

# Transport Conditions Subcontractor



## Purpose of Agreement

1. By signing this transport order, the contractor accepts these terms and conditions. The contractor is not allowed to make any changes to the general terms and conditions for freight transports nor to the individual order.
2. The client works exclusively on the basis of the German Freight Contractors' Standard Terms and Conditions 2017 (ADSp 2017) or, if these do not apply to the services ordered, its Logistics Terms and Conditions of March 2006. §23 ADSp 2017 set a different maximum liability for freight damage than that given in §431 of the German Commercial Code (HGB) as follows: the liability for multimodal transports including sea transport where the place the damage was incurred is limited to 2 SDR/kg and otherwise to 8.33 SDR/kg. It is also capped at €1.25 million per instance of damage and €2.5 million per incident or 2 SDR/kg, whichever is higher.

## Duration of the transport order

1. The duration of this transport order is defined by the loading and unloading periods indicated.

## Contractor tasks and duties

1. The contractor agrees only to use driving personnel (including foreign drivers from other states) which have the requisite work permits. The foreign personnel must have an official driving licence with an officially certified translation into German per §7b(1)(2) Freight Transport Act (GüKG). The personnel agree to present all such required documents to the loader or its agents upon request. Licences and vehicle registration papers may no longer be laminated in plastic or have some other similar protective cover (§712 GüKG). If a work permit is not required for the driving personnel in the freight contractor's state, the driving personnel must carry an affidavit to that effect. No drivers whose nationality is that of a state on the prohibited list may be deployed. The contractor is responsible for any and all damages caused its culpable breach of these rules.
2. The contractor must issue a general ban on the consumption of alcohol and drugs when operating the freight vehicle and shall take measures to ensure compliance.
3. The contractor declares and expressly confirms that it is in possession of all regulatory permits such as the EU licence/Cemt permit, transporter declaration, and comparable permits. The contractor further warrants that it carries the insurance cover mandated by law. The contractor agrees to provide the client proof of its regulatory permits and mandatory insurance cover at least twice a year (30 June/31 December) by presenting original documents.
4. Deviations (quantity, quality, delays, etc.) must be reported without delay and recorded on the waybill.
5. The contractor's claim for payment is subject to the condition that it has provided the client with the waybill, unloading lists, delivery receipt, and pallet receipt signed by the recipient either clearly scanned or legible (based on the original document).
6. Delivery receipts are to be emailed to the client within 15 calendar days after unloading. Late receipts will incur a €20 penalty to cover the extra administrative effort required. The contractor is entitled to demonstrate that the client has incurred lesser or no damage due to the delay, while the client is entitled to demonstrate that it has incurred higher damages. The contractor gives its express consent for the client to deduct the penalty from its invoices.
7. The contractor's invoice is due without deduction 45 days after receipt and presentation of all auditable transport documents, especially the delivery slips with date, signature, printed name of signatory, stamp, time, waybill, copy of the transport order, pallet exchange receipts. Payments made to an account outside the SEPA system will incur a bank fee of €10.00.

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8. For hindrances or delays in loading or unloading the cargo or other irregularities in the transport process, the client is to be notified and its instructions followed. The contractor confirms that it will check in to load and unload each transport order within the timeframe indicated and has informed its drivers and other third parties of these timeframes. For each non-compliance with these timeframes (early or late check in, entering the factory site), the customer will deduct €50.00 from the gross freight price. In addition, we will charge an administrative fee of €20.00 per incident. If there are irregularities during transport, the client must be informed with full details by calling +49 (0)89 1250 914-10 or by fax +49 (0)89 1250 914-15 or by email: [dispo@claus-international.de](mailto:dispo@claus-international.de).

9. Contractor fees for standstill require prior written agreement and valid documentation.

10. If so instructed by the client, neutralised transport papers are a significant part of this transport order. If the contractor fails to comply, the parties agree to a penalty of 20% of the agreed freight price. The client reserves the right to claim further damages for breach of contractor against the contractor.

11. The use of subcontractors requires the prior consent of Claus Spedition GmbH. If such consent is granted, the contractor agrees that its duties and liability as stipulated herein remain in place and to ensure the subcontractors' compliance with the same.

