk shall be entitled to withdraw from the contract; this shall not affect claims for damages.
- 4.2 Should Klenk decide to go through with the contract, Klenk shall be entitled to determine, at its own reasonable discretion, the start of a new loading period, taking into account the circumstances of the case. In order to avoid downtimes, the contractor shall in each case book a time window via TRANSPOREON.
- 4.3 Decisive for compliance with the contractual delivery time is the delivery of the cargo to the place of unloading specified by Klenk. Should it become foreseeable prior to the arrival of the cargo at the place of unloading that the transport cannot be completed in accordance with the contract, or if obstacles to delivery exist after the arrival of the cargo at the place of unloading, the Contractor shall inform Klenk thereof without delay and request Klenk's instructions.

#### **5. General duties of the Contractor in transporting the goods**

- 5.1 The Contractor shall provide vehicles suitable for carrying out the freight contract, and, where this has been agreed, loading tackle as well as means of load securing (in particular 15 tie-down straps, 30 edge protectors and a sufficient number of anti-slip mats). The vehicles, loading tackle and means of load securing of the Contractor shall be in good functional condition and shall comply with statutory and regulatory provisions. Where the freight contract sets out special requirements for the vehicles or loading tackle, the Contractor shall observe such requirements.
- 5.2 The Contractor shall deploy reliable drivers in compliant employment relationships; the drivers shall be appropriately trained in accordance with the relevant tasks.
- 5.3 Where necessary for the specific freight contract, the Contractor shall in particular ensure
- 5.3.1 that he, his drivers and any subcontractors he may employ are in possession of the license and permission for such transport pursuant to § 3 German Road Haulage Act (GüKG) and § 6 GüKG (permission, Community license, third-country permit and/or ECMT permit) and carry the legally required documents during the transport;
  - 5.3.2 that the drivers carry a record sheet in the vehicle according to Art. 5 CEMT Directive (German Directive for the Issuance of ECMT permits);
  - 5.3.3 that only drivers are used who are in possession of and carry a valid driver's license as well as a valid passport or official identity card;
  - 5.3.4 that only drivers with the required work permit are used; this applies in particular where drivers from non-EU/non-EEA countries are used;
  - 5.3.5 that the drivers comply with driving times and rest periods and study the safety instructions and carry these in the mandated places within the vehicle;

#### **6. Minimum wage**

The Contractor shall comply with the applicable minimum wage laws as well as the provisions governing minimum working conditions, and, upon request, shall confirm to Klenk his compliance therewith. The Contractor shall indemnify and hold Klenk harmless from any minimum wage-related liability arising because the Contractor or any

subcontractor used by the Contractor fails to meet his obligation to pay the minimum wage, causing claims to be levelled at Klenk.

## 7. Loading and unloading

- 7.1 Klenk shall be responsible for loading the goods, while the end customer is responsible for the unloading, unless the relevant freight contract provides for a different arrangement. Should the Contractor carry out the loading or unloading in whole or in part without any express agreement to this effect, this shall give rise to the assumption that the Contractor has assumed the duty of loading and/or unloading. For DIY tours where a forklift is brought along, the Contractor shall be responsible for unloading at the relevant end customer.
- 7.2 The Contractor shall ensure that the permissible axle load of the vehicles and the statutory regulations of the transit countries concerning the vehicles are complied with. Should Klenk's personnel load goods, the Contractor shall highlight the permissible axle load.
- 7.3 The Contractor shall ensure that the transport poses no traffic hazard and secure the goods properly in compliance with Directive VDI 2700 ff. on load securing for road transport vehicles, § 22 para. 1 StVO (German Road Traffic Regulations). The Contractor shall carry sufficient equipment for securing the load (anti-slip mats, wedges, tie-down straps, tension chains, etc.) during transport.
- 7.4 Before leaving Klenk's premises, the Contractor shall check again whether the load has been properly secured for transport (*beförderungssicher*) and whether the vehicle is appropriate for safely carrying out the transport (*betriebssicher*); this obligation shall apply even if the loading was carried out by Klenk or a third party. The Contractor shall inform Klenk of any concerns regarding a loading.

