

# General Terms and Conditions of Logistics-Services Providers 2019 (Logistics GTC)

The following text is a translation of the German version of the Logistic GTC.

In case of doubts, the German version of the Logistic GTC shall prevail.

## Preamble

The General Terms and Conditions of Logistics-Services Providers 2019 (Logistics GTC) were created with the participation of the Institute for Logistics Law and Risk Management (ILRM) and are recommended for use as of July 1, 2019 by the Federal Association of Road Haulage, Logistics and Disposal (BGL), the Federal Association of Furniture Forwarders and Logistics (AMÖ) and the German Association for Freight Forwarding and Logistics (DSLVL). This recommendation is non-binding and the contract parties are free to make agreements that deviate from the contents of this recommendation.

## 1. Scope of application, priority of ADSp 2017

- 1.1** These Logistics GTC apply to all (supplementary) logistics services that are not subject to
- a Freight Forwarding Contract (“Verkehrsvertrag”) according to the German Freight Forwarders’ Standard Terms and Conditions 2017 (ADSp 2017) or
  - a transport, freight forwarding or warehousing contract

but that are provided by the Service Provider and are commercially connected to such a contract, in particular to services within a supply chain.

Such logistics services may be activities for the Principal or third parties named by him, like, for example, order acceptance (call center), goods handling, goods inspection, goods preparation, country and customer-specific adaptation of goods, assembly, repair, quality control, price labeling, shelf service, installation or the placing into operation of goods and commodities or activities in connection with the planning, implementation, steering or control of the order, process, sales, recycling and information management.

- 1.2** Principal is that party that instructs his contracting partner with the provision of logistics services.

- 1.3** Service Provider is that party that has been instructed to provide logistics services.

- 1.4** If the ADSp have been agreed in addition to these Logistics GTC, the terms and conditions of the ADSp shall take precedence, insofar as individual clauses contradict each other.

- 1.5** A reference to the ADSp in these Logistics GTC always includes a reference to the current version in force at the time of conclusion of the contract, unless the parties have agreed to another version of the ADSp.

- 1.6** These Logistics GTC do not apply to freight forwarding contracts with consumers within the meaning of Section 13 German Civil Code (BGB).

- 1.7** These Logistics GTC do not apply to business transactions, which have as their sole object:

- 1.7.1** storage and digitalization of files; files are all types of embodied and digitalized business papers, documents, data carriers as well as similar items serving the purpose of gathering information;
- 1.7.2** heavy or oversized transports, the execution of which requires a permit or exception under applicable transportation regulation, crane services or related assembly work.

## 2. Electronic data exchange

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- 2.1** If agreed between the Principal and the Service Provider, the parties will transmit and receive the shipping details, including invoice generation, by electronic means (electronic data interchange/remote transmission). The transmitting party bears the risk for the loss and correctness of the transmitted data.
- 2.2** In case of an agreement according to Section 2.1, the parties ensure that their own IT system is ready for operation and the usual security and control measures are taken to protect the electronic data exchange from access by third parties and to prevent alteration, loss or destruction of electronically transmitted data. Each party is obligated to notify the other party timely of any changes to its IT systems that could affect the electronic data exchange.
- 2.3** Upon request of a contracting party, each side will nominate one or more contact persons for the purpose of receiving information, explanations and enquiries regarding the fulfilment of the contract and shall inform the other party of the names and addresses of such person/s. This information must be updated in case of changes. If a contracting party fails to provide details for a contact person, then the relevant signatory of the contract shall be the designated contact person.
- 2.4** Electronically or digitally created and storable documents shall be considered equal to written documents, unless the law requires the written form. Furthermore, each party is entitled to archive written documents only electronically or digitally and to destroy the originals in compliance with the statutory provisions.

## 3. Confidentiality

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- 3.1** The parties are obligated to treat as confidential all information received during the execution of the logistics services contract that is not publicly accessible. The information may only be used for the exclusive purpose of providing the services. The parties shall impose this confidentiality obligation on all persons whom they employ in the performance of their contractual duties.
- 3.2** The obligation of confidentiality does not apply to data and information that must be made known to third parties, especially authorities, due to legal obligations. In this case, the other party must be informed of this immediately.

