

General Business and Packaging Terms and Conditions of Breeze Industrial Packing GmbH

1. Scope

- 1.1. These General Business Terms and Conditions (AGB) shall apply to all contracts – also to all future contracts – regarding packaging services with the customer.
- 1.2. Insofar as the transport to and/or from the location of the goods that are to be packed/ packed goods or forwarding services otherwise pursuant to Subclause 2.1. of the General German Forwarding Conditions [*Allgemeinen Deutschen Spediteursbedingungen - ADSp*] in the version from 2003 including thus associated storages are also taken over by us as per contract in deviation from these General Business Terms and Conditions the General German Forwarding Conditions (ADSp) shall apply hereto in the respective most recent version. We explicitly refer in particular to the regulations regarding the liability exclusion respectively the liability limitation pursuant to Subclauses 22, 23, 24 et seqq., 27 ADSp (cf. also Subclause 3.3.). In the event of the take-over of services pursuant to Subclause 2.1. of the ADSp the contractual agreements reached shall stand in the following superordinate /subsidiary relation: Individual agreements have the highest precedence with regard to the validity, subsidiary to this the respective current ADSp shall apply, should regulations then laid down be invalid or a regulation be missing these General Business Terms and Conditions shall be valid, subsidiary to this the special and general statutory regulations shall be valid.
- 1.3. We hereby explicitly object to opposing or contradictory General Business Terms and Conditions of the customer. Such General Business Terms and Conditions will only become part of the contract if Breeze Industrial Packing GmbH explicitly agrees hereto in writing. Such a consent in particular does not lie in the reservation-free acceptance of goods to be packed or the reservation-free executions of the contractually owed service in the knowledge of opposing terms and conditions of the customer.
- 1.4. Our General Business Terms and Conditions shall only apply towards entrepreneurs within the meaning of Section 14 German Civil Code [*Bürgerliches Gesetzbuch - BGB*], legal entities under public law and special funds under public law.

2. Conclusion of contract

- 2.1. Our offers are without obligation insofar as no binding nature is confirmed in writing. Solely our written order confirmation is decisive for the scope of the services to be provided by us. This shall also apply to possible promises and declarations of our employees, representatives or other assistants and also the waiver of the written form requirement.

3. Service content, scope of services

- 3.1. Our written order confirmation is decisive for the scope and content of the services to be provided by us.

- 3.2. The packaging service owed on our part shall comprise the production of the parcel from the packaged goods and packaging material (packaging), the preservation of the packaged goods, the pre-storage required for the purpose of production and the follow-up storage, provided that the packaging is carried out on our own premises, as well as the storage of the packaged goods in the period from the start of the packaging until its completion.
- 3.3. The transport to and from the location of the goods to be packed/packed goods as well as other forwarding services including thus associated storages and other carriage are only an object of service if this is agreed separately in writing. These services are exclusively subject to the ADSp as amended from time to time (cf. also Subclause 1.2.). We are principally entitled to involve third parties (subcontractors) as vicarious agents.
- 3.4. It is not the content of our service obligation either to subject the goods to be packed to a goods or material inspection. We shall inform the customer without delay of damages to products or goods to be packed insofar as these can be easily recognized externally.
- 3.5. Neither shall our service obligation include the execution of corrosion protection measures, insofar as the type and the period of time of the corrosion protection is not explicitly agreed in writing.
- 3.6. Products and goods delivered for packaging will be stored by us at the expense of the customer if no packaging order is placed within one month after delivery. We will notify the customer of the costs incurred for this purpose one week before expiration of the one-month period.

4. Service times - default of delivery

1. Execution dates and execution deadlines are only binding if we have explicitly assured these in writing. Insofar as we have stated a service time respectively an execution deadline in writing this will only begin to run after clarification of all technical questions with the customer. The prerequisite is in addition the timely and proper fulfillment of the obligations of the customer, in particular the comprehensive compliance with the obligations to provide assistance (cf. Subclause 6.).
2. In the event that we are in default of delivery we shall be liable according to the regulations in Subclause 11 under the condition that for each week of the default 0.5, in total however no more than 5% of the value of the contractual packaging service are to be paid.