## 8. Exchange of pallets

- 8.1 At the place of loading, the Contractor shall sign a receipt regarding the number and type of pallets received from Klenk and document any reservation with regard to their quality in writing. When making deliveries to wholesalers or retailers, the Contractor shall exchange all exchangeable pallets. The Contractor shall inspect the empty pallets offered by the receiver in exchange for the delivered pallets at the place of unloading to confirm their exchangeability (based on their outer appearance), issue a receipt regarding number and type of the accepted pallets and document any reservations with regard to the quality of the pallets. The Contractor shall procure confirmation of any refused exchange from the recipient at the unloading site.
- 8.2 For any empty pallets he has accepted, the Contractor shall deliver an equal number of pallets to the place of loading within one month after accepting the pallets. If the recipient has provided no or only an insufficient number of pallets in return, the Contractor shall inform Klenk within a month after making delivery and submit the confirmation of the pallet deficit to Klenk. Upon providing confirmation of the pallet deficit, the Contractor shall be released, commensurate to the deficit, from his duty to return pallets.
- 8.3 Klenk shall maintain a pallet account for the Contractor in the form of a current account in analogous application of § 355 German Commercial Code (HGB). The pallet account shall be reconciled on a monthly basis between Klenk and the Contractor. At the request of the Contractor, Klenk shall provide information at any time about the Contractor's pallet account balance. The Contractor shall be obligated to review the account balance. If the Contractor fails to object to the notified balance of his pallet account within 14 working days after receipt of such notification, the balance shall be deemed to have been accepted.

The Contractor shall be obligated to settle any negative balance. If the owed number of pallets is not returned within a further period of 14 days, Klenk shall be entitled to bill the owed pallets.

8.4 Unless stipulated otherwise in the relevant freight contract, the above paragraphs of this clause 8 shall apply only for national, and not for international transportation orders.

## 9. Transport documents

9.1 The Contractor shall verify the accuracy of the information contained in the transport document (consignment note, delivery note or similar) with regard to the type and nature of the goods, the gross weight (or other data as to the amount), writing, numbers, number of packages, and check for the absence of visible external damage, to the extent that he has the appropriate means to carry out such verification. He shall sign the transport document upon accepting the goods.

9.2 When making delivery, the Contractor shall ensure that the recipient signs the transport document (i.e. consignment note and acknowledgement of receipt), confirming the time and date of delivery. The Contractor shall submit the original signed transport document to Klenk within 10 days.

## 10. Delivery to the recipient

10.1 The Contractor shall deliver the cargo to the recipient's place of unloading within the specified delivery period.

10.2 Should it become foreseeable prior to the arrival of the cargo at the place of unloading that the transport cannot be completed in accordance with the contract, or if obstacles to delivery exist after the arrival of the cargo at the place of unloading, the Contractor shall inform Klenk thereof without undue delay and request further instructions.

## 11. Use of subcontractors

11.1 In principle, the Contractor shall be allowed to subcontract the conveyance of goods to a third party. However, the delegation of the freight contract to a third party via a freight exchange requires the express consent of Klenk.

11.2 The Contractor shall be liable for the faults of the subcontractor used by him as if such faults were his own. The Contractor shall ensure compliance of such third party with the terms of the freight contract with Klenk by submitting such third party to appropriate contractual agreements.

## 12. Customs clearance

12.1 For cross-border transports, the duties of the Contractor shall include customs clearance and other official proceedings relating to the cargo, unless the parties expressly stipulate otherwise.

12.2 If the Contractor is responsible for customs clearance, he shall in particular submit a correct electronic presentation notification (*Gestellungsanzeige*) and arrival notification (*Ankunftsanzeige*) to the customs office at the point of exit in accordance with the ATLAS procedural instructions (*ATLAS-Verfahrensweisung*).