## 4. Obligations of the Principal when placing an order, information obligations, protection of intellectual property

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- 4.1** The Principal shall timely inform the Service Provider of all significant factors known to him which influence the execution of the order and which are attributable to the Principal's area of risk. This applies in particular if he, as "system leader", determines the procedure to be implemented by the Service Provider, for example by means of know-how transfer. In particular, the Principal shall provide all objects, information and authorizations necessary for the performance of the logistics services and shall provide appropriate assistance, especially
- 4.1.1** to provide pre-products, materials and means of production, as far as agreed, in technically and contractually sound condition as well as to maintain such means of production;
- 4.1.2** to inform the Service Provider about specific characteristics of the goods and procedures and related legal, regulatory or trade association requirements and, as far as necessary, to train his employees;
- 4.1.3** to develop and update specifications, descriptions of procedures and materials (production instructions, designs and plans) and to monitor compliance with them by the Service Provider.
- 4.2** The Principal shall draw the Service Provider's attention to special requirements for fire protection, safety and other technical requirements (temperature, humidity, smell).
- 4.3** At the request of the Service Provider, the Principal shall timely inform the Service Provider of all information which is recognizably necessary for the Service Provider's capacity planning and is allocated to his area of risk.
- 4.4** Furthermore, the Principal is responsible for compliance with
- 4.4.1** all obligations under public law, e.g., customs, foreign trade (especially embargos relating to goods, persons or countries) and security/safety laws and regulations;
- 4.4.2** intellectual property rights of third parties, such as trademark and license restrictions associated with the possession of the goods, including legal or regulatory obstacles which jeopardize the execution of the order.
- 4.5** The information and rights transferred according to Sections 4.1 to 4.3 remain the intellectual property of the Principal. A right of lien or retention in this respect cannot be exercised by the Service Provider.

## 5. Obligations of the Service Provider

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- 5.1** The Service Provider is obligated to provide his services in accordance with the specifications of the Principal as set out in Section 4. He is entitled, but not obligated, to review these specifications.
- 5.2** Insofar as the Service Provider provides the logistics services within the operational organization of the Principal or on his instructions within the operational organization of a third party (e.g., shelf service), he shall comply with the instructions of the Principal (respectively the third party) with regard to operational safety.
- 5.3** The Service Provider is obligated to inform the Principal without delay of any objections or irregularities that have arisen during the execution of the contract and to obtain appropriate instructions.
- 5.4** Any information obligations beyond the legal requirements, e.g., regarding measures taken by the Service Provider in the event of disruptions, in particular an impending delay in logistics services, in the event of damage to goods or other disruptions (emergency concept), require express agreement.

## 6. Performance hindrances and *force majeure*

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- 6.1** Performance hindrances which are not attributable to the area of risk of either contracting party shall release the contracting parties from their performance obligations for the duration of the hindrance and the extent of its impact.
- Such performance hindrances are deemed to be force majeure, civil unrest, acts of war or terrorism, strikes and lock-outs, blockades of transport routes, outages or constraints of electronic data exchange caused by third parties, cyber-crime by third parties, as well as any other unforeseeable, unavoidable and serious events.
- 6.2** In the event of a performance hindrance according to Section 6.1, each contracting party is obligated to notify the other party immediately. Additionally, the Service Provider is obligated to obtain instructions from the Principal.

## 7. Modification of the contract

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- 7.1** Agreements on prices and services always refer exclusively to the named services and essentially unchanged volume of goods, orders and quantity structure. They assume, on the one hand, unchanged data processing requirements, quality agreements and procedural instructions and, on the other hand, unchanged energy and personnel costs as well as public levies.
- 7.2** If the conditions described in Section 7.1 change, either party may request negotiations to modify the contract with effect from the first day of the month following the request for modification, unless the changes were already known to the requesting party at the time the contract was concluded. The modification must be based on the identifiable changes, including rationalization effects.
- 7.3** Should the contracting parties fail to agree on the requested contract modification within one month after the request for contract modification was made, either party can terminate the agreement by giving notice of one month to the end of the month in the case of the contract being valid up to one year, or three months to the end of the month if the contract has a longer term. This termination must be received in text form within one month after at least one party has declared the failure of the contract modification.