5. Events of force majeure

Events of force majeure, for which we are not responsible pursuant to Section 276 BGB, such as for example unforeseeable interferences to operation by strike, lockouts, late delivery with the necessary packaging materials despite a proper and timely order shall release us from the fulfillment of the contractual obligations assumed by us as long as these events continue. We are obliged to inform the customer without delay of the occurrence of such an event and to notify which delays

are to be expected by this event.

6. Obligations of the customer to provide assistance

- 6.1. The proper fulfillment of the packaging order presumes, and the customer is responsible for ensuring that the packed goods are made available in a condition that is ready and suitable for execution of the packaging order in time. Parts which are particularly susceptible to corrosion shall be handed over to us cleaned and treated with suitable contact corrosion protection agents. The corrosion protection agent must be made known before packing. The parts delivered for packaging must be clean, clearly identifiable and free of liquids of all kinds. Parts that may be movable during the transport are to be secured and labeled in a qualified manner by the customer. The customer has to explicitly point out hazardous goods to us before starting the packaging work and to mark these clearly. Insofar as no separate regulation is laid down the goods packed by us are to be stored and transported dry. A corresponding marking is located on the packages. Furthermore, we assume that the parcels will not be transported on deck during the transport by sea.
- 6.2. The customer is obligated to inform us upon conclusion of the contract in writing of all circumstances that are essential for implementation of the contract, in particular of the condition (e.g. weight, dimensions, center of gravity, type of material, special technical features) as well as, in particular to provide details of the center of gravity, the attachment points provided for crane and forklift work and, in particular, handling instructions and prohibitions. The necessary details of hazardous goods and hazardous substances and also safety provisions with regard to a secure delivery chain and customs provisions are to be announced in writing before delivery by the customer.
- 6.3. The customer shall inform us in writing of any additional and special handling of the packaged goods that may be required during transport, packaging, handling and/or storage. For example, we are to be informed for which goods, due to a particular risk of corrosion, sealed packaging with the addition of desiccants and other corrosion protection procedures are to be carried out. Furthermore, the customer has to point out in writing special risks as they result from the requirements of the respective transport route, of landing and transport means as well as in case of a possibly planned follow-up storage also with regard to general environmental pollution.
- 6.4. The packing shall be carried out by agreement in our plant or at the correspondingly coordinated packing places. The timely transport to and from the location of the goods and/or products to be packaged is the responsibility of the customer.

- 6.5. If the packing order is to be carried out outside of our plant, the customer has to make sufficient space, energy (electricity, compressed air, etc.) and the suitable lifting tools and lifting equipment including the necessary operating staff for a fast and qualified execution of the packaging order available free of charge. Possible safety instructions/factory instructions of our personnel are not included in our prices and will be invoiced separately.
- 6.6. The customer is also responsible for the translation of packing list from the respective foreign language into German.
- 6.7. The details required for marking are to be sent in writing in time before execution of the packaging.
- 6.8. The customer has to ensure sufficient insurance of the goods to be packed (e.g. transport, storage, fire, liability, theft as well as extended natural hazard insurance).
- 6.9. If the customer breaches its obligations to provide assistance or if it is in default of acceptance, we are entitled to request compensation of the damages suffered hereby including possible additional expense. A breach of the obligations to provide assistance shall moreover entitle us, after the fruitless expiration of a reasonable deadline to rescind the contract and to request damages instead of the service.

7. Prices

- 7.1. Our prices are quoted "ex works" in "Euro". Unless otherwise agreed, our prices do not include the statutory value-added tax. The deduction of cash discount and other deductions shall require a prior written agreement.
- 7.2. If unforeseeable, more difficult working conditions arise during the processing of the contract or if the processing is delayed for reasons, for which we are not responsible, we are entitled to reasonably increase the price in accordance with the additional work that is to be provided. This shall in particular apply insofar as additional standstill costs or multiple journeys of the personnel deployed by us are incurred in the customer's plant.
- 7.3. Our prices are based on the calculation carried out at the time of the price adjustment. In case of a substantial change to the raw material prices after conclusion of the contract, we are entitled to increase the agreed prices by the pro rata additional expenses. A substantial change to the raw material prices exists in case of a deviation in the raw material price by at least 5% compared to the raw material prices existing at the time when the price was stated.
- 7.4. Payments are to be made without deduction free of charge to our paying agent. The term of payment is 14 days from receipt of invoice without deduction of discount. After expiration of the payment deadline the customer will be deemed in default of payment and has

to pay default interest in the amount of 5% above the base lending rate during the default. The assertion of higher damages due to default shall remain explicitly reserved.

