

**GENERAL CONDITIONS OF BUSINESS AND PACKING**  
**of**  
**duisport packing logistics GmbH**  
(as at: 01.01.10)

## **I. General**

### **1. Applicability**

1.1 The packing services we perform are subject exclusively to our following General Conditions of Business. Contradicting general conditions of business are only binding if we have explicitly acknowledged them as such in writing.

1.2 Our General Conditions of Business and Packing apply only with respect to entrepreneurs in the meaning of § 14 BGB (*German Civil Code*), legal persons under public law and public special assets.

1.3 Our General Conditions of Business and Packing also apply for all future transactions with the Customer.

**1.4 If haulage services and/or transport orders are a subject of contracts in connection with packing orders, then these shall be governed by the German Freight Forwarders Standard Terms and Conditions (ADSp) 2003.**

### **2. Written form**

Contract changes and ancillary agreements are only effective if in writing; this applies also for a waiver of the written form requirement.

## **II. Contract conclusion, Service scope and contents**

### **1. Proposal**

Our proposals are non-committal.

### **2. Service scope**

2.1 The scope of the services we perform is governed by our written confirmation.

2.2 Under reserve of differing agreements, the owed packing service encompasses solely producing the package from package goods and packaging (packing), conserving the package goods, the pre-storage and post-storage necessary for production and storage of the package goods in the time as from when packing begins until it is completed. Unless explicitly agreed otherwise, the total storage time for this is limited to a maximum of 2 weeks. If this total time is overrun, then following prior notice we reserve the right to trans-ship and store in an external warehouse/open storage at the cost of the Customer. If we must only deliver packaging materials, then we are only obligated under the respective purchase contract, and work and services are not therewith owed.

### **3. Performance impediments**

If we are confronted with unforeseen impediments not attributable to our sphere of risk, then we are entitled to compensation for the necessary expenditure and appropriate additional remuneration. This applies particularly if a standstill in the operations of the Customer causes higher costs for the personnel we deploy.

### **4. Prices**

4.1 The statutory VAT is added to our prices.

4.2 Our prices are based on the calculation as at submission of our proposal. We are entitled to increase the agreed prices by the pro rata extra expense if the commodities prices for packaging materials change significantly by at least 10% after contract conclusion.

### **5. Payment**

Payments must be made to our branch establishment without any deduction whatsoever and free of charges; the details are set out in our invoice.

## **III. Offsetting and withholding prohibition**

The Customer is only entitled to offset or refuse performance if the counter-claims are uncontested, established with lawful finality or mature for decision.

## **IV. Exploitation rights, Translations**

All drawings, sketches and models remain our property. The exploitation rights and copyrights vest solely with us. Transcripts, photographs or copies may only be produced with our explicit written consent. Unless agreed otherwise, the Customer is responsible for translating texts, e.g. package lists, into foreign languages.

## **V. Cooperation and information obligations of the Customer**

1. It is the responsibility of the Customer to provide package goods in a condition ready and suitable in good time for executing the packing order. Especially parts susceptible to corrosion must be handed over to us cleaned and treated with suitable contact anti-corrosion agents.

2. The Customer is obligated to notify the weight and other particular characteristics of the goods to us in writing in good time. This includes especially statements of the centre of gravity, fixing points provided for crane lifting and the necessary statements concerning hazardous goods and dangerous substances.

3. The Customer must notify us in writing of any possibly necessary additional and special treatment of the package goods (also relative to storage). This applies particularly for requirements of the respective transport route of the loading and transportation means and, in the event of any possibly foreseen subsequent storage, with regard to general environmental contaminations.

4. Unless agreed otherwise, the packing is carried out in our operating facilities; the Customer is responsible for timely delivery and collection of the goods. If the packing order must be executed outside our operating facilities, then the Customer must provide free of charge sufficient space, energy (electricity, compressed air, etc.) and the suitable lifting gear and equipment, including the necessary personnel, to execute the packing order promptly and expertly.

5. It is the responsibility of the Customer to ensure that goods to be packed or packed goods are sufficiently insured (transport, storage, fire insurance).

## **VI. Reservation of title**

1. We reserve title to all packaging materials delivered and processed by us until all our claims against the Customer are fully settled. This applies also in the case that the individual materials are paid for.