## 8. Transfer of Undertakings

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- 8.1** If the contract for logistics services or its execution is related to a transfer of business in accordance with § 613a BGB (German Civil Code), the contracting parties undertake to agree on the economic consequences, taking into account the duration of the contract.
- 8.2** If the contracting parties have not agreed on such provisions, the party entering into the employment contract shall be entitled to an appropriate modification of its remuneration at his reasonable discretion, taking into account the duration of the contract. In all other respects § 315 German Civil Code (BGB) applies.

## 9. Set-off, Retention

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Offsetting or Retention against claims arising from the logistics services agreement according to Section 1.1 and related non-contractual claims are only permitted when the due counterclaim is undisputed, ready for decision or legally binding.

## 10. Right of lien and retention, retention of title

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**10.1** To secure his claims from the contract for logistics services, the Service Provider may invoke the statutory rights of lien and retention to which he is entitled.

If and to the extent that a statutory lien does not exist, the Service Provider shall have a lien on the Principal's property in his possession for all due and undue claims he is entitled to which stem from services according to Section 1.1.

**10.2** The realization of the security shall be effected in accordance with the statutory provisions, provided that the time limit of one month as specified in § 1234 German Civil Code (BGB) is replaced by a time limit of one week.

**10.3** The Principal is entitled to prohibit the exercise of the right of lien and right of retention if he grants the Service Provider an equivalent security with regard to his claims (e.g., directly enforceable bank guarantee).

**10.4** Section 4.5 remains unaffected.

**10.5** If, in the course of providing logistics services, the Service Provider also transfers ownership in things to the Principal, these objects remain the property of the Service Provider until all claims against the Principal to which the Service Provider is entitled to under the contract for logistics services have been settled.

## 11. Acceptance, notification of deficiencies and delay

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**11.1** Insofar as acceptance of the logistics service is required by the Principal, it can, due to the cooperative nature of logistics services, be done through use, resale or further processing of the product, delivery and shipment to the Principal or third parties specified by him. If acceptance of a logistics service is not possible, completion shall be deemed as acceptance.

**11.2** The Principal is obligated to notify the Service Provider of apparent deficiencies at the time of acceptance.

The notification must be made in text form. To meet the deadline it is sufficient to send the notification in time, provided it reaches the Service Provider.

**11.3** If the Principal fails to notify the Service Provider of a claim, the logistics service is deemed to have been performed in accordance with the contract, unless the Service Provider fraudulently concealed the deficiency.

**11.4** Claims due to delays lapse if the Principal does not notify the Service Provider within 21 days of the service having been provided.

## 12. Deficiency claims by the Principal

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**12.1** The deficiency of a logistics service is initially determined by the content of the contract, subsequently by the statutory provisions applicable to the respective logistics service. Warranties regarding characteristics or durability shall only be assumed by the Service Provider if these were agreed in text form.

**12.2** If the logistics service is deficient, the Principal is entitled to supplementary performance. The right to choose between rectification of the deficiency and new delivery/new service is in any case at the discretion of the Principal. If the supplementary performance does not lead to the success owed under the contract, the Principal is entitled to a second supplementary performance. Further claims for supplementary performance are excluded.

**12.3** If the supplementary performance fails twice or if a supplementary performance is not possible due to the nature of the service, the Principal is entitled to exercise his right to reduction, withdrawal and compensation for damages as well as his right to self-execution as follows:

**12.3.1** If the Principal claims a reduction, it is limited to the remuneration for the contested deficient logistics service.

**12.3.2** If the Principal asserts his right of withdrawal, this shall only apply with regard to the individual logistics service that is deficient. The Principal is also entitled to the right of extraordinary termination according to Section 13 instead of the right of withdrawal.

**12.3.3** The Principal may demand compensation instead of performance in accordance with the requirements of Section 14.

**12.3.4** In the case of self-execution, the Principal's claim for reimbursement is limited to an amount of up to EUR 20,000.

### 13. Extraordinary termination

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**13.1** If one of the parties breaches the same material contractual obligation twice within one year and this leads to a significant operational disruption in each case, the other party has the right to terminate this contract by giving reasonable notice in text form after having granted the breaching party in text form a reasonable period of time to remedy the breach of the obligation and this period has expired without the party having fulfilled its obligations.