12. Transport by air is excluded. For the transport of "secure air freight," the following documents must be provided to us:

- proof of driver training in air freight safety
- contractor's transporter declaration
- results of a reliability check performed by the government of Upper Bavaria per §7 of the Air Security Act (Luft-SiG)

### Pallet exchange and certificates

1. The contractor agrees to exchange the same quantity of Euro or Düsseldorf pallets at the loading and unloading locations and document each exchange with a pallet exchange certificate. The contractor acknowledges that €25.00 of the transport fee agreed serves as compensation for this exchange. Each Euro or Düsseldorf pallet not exchanged or missing pallet exchange certificates will result in charges of €13.00 per pallet passed on to the contractor. If exchange using DPL pallet certificates has been agreed, only the original DPL certificate can be accepted. The contractor is free to prove that the client has incurred lesser or no damages as a result of this incident. For each pallet cage the whereabouts of which is documented (indicated on the waybill), the contractor will cover the damages incurred by the client.

2. The pallets can be returned within 14 days. If they are not returned on time, the client is entitled to charge €10.00 net for each Euro or Düsseldorf pallet not exchange in a timely manner as damages and return costs and €100.00 for each pallet cage. Late returns will not affect these fees. Exchanges are regulated by the applicable liability rules (HGB/CMR). The contractor accepts that the client's billing of pallets/pallet cages as final if no objection is filed within 7 business days after the invoice is sent. Any further claims are forfeited beyond this deadline.

### Securing cargo, cleanliness, hygiene

1. Loaded vehicles are to be parked in guarded or locked locations with separate security systems (e.g. alarms, GPS, fuel interrupters, electronic immobilisers, etc.) activated for the cab and the trailer. A list of European lorry parking places is available at <http://www.iru.org/cms-filessystem-action?file=mix-publications/parking2007.pdf>. The client accepts no liability for its accuracy or completeness.

2. The contractor shall equip its driving personnel with helmet, safety shoes, warning vests, and identification as well as its vehicles with anti-slip mats, edge protectors, wedges, tension belts, and other equipment to secure the cargo. If the contractor fails to meet this obligation, the expenses of the loader or sender will be

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charged to the contractor and deducted from the freight fees. The contractor is fully responsible for any damages incurred by the client as a result of inadequate equipment in the vehicle. The contractor agrees to comply with the general principles for securing cargo as found in Directive VDI 2700. The contractor agrees to secure the cargo properly. The loading and unloading is the responsibility of the driving personnel, who shall be instructed accordingly and regularly trained by the contractor.

3. If the sender loads the vehicle, the loading personnel must be informed of the existing axle loads on the vehicle and expressly instructed to ensure a proper distribution of the load on the vehicle. The contractor must ensure compliance with the maximum loads for each axle and other regulations concerning the vehicle.

4. Reloading to another vehicle is expressly prohibited. Any additional loading requires the client's written consent.

5. When transporting foodstuffs, the contractor agrees to use only clean and functioning vehicles that are free of odours and other contamination. The contractor also agrees to comply with applicable hygiene regulations and to train its drivers per IFS Food, IFS Logistics, and IFS Broker.

### Contractor liability

1. Contrary to §431 HGB, the parties agree a liability cap of 40 SDR for each kilogram of net freight weight per §499 II (2)(1) HGB.

2. The contractor may not use a later version of ADSp against Claus Spedition GmbH. The contractor may not use any offset per §19 ADSp under any circumstance.

3. The contractor shall maintain insurance cover of at least €600,000 for any liability arising from this transport contract and any ancillary services. The forwarder must provide notice if the cover is limited due to qualified culpability (§43 HGB, Art. 29 CMR). If the contractor has already exhausted its annual benefits under this coverage, it must take additional coverage without delay. Confirmation of cover, proof of premium payments, and confirmation of additional cover are to be presented without delay at the client's first request.

4. Special notices: German law prohibits the use of drivers without a residence permit or work permit (§7b GüKG). It also prohibits the use of unlicensed operators (§7c GüKG). If the contractor is in breach of these laws, the client can be faced with penalties. The contractor agrees to indemnify and hold the client harmless from such claims arising from its illegal actions. The contractor accepts liability for any claims for damages, regulatory penalties, fines, and other claims against the client arising from its illegal actions. The contractor is required at a minimum to carry the following documents with each transport; otherwise, fines and criminal penalties may result:

- GüKG permit, Euro licence, and driver certificate
- Waybills, delivery slips, other cargo papers
- Proof of insurance
- Driver's social insurance card and personal ID (passport)
- Work permits for any foreign drivers
- Residence permits for any foreign drivers
- Copy of cab/trailer rental agreement
- Copy of the employment agreement
- For journeys to France, a confirmation that the driver is being paid the French minimum wage
- Driver's qualification papers (driving licence, ADR certificate, forklift certificate, journeyman's certificate, etc.)
- Proof of training in air security when transporting secure air freight

5. The contractor agrees to comply with all regulations, especially those concerning road traffic, avoiding risks in the transport of freight, the use of proper personnel, and to carry the required documents. If breaches of these result in damages to the client, the contractor agrees to hold the client harmless and to pay damages accordingly.