- 7.5. The customer will only be entitled to rights to offset if its counterclaims have been declared final and binding, are recognized by us or are undisputed. In addition, it is only insofar authorized to exercise a right of retention to the extent that its counterclaims are due to the same contractual relationship.

8. Reservation of title

- 8.1. We reserve the ownership to our packaging materials until the settlement of all already incurred liabilities of the customer towards us.
- 8.2 The customer is permitted to resell the reserved goods within the scope of the customary business operation. For the redemption of all of our claims secured by the reservation of title the customer hereby now already assigns its claims from the resale against its customers to us as a precautionary measure.

9. Passing of risk

- 9.1. The risk shall pass to the customer with the acceptance of the packed products/the packed goods. Deemed as acceptance is the hand-over of the packed good/the packed product to the customer or to the third party/freight forwarder determined by the customer for executing the transport of the packed good /the packed product.
- 9.2. With the execution of transport or forwarding services pursuant to Subclause 2.1. of the ADSp in the version of 2003, the handover of the packed goods to the person selected by us for the execution of the forwarding service shall be deemed as acceptance. The liability for the transport/forwarding service pursuant to Sentence 1, this also comprises transshipments and storage, is exclusively oriented to Subclauses 22, 23, 24 et seqq., 27 ADSp in the version from 2003.

10. Warranty for defects

- 10.1. The prerequisite of the warranty claim is the existence of a defect upon passing of the risk. The packaging is free of material defects if it has the agreed condition. Insofar as the condition is not agreed it is deemed free of material defects if it is suitable for the use presumed according to the contract, otherwise for the customary use and features a condition, which is customary with works of the same kind and which can be expected by the customer according to the type of the work.
- 10.2. If, in the case of brand-new packaging items/goods, the agreed packaging service also consists of the application of sufficient corrosion protection in accordance with the state of the art, the packaging service shall be deemed to have been provided in accordance with the contract if the corrosion protection lasts for the duration of the agreed preservation period, calculated from the date of packaging. We shall not be liable for cases of corrosion after the expiry of the agreed preservation period. In case of used packaging objects liability for corrosion damages is excluded.

- 10.3. The customer is obliged to examine the packaging upon acceptance of the packed goods at the place of delivery for obvious and recognizable defects. Insofar as defects are recognized in this examination the customer shall safeguard its claims for defects by announcing a written complaint. Moreover, it has to give us the opportunity to check the complaint. In case of obvious defects, the complaint must be received by us within two weeks from receipt of the packed good/the packed product. After expiration of this deadline warranty claims because of obvious defects cannot be asserted.
- 10.4. With the existence of a material defect we are entitled, at our choice within a reasonable deadline, to remedy the defect or a deliver new packaging.
- 10.5. The customer has to give us the necessary time and opportunity for the execution of the subsequent performance. If the subsequent performance fails the customer shall be entitled, at its choice, to rescind the contract or to request reduction in the price.
- 10.6. Claims for defects shall become statute-barred in twelve months from the passing of risk.
- 10.7. The customer is obliged to provide proof of the defectiveness of the packaging service. This shall in particular also apply to the extent that, with preservative packaging, this was opened or damaged for reasons of inspection under customs law. It is in particular obliged to secure possible proof on site so that we have the opportunity to convince ourselves of the justification of the asserted claim – with respect to the reason and amount.