2.1 The ordering party is allowed to resell the conditional goods within the context of usual business operations, whereby he herewith assigns to us all his claims against his customers from the resale as security to collateralise all our claims from the reservation of title.

2.2 If the conditional goods are processed or compounded as an essential component of other items or are commingled with other items not our property, then we acquire co-ownership in the new items so created in the ratio given from the prices of our materials to the value of the newly created single item. The foregoing section 2.1 applies correspondingly in the event that such items are sold. We acquire a share in the claim in accordance with our co-ownership portion by virtue of the partial assignment carried out thereafter.

3. Inasmuch as the value of all collateral rights exceeds the amount of all collateralised claims by more than 20%, then on demand by the Customer we are obligated to release a corresponding portion of said collateral.

## **VII. Assumption of risk**

The material risk is governed by § 644 sec. 1 sentence 3 BGB. If no case pursuant to § 644 sec. 1 sentence 2 and § 645 BGB is given, then the remuneration risk passes to the Customer with dispatch of the packed goods, and with handover to the Customer in the event of packaging in the operating facilities of the Customer. If the packing order must be executed outside our operating facilities and if the entirely or partially performed service is damaged or destroyed before handover due to force majeure, war, civil unrest or other unavoidable objective circumstances for which the Customer is not answerable, then we are entitled to bill the performed services according to the contract prices and also to demand the costs we have already incurred and which are contained in the contract prices of the unperformed part of the service.

## **VIII. Contractual lien**

For all claims from the contract and also receivables from uncontested or lawfully established claims from other contracts concluded with the Customer, we are entitled to a contractual lien and withholding right in all items of the Customer that have come into our possession. The due period of one month stipulated in § 1234 BGB shortens to 2 weeks. If the Customer is in default, then after threatening a sale, we can freely sell goods of the Customer in our possession in a quantity we dutifully deem sufficient to achieve satisfaction. We can charge sales commission on the net proceeds at the locally usual rates from selling attached property or from the sale to achieve satisfaction.

## **IX. Performance time – Delivery delay**

1. Delivery dates and periods first begin after clarification of all details of the order, confirmation by us and the receipt of possibly agreed payments on account, advance payments or the like.

2. Fixed delivery times are only then deemed as agreed if they are assured as such in the written order confirmation. But they are even then not considered as fixed dates in the meaning of § 361 BGB if not explicitly designated as such in writing.

3. In the event that performance is delayed due to force majeure, civil unrest, strike, lockout and operational disruptions not the fault of the operator (also at suppliers), the performance period prolongs by the time necessary to remedy the disruption. In such a case, we can at our own discretion and excluding any compensation claims whatsoever withdraw from the contract. We shall notify the beginning and end of such circumstances to the Customer immediately.

4. The Customer can withdraw from the contract without further notice if the entire performance becomes finally impossible for us before passage of risk. The Customer can moreover withdraw from the contract if a part of an order cannot be executed and he has a justified interest in refusing the partial performance. If this is not the case, the Customer must pay the contract price for the partial performance. The Customer remains obligated to counter-performance if the impossibility occurs during the acceptance delay or if the Customer is solely or overwhelmingly responsible for these circumstances. Further warranty claims are governed exclusively by section XI of these conditions.

## X. Warranty for defects

1. A warranty claim for defects is dependent on the existence of a work defect at passage of risk, i.e. at the latest with dispatch of the packed goods, and at handover if the packing is done in the operating facilities of the Customer. The Customer bears the burden of proof for this.

2. If the packing service also comprises the application of sufficient corrosion protection according to the latest state of technology, then the corrosion protection is deemed to be contractual if it lasts for the duration of the agreed conservation period reckoned as from the packing date. We therefore assume no liability for corrosion which occurs after the agreed conservation period expires.

3. The Customer must inspect the packaging for deficiencies immediately on receipt of the packed goods. Discovered defects must be complained in writing. We must have received the complaint of obvious defects within 2 weeks as from receipt of the packed goods. Warranty claims for obvious defects can no longer be asserted after this period expires.

4. We must be accorded the opportunity to verify the reasons and amount of complained defects or damages onsite.

5. In the event of a work defect covered by warranty, we are entitled as we decide to either remedy the defect or undertake a new packing within an appropriate period of time (so-called "subsequent fulfilment").