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### Compliance with Directive (EC) No. 1072/2009

1. The contractor will comply with Directive (EC) No. 1072/2009 for cabotage transports (esp. permissible pre-transports, documents, insurance). If breaches of this directive result in damages to the client, the contractor agrees to hold the client harmless and to pay damages accordingly.

### Compliance with applicable laws and minimum wage laws (MiLoG)

1. The contractor will comply with the work hours law (ArbZG), work hours regulation (AZO), Directive (EC) 561/2006, the Driving Personnel Act (FPersG) and Driving Personnel Regulations (FPersV).

2. The contractor will pay its employees at least the statutory minimum wage and ensure that any subcontractors or employee outsources do the same, monitoring them to ensure their compliance. If breaches of minimum wage laws result in damages to the client, the contractor agrees to hold the client harmless and to pay damages accordingly.

### Neutrality and non-poaching

1. The contractor agrees not to enter into direct contract negotiations with the client's customers. This obligation exists for the duration of the parties' contractual agreement and indefinitely beyond. Each breach of this provision shall result in a contractual penalty for the contractor. The contractor agrees to remain neutral and not to poach customers. This applies to all activities performed by the contractor for the client. In the course of this contractual relationship, the contractor will receive confidential information from the client concerning the latter's customers and other third parties (e.g. recipients of shipments). The parties agree that the contractor may not use this information for any other business purposes and that the contractor agrees not to poach the client's customers. The contractor will not enter into, seek, or maintain a business relationship with the client's customers either directly or via a third party. If said customers contact the contractor for such an offer, the contractor agrees to inform the client immediately in writing and coordinate the next steps with the client.

2. For each documented breach of this provision, a minimum contractual penalty of €5,000 shall apply and is payable upon first demand. This penalty is capped, however, at €25,000. The client is free to assert higher damages less the penalty. The client only has to prove an existing relationship with the customer and credible evidence that the customer will be working with the contractor instead in the future. This constitutes credible evidence that the contractor has made use of confidential information, is in breach of this neutrality obligation, and is guilty of poaching customers.

### Data protection per GDPR

1. The content, rights, and obligations of the client and contractor in this agreement and any affected personal data fall within these terms and conditions and are subject to the provisions of GDPR. The client is the controller and the contractor is the processor of such data. The purpose of the order is the provision of services according to these terms and conditions. This includes the creation and storage of orders and order-related data for the parties involved (client and recipient) and the collection of master data (addresses, contact data of those involved) as may be required to fulfil the order. This data is only to be collected within the framework of this transport order and subsequently either to be deleted or returned in compliance with EU or national law. No further use of the data is permitted and is to be blocked in the client's systems.

2. The contractor agrees and hereby confirms to the client that it will take such technical and organisational measures as may be necessary to observe, comply, and ensure compliance with the requirements of GDPR. Any subcontractor relationships require the prior consent of the client.

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## ADR – Transport of hazardous goods

1. In case I of transport of hazardous goods the client is fully responsible to act according to the ADR regulations. Especially to ensure that the driving personnel is regularly trained according to 1.3 ADR and/or owns a valid ADR-Certification. The 1.000 points-regulation has to be regarded as well as the necessary equipment for the used car/truck has to be in line with ADR regulations.<br><br>

## Severability

1. If one or more of the provisions in this contract or its appendices is or shall become invalid either in whole or in part or if this contract contains a loophole, the validity of the remaining contract remains unaffected. The parties agree to replace the invalid provision with one which comes closest to the form, content, and extent of the original's intent. The same applies to any loopholes. If the economic success envisaged by this contract is only possible by making supplemental agreements, the parties agree to make the same without delay.

## Place of jurisdiction

1. German law applies. The exclusive place of jurisdiction for any claims and disputes arising from this contract shall be Munich.

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