11. Liability limitation, liability exclusion

- 11.1. We shall only be liable to an unlimited extent for willful intent and gross negligence (also of our legal representatives and vicarious agents) as well as for damages from the injury to life, the body or the health, which are due to a negligent breach of obligations on our part or a willful or negligent breach of obligations of our legal representatives or vicarious agents. We shall also be liable to an unlimited extent with the submission of guarantees and assurances, if particularly a defect covered hereby triggers our liability. There shall also be no limitation in the case of liability arising from endangering circumstances (in particular under the Product Liability Act [*Produkthaftungsgesetz*]). Possible liability according to the principles of the recourse of the entrepreneur according to Sections 478 et seqq. BGB shall remain unaffected.
- 11.2. Insofar as a breach of obligation attributable to us is due to simple negligence and an essential contractual obligation (cf. Subclause 11.4) is breached we shall be liable within the scope of our liability insurance. The obligation of the liability insurance for payment as well as our liability is limited to the foreseeable, typically occurring damages. The sum insured of our liability insurance for property damages is EUR 500,000.00 per damaging event, a maximum of EUR 2.5 million per insurance year.

If the customer requests with regard to this liability limitation the extension of the liability or the maximum liability amount, we will subsequently apply for the extension of the insurance cover and thus the scope of liability at our insurer. The additional costs incurred by the extension of the maximum liability amount will be borne by the customer.

- 11.3. An exclusion or a limitation of our liability shall also have an effect for our legal representatives and vicarious agents.
- 11.4. Essential contractual obligations are those obligations, which characterize the contract and on which the contractual partner may rely on; it thus concerns the essential rights and obligations, which create the prerequisites for the fulfillment of the contract and are indispensable for achieving the contractual purpose.
- 11.5. Insofar as a case of liability exists, for which we do not have to assume liability according to the regulations in Subclauses 11.1. and 11.2. to an unlimited or limited extent, the liability – no matter for what legal grounds (in particular claims from the breach of contractual main and secondary obligations, illicit act as well as other liability in tort) - is excluded.
- 11.6. The above-mentioned exclusions, limitations and exceptions shall also apply to claims arising from culpa in contrahendo.
- 11.7. In the event of the reimbursement of expenses (with the exception of those according to Subclauses 439 Para. 2, 635 Para. 2 BGB) the above mentioned regulations regarding liability exclusion and liability limitation shall apply accordingly.
- 11.8. None of the preceding clauses aim at a change in the statutory or judicial law distribution of the burden of proof.

12. Statute of limitations

1. Warranty claims for material defects shall become statute-barred in 12 months from the passing of risk, cf. Subclause 10.6.
2. Claims for compensation for damages from the injury to life, the body or the health as well as for other damages, which are the result of willful intent or gross negligence, shall become statute-barred according to the statutory provisions.
3. Claims for damages of the customer due to negligence on our part shall become statute-barred after the expiration of one year after hand-over of the packed goods. In the event of the loss the statute of limitations shall begin at the time, at which the packed products /the packed goods should have been handed over.
4. Claims other than those mentioned in Subclauses 12.2 and 12.3, irrespective of their legal basis, shall become statute-barred one year after they have arisen, and the customer has become aware of the circumstances giving rise to the claim or after the time at which the customer should have become aware without gross negligence.

13. Copyrights, rights of use

All drawings, diagrams, sketches, calculations, models and other documents, which are created by us within the scope of the implementation of the contract, shall remain our property. All rights of use and exploitation, in particular the rights to reproduction are solely held by us. Transcripts, photographs and copies may only be made with our express written consent for the own use. This shall also apply to those written documents, which have been designated as "confidential". Before these are

forwarded to third parties the customer shall require our explicit written consent.

14. Place of jurisdiction – written form– scope– severability clause

- 14.1. The court of jurisdiction for our place of residence shall have exclusive jurisdictions for all disputes arising from or in connection with this contract; we reserve the right however to also sue the customer at the court of jurisdiction for it.
- 14.2. Amendments, addendums or the revocation of a contract shall always require a written form. This shall also apply to the amendment, addendums or revocation of this written form requirement. The precedence of individual agreements pursuant to Section 305 b BGB shall remain unaffected.
- 14.3. This contract shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.4. Insofar as individual provisions of the contractual relationship are invalid, this shall not affect the validity of the remaining provisions. The parties shall endeavor to replace the invalid provision with a valid provision that comes closest to the economic purpose of the contract. The same shall apply in the event of a loophole in the contract.

Hamburg, February 14, 2014