**13.2** If one of the parties defaults on its contractual payment obligation from two consecutive billing periods, the other party has the right to terminate this contract within one further billing period. Section 13.2 does not apply to compensation payments.

**13.3** The right to extraordinary termination for good cause remains unaffected.

### 14. Liability of the Service Provider

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**14.1** The Service Provider is only liable if he is at fault for the damage caused by him.

**14.2** The Service Provider's liability is limited to

**14.2.1** the amount of EUR 20,000 per damage event for damages to the goods.

**14.2.2** the amount of EUR 125,000 in the case of damage to the goods due to serial damages, notwithstanding Section 14.2.1.

In the case of a series damage, several damage events shall be deemed to be one damage event that occurred at the time of the first of these damage events if they are based either on the identical cause, on the same causes with inner, especially factual and temporal, connection or on logistics services with the same defects.

**14.2.3** the amount of EUR 20,000 per damage event for damages other than to the goods.

**14.2.4** EUR 600,000 for all claims within one year. Section 14.3 remains unaffected.

**14.3** Against payment of a surcharge to be agreed upon prior to the commencement of the logistics service, the Principal may in text form

**14.3.1** specify a value for an increased liability for damages to the goods which exceeds the maximum amounts stipulated in Sections 14.2.1 and 14.2.2. In this case, the specified value in each case shall replace the relevant maximum amount ("value declaration").

**14.3.2** declare an interest in increasing liability for damages other than damages to the goods which exceeds the maximum amounts stipulated in Section 14.2.3. In this case, the declared interest shall replace the relevant maximum amount ("interest declaration")

**14.4** The aforementioned liability exclusions and limitations also apply to non-contractual claims against the Principal and his vicarious agents.

**14.5** The aforementioned liability exclusions and limitations do not apply

**14.5.1** to fatal injuries, personal injuries and damage to health as well as to damages to items that are not the subject of the (additional) logistics service.

**14.5.2** insofar as mandatory statutory liability provisions, such as the product liability act, apply.

### 15. Qualified fault

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**15.1** The liability exclusions and limitations listed in Section 14 do not apply if the damage was caused by:

**15.1.1** intent or gross negligence of the Service Provider or his vicarious agents or

**15.1.2** violation of material contractual obligations, whereby such compensation claims in the latter case are limited to the foreseeable, typical damage.

Material contractual obligations are obligations whose fulfillment is essential for the proper execution of a contract according to Section 1.1 and on whose compliance the contracting partner may reasonably rely.

**15.2** Furthermore, the liability exclusions and limitations listed in Section 14 do not apply if the Service Provider maliciously concealed the damage or assumed a guarantee for the quality of the logistics service.

**15.3** Notwithstanding Section 15.1.2, the liability exclusions and limitations according to 14.2 as well as in case of a value or interest declaration according to Section 14.3 only cease to apply in the event of grossly negligent or intentional breach of material contractual obligations.

## **16. Service Provider's right to indemnification and product liability**

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- 16.1** The Service Provider is entitled to reimbursement of the expenses which he, under the circumstances, reasonably considered necessary in the interest of the Principal and for which he is not responsible.
- 16.2** The Principal shall indemnify the Service Provider against all expenditures, such as maintenance, repair, servicing and disposal costs, customs duties, taxes, levies and other fees which are charged to the Service Provider, in particular as the party entitled to dispose of or as the possessor of third-party goods, unless the Service Provider is responsible for them.
- 16.3** The Principal shall indemnify the Service Provider and his vicarious agents against all claims made by third parties, including by the Principal's insurer, and other costs pursuant to the product liability act and other regulations protecting third parties, unless
- 16.3.1** the Service Provider or his vicarious agents have caused the claim of the third party by gross negligence or intent;
- 16.3.2** the Principal has insured his liability risk according to the product liability act or other regulations protecting third parties with a deductible and has agreed expressly with the Service Provider that he will be reimbursed such deductible by the Service Provider in case of a damage event.
- 16.4** If and to the extent that the Principal insures the inventories which are the subject of a contract according to Section 1.1, under a cargo insurance or against fire, burglary, storm, hail, flood, earthquake and tap water, the Service Provider shall be included in the insurance cover as an insured person, but not as a representative of the Principal.
- If the Principal does not have appropriate insurance cover, he must inform the Service Provider early enough to allow for the Service Provider's own risk assessment.