6. The Customer must accord us the time and opportunity necessary to perform the subsequent fulfilment; otherwise, we are released from liability for the consequences arising as a result.

7. If a subsequent fulfilment would involve disproportionately high costs for us, then we can refuse this while accepting that a right of withdrawal comes into being for the Customer.

8. The Customer has the right to withdraw from the contract within the framework of the statutory provisions if – giving consideration to the statutory exceptions – we allow an appropriate due period set for us to perform to expire fruitlessly. If a defect is merely insignificant, then the Customer only has a right to reduce the contract price. The right to reduce the contract price is otherwise excluded. Further claims are regulated according to section XI of these conditions.

## XI. Liability, Liability exclusion and limitation

1. We are liable

- for damages caused by injury to life, limb or health,
- for other damage founded in wilful or grossly negligent breach of duty, and
- in the case of defects we have maliciously concealed or the absence of which we have guaranteed.

We are liable pursuant to the ADSp 2003 for damages in connection with freight haulage services, transportation orders or trans-shipments/storages.

**We indicate that according to section 23 ADSp the liability of the freight forwarder for loss or damage of the goods is as a rule limited to EUR 5.00 per kg gross weight of the consignment and that furthermore a limit of 2 special drawing rights per kg comes to bear in a transportation contract for forwarding with various transportation means and in cases of major damage.**

2. We are liable for breach of essential contract duties (cardinal duties) even in minor negligence, but limited to the typically foreseeable damage. The term cardinal duty is used to designate a concretely described breach of an essential duty putting the achievement of the contract purpose at risk or abstractly elucidated as a duty which must be fulfilled in order that the contract can be duly and properly executed at all and which the contract partner may regularly trust is fulfilled.

3. Irrespective of the legal nature of the asserted claim, any further-reaching liability for damage compensation other than that provided for in sections XI 1 and XI 2 is excluded.

4. The exclusion pursuant to section XI 3 also applies inasmuch as the Customer demands compensation for futile expenditure in the meaning of § 284 BGB instead of claiming compensation for damage.

**5. We are liable up to a maximum amount of € 250,000.00 for breach of contract duties by our vicarious agents neither wilful nor grossly negligent. With regard to this liability limitation, the Customer may demand that the maximum liability amount is increased to a value he declares in writing in good time. We shall thereupon apply to our insurer for expansion of the insurance coverage and thus the liability scope. Maximum liability limits of up to € 600,000.00 are insurable without difficulties. Furthermore, we must negotiate with the insurers individually for an expansion of the insurance coverage to the desired amount. The extra costs arising due to expanding the maximum liability amount are assumed by the Customer. Hedging the damage risk through insurance held by the Customer for transport, storage or fire damage is as a rule usual in the sector and less costly for the Customer.**

6. Inasmuch as our liability is excluded or limited, this applies also for the personal liability of our workers, employees, vicarious agents, representatives and subcontractors.

## XII. Statutory limitation

1. Compensation claims from injury to life, limb or health and for other damages founded in wilful conduct or gross negligence are statute-barred in accordance with the statutory provisions.

2. Under reserve of section XII 1, all claims against us due to loss or damage of packed goods or due to failure to properly fulfil the contract in another way are statute-barred with expiry of one year after the packed goods are delivered. The period of limitation in the case of lost goods begins with the point in time at which they were supposed to have been delivered.

3. Claims other than those named in sections XII 1 and XII 2, on whatever legal grounds, are statute-barred one year after they come into being and Principal gains knowledge of the circumstances founding the claim or after that point in time at which he would have gained knowledge of them without being grossly negligent.

4. The statutory limitation arising pursuant to sections XII 2 and XII 3 extends to contractual as well as extra-contractual claims of any kind whatsoever.

## XIII. Data processing note

We record the necessary data of our Customers in our electronic data processing systems in compliance with the Data Protection Act (BDSG).

## XIV. Jurisdiction, Applicable law

1. Place of jurisdiction is our registered business domicile; however, we are also entitled to bring legal action against the Customer at the place of his head office.

2. All legal relations between the contract parties are subject to German law; UN commercial law is explicitly excluded.

## XV. Severability

Should one of the foregoing provisions be or become invalid, the other provisions nevertheless remain effective.