12.3 The Contractor shall not be entitled to any additional remuneration for the customs clearance; however, Klenk may reimburse the Contractor for any documented expenditures relating to proper performance of the customs clearing process.

## 13. Contractor's liability

13.1 Liability for damage to cargo

13.1.1 The Contractor's liability in the event of the loss of or damage to the accepted cargo shall be governed by the Convention on the Contract for the International Carriage of Goods by Road (CMR), if and to the extent that the freight contract involves cross-border transport by truck.

13.1.2 If the Contractor is commissioned to transport goods by road within Germany, the liability for the loss of or damage to the accepted cargo shall be governed by §§ 425 et seqq. HGB, with the following modifications:

**By way of derogation from the statutory rule of § 431 para. 1 HGB, the compensation owed by the Contractor for the loss of or damage to the cargo shall be limited to an amount of 40 SDRs per kilogram of gross weight of the cargo.**

§ 435 HGB shall remain unaffected.

13.1.3 Where the freight contract includes the conveyance by different means of transport, the parties agree, by way of derogation from § 452a HGB, that the liability of the Contractor shall always be governed by §§ 425 – 439 HGB, regardless of the question on which leg of the route damage occurs. The maximum liability amount set out under clause 13.1.2. shall also apply for multimodal transportation.

## 13.2 Liability for late deliveries

If the Contractor fails to make delivery within the delivery period, his liability towards Klenk for any resulting damage or loss shall be governed by the applicable statutory provisions. To the extent that the freight contract includes conveyance by different means of transport, the liability for a late delivery shall always be governed by §§ 425 – 439 HGB, regardless on which leg of the route the delay occurs.

## 14. Klenk's liability as the consignor

14.1 Klenk's liability under § 414 HGB shall be limited to 8.33 SDRs per kilogram of gross cargo weight.

14.2 The liability restriction under clause 14.1 shall not apply for injury to life, body or health, or for any damage caused by intent or gross negligence on the part of Klenk or the agents employed by Klenk in the performance of its obligations under the contract, or for any damage caused by a breach of essential contractual obligations; in the latter case, compensation claims shall be limited to the foreseeable typical damage.

## 15. Insurance

The Contractor shall take out liability insurance covering cargo damage and late deliveries pursuant to clause 12 of these General Terms and Conditions of Transport at customary market terms and shall maintain such coverage for the duration of his contractual relationship with Klenk. At the request of Klenk, the Contractor shall furnish proof of such valid liability coverage.

## 16. Right of retention, set-off

16.1 The Contractor shall be entitled to rely on liens or rights of retention with regard to Klenk's cargo only for claims relating to the specific freight contract (connected claims).

Insofar as claims from other freight contracts concluded with Klenk are concerned (unconnected claims), the Contractor shall be entitled to liens or rights of retention only with regard to claims which are uncontested or which have been established by final and absolute judgement.

16.2 The Contractor may set off his own claims against Klenk's claims if the Contractor's counterclaims are uncontested or confirmed by final and absolute judgement.

**17. Confidentiality**

The parties shall treat all non-public information gained in the context of carrying out the freight contract confidentially and shall ensure that such data are only disclosed to third parties with the consent of the other party. This obligation shall not apply to the extent that a party is required to disclose the information due to a judicial decision, an order issued by an authority or under the law. The Contractor shall ensure that this confidentiality obligation is also observed by all subcontractors. The information shall be used exclusively for the purpose of rendering performance.

**18. Applicable law; place of jurisdiction**

18.1 The law of the Federal Republic of Germany shall apply.

18.2 Unless the law mandates otherwise, the exclusive venue for all disputes relating to freight contracts based on these provisions shall be determined by Klenk's principal place of business. Klenk shall be entitled to bring suit against the Contractor at the Contractor's place of jurisdiction.

As of: October 2018