## **17. Limitation period**

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- 17.1** Claims arising from a contract in accordance with Section 1.1 shall become time-barred after one year.
- 17.2** The limitation period for all claims shall commence at the end of the day of delivery, for contractual services at the end of the day of acceptance according to Section 11.1.

- 17.3** The aforementioned limitation periods shall not apply
- 17.3.1** in the cases referred to in Section 15;
- 17.3.2** in the case of fatal injuries, personal injuries and damage to health or
- 17.3.3** insofar as mandatory statutory limitation provisions are applicable.

## **18. Liability insurance of the Service Provider**

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- 18.1** The Service Provider is obligated to take out and maintain liability insurance at normal market conditions with an insurer of his choice. The usual market conditions shall cover the risk at least to the extent of the maximum liability amounts according to Section 14.
- 18.2** The agreement on a maximum compensation per claim, claim event and year are permissible; likewise the agreement on a reasonable deductible by the Service Provider.
- 18.3** Upon request, the Service Provider shall provide evidence of the existence of a valid liability insurance cover by presentation of an insurance confirmation.

## **19. Place of performance, place of jurisdiction, applicable law**

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- 19.1** The place of performance for all involved parties is the location of the Service Provider's branch to which the order or enquiry is directed.
- 19.2** The place of jurisdiction for all legal disputes arising from or in connection with the contractual relationship is for all involved parties, insofar as they are merchants or of equal standing, the location of the Service Provider's branch to which the order or enquiry is directed; for claims against the Service Provider, this place of jurisdiction is exclusive.
- 19.3** The legal relations between the Service Provider and the Principal or his legal successors shall be governed by German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **20. Compliance**

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- 20.1** The Service Provider undertakes to comply with minimum wage regulations and minimum conditions at the workplace and shall confirm this in text form upon request of the Principal. The Service Provider indemnifies the Principal from his liability for minimum

wages if the Service Provider or a subcontractor or hirer engaged as part of the logistics services contract does not pay employees the statutory minimum wage and the Principal is held liable.

- 20.2** The parties will process the data necessary for the performance of the contract in accordance with the provisions of the applicable data protection laws and undertake to take appropriate data and IT security measures. In particular, the parties shall observe the basic principles of data protection law and take suitable technical-organizational measures that meet the requirements on security and confidentiality of data processing and ensure the protection against unauthorized access by third parties.
- 20.3** Both parties undertake to comply with the legal regulations applicable to their companies. They support and respect the principles of the “Global Compact” (“UNGC”), the United Nations Universal Declaration of Human Rights and the 1998 Declaration on Fundamental Principles and Rights at Work of the International Labour Organization (“Declaration on Fundamental Principles and Rights at Work”) in accordance with national laws and practices. In particular, both parties in their companies commit
- 20.3.1** not to employ children or use forced labour;
  - 20.3.2** to observe the respective national laws and regulations on working hours, wages and salaries and to comply with all other employer obligations;
  - 20.3.3** to comply with the applicable health and safety regulations and provide a safe and health-promoting working environment to ensure the health of employees and to prevent accidents, injuries and work-related illnesses;
  - 20.3.4** to refrain from any discrimination based on race, religion, disability, age, sexual orientation or gender;
  - 20.3.5** to comply with international anti-corruption standards, such as those set out in the UNGC and local anti-corruption and bribery laws;
  - 20.3.6** to comply with all applicable environmental laws and regulations;
  - 20.3.7** to insist on their business partners and subcontractors to also base their actions on the aforementioned principles.

## 21. Final provisions

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- 21.1** When determining the extent of the compensation claims to be satisfied by the Service Provider, the economic circumstances of the Service Provider, the type, scope and duration of the business relationship, possible contributions to causation or fault by the Principal in accordance with § 254 BGB (German Civil Code) and the degree of monitoring and control exerted on the implemented procedures by the Principal must be taken into consideration in favor of the Service Provider. In particular, the replacement services, costs and expenses to be borne by the Service Provider must be in reasonable proportion to the Service Provider's proceeds from the services provided for the Principal.
- 21.2** Should a provision of this Logistics GTC or the further agreements made be or become invalid, this shall not affect the validity of the rest of the contract.

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