

# **GENERAL BUSINESS AND PACKAGING TERMS AND CONDITIONS of duisport packing logistics GmbH, dpl Chemnitz GmbH and dpl Weinzierl Verpackungen GmbH**

(Status: 11/01/2020)

## **I. General Information**

### **1. Scope**

- 1.1. Our following General Business Terms and Conditions shall exclusively apply to the packaging services provided by us. Opposing General Business Terms and Conditions are only binding if we have explicitly recognized their validity in writing.
2. Our General Business and Packaging 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.
3. Our General Business and Packaging Terms and Conditions shall also apply to all future business with the customer.
4. **Should forwarding services and/or transport orders become the object of a contract in connection with packaging orders the General German Forwarding Conditions [Allgemeine Deutschen Spediteurbedingungen - ADSpJ] 2017 shall apply hereto.**

### **2. Written form**

Amendments to contract and collateral agreements are only effective if they are carried out in writing, this shall also apply to the waiver of the written form.

## **II. Conclusion of contract, scope and content of the services**

### **1. Offer**

Our offers are without obligation.

### **2. Scope of services**

- 2.1. Our written order confirmation is decisive for the scope of the services to be provided by us.
- 2.2. Subject to agreements to the contrary, the packaging service owed shall merely comprise the production of the parcel from 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 as well as the storage of the packaged goods in the period from the start of packaging to its completion. The total storage duration for this is insofar as not explicitly otherwise agreed – limited to a maximum of 2 weeks. We reserve the right, if this total duration is exceeded, after prior registration, to carry out a transfer and storage in an external warehouse/independent storage facility at the expense of the customer. Insofar as we are only required to supply packaging material, we are only obligated under the purchase contract; work and services are not owed as a result.

### **3. Impediments to performance**

If unforeseeable impediments to performance arise for us which are not attributable to our sphere of risk, we shall be entitled to compensation for the necessary expenses and to reasonable additional remuneration. This shall in particular apply in the event that a standstill in the customer's plant caused increased costs for the personnel deployed by us.

### **4. Prices**

- 4.1. Our prices shall apply plus the applicable statutory rate of value added tax.
- 4.2. Our prices are based on the calculations existing at the time when the offer is submitted. In case of a substantial change to the raw material prices for packaging material at least in the amount of 10% after conclusion of the contract we shall be entitled to increase the agreed prices by the pro rata additional expenses.

### **5. Payments**

Payments are to be made without any deduction free of charge to our branch; the details can be seen from our invoice.

## **III. Ban on offsetting and retention**

Rights to offset or rights to refuse service for the benefit of the customer shall only exist insofar as the counterclaims are undisputed, have been declared final and binding or are ready for a decision.

## **IV. Exploitation rights, translations**

All drawings, sketches and models remain our property. The exploitation rights and rights to reproduction (copyright) are solely held by us. Copies, photographs or duplicates may only be made for our own use with our express written consent. The customer is responsible for the translation of texts, e.g. packing lists, into foreign languages – subject to an agreement to the contrary.

## **V. Obligations to provide assistance and information of the customer**

1. The customer is responsible for ensuring that the packaged good is made available in a condition that is ready and suitable for the execution of the packaging order in time. Parts particularly susceptible to corrosion are to be handed over to us cleaned and treated with suitable contact corrosion protection agents.
2. The customer is obliged to announce to us the weight and the other special properties of the goods in writing in time. This includes in particular details of the center of gravity, the attachment points provided for crane work and the necessary details of hazardous goods and hazardous materials.
3. The customer has to inform us in writing of a (also with regard to the storage) possibly necessary additional and special handling of the packaged good. This shall in particular apply to requirements of the respective transport route because of the loading and transport means, as well as with a possibly envisaged follow-up storage with regard to general environmental pollution.
4. Insofar as not otherwise agreed the packaging shall be carried out in our plant; the timely transport of the goods to and from the location is the responsibility of the customer. If the packaging 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.
5. The customer shall be responsible for adequate insurance of the goods to be packed or packed goods (transport, storage, fire insurance).

## **VI. Reservation of title**

1. We reserve the property to all packaging materials delivered and processed by us until satisfaction of all of our claims against the customer. This shall also apply in the event that the individual materials have been paid for.

1. The orderer is permitted to resell the reserved goods within the scope of the customary business operation, whereby it hereby now already, for the redemption of all of our claims secured by the reservation of title, assigns its claims from the resale against its customers to us as a precautionary measure.
2. If the reserved goods are processed or combined as an essential component of other items or mixed with other items not belonging to us, we shall acquire co-ownership of the new items thus created in proportion to the value resulting from the ratio of the price of our materials to the value of the newly created uniform item. If the latter items are sold, Subclause 2.1 above shall apply accordingly. We shall acquire a share in the claim corresponding to our co-ownership share through the partial assignment made thereafter.

3. Insofar as the value of all collateral rights exceeds the amount of all secured claims by more than 20%, we are obliged, at the request of the customer to release a corresponding part of the collateral.

## **VII. Assumption of risk**

The material risk shall be determined according to Section 644 Para. 1 S. 3 BGB. Insofar as no case of Section 644 Para. 1 S. 2 BGB and of Section 645 BGB exists the remuneration risk shall pass with the sending of the packed goods, with packaging in the in the customer's plant with the hand-over to the customer. If the packaging order is to be carried out outside of our plant and if the entire or partially carried out service is damaged or destroyed before the hand-over by force majeure, war, riot or other objectively unavoidable circumstances for which the customer is not responsible then we are entitled to settle the executed services according to the contractual prices and in addition to request the costs, which were incurred to us already and are included in the contractual prices of the non-executed part of the service.

## **VIII. Contractual right of lien**

Because of all claims from the contract as well as because of undisputed claims or final and binding claims from other contracts concluded with the customer, we shall be entitled to a right of lien and retention to the objects of the customer that are at our power of disposal. The period of one month stipulated in Section 1234 BGB shall be reduced to 2 weeks. If the customer is in default, then we can after a threat of sale of goods of the customer in our possession in such a quantity, as at dutiful discretion as necessary for the satisfaction, sell these on the free market. For the lien or self-help sale, we can charge a sales commission from net proceeds in the amount of the customary local rates.

## **IX. Service time – default of delivery**

1. Delivery dates and periods shall only commence after clarification of all details of the order, confirmation by us and receipt of any agreed deposits, advance payments or similar.
2. Fixed performance times shall only be deemed to have been agreed if they have been assured in the written order confirmation. Even then, however, they are not fixed dates within the meaning of Section 361 BGB if they are not expressly designated as such.
3. In the event of delays in performance due to force majeure, riots, strikes, lockouts and operational disruptions for which we are not responsible (including at suppliers), the performance period shall be extended by the period until the disruption has been remedied. At our discretion, we may also withdraw from the contract in such a case to the exclusion of any claims for compensation. We shall inform the customer immediately of the beginning and end of such circumstances.
4. The customer may withdraw from the contract without setting a deadline if the entire performance becomes finally impossible for us before the transfer of risk. In addition, the customer may withdraw from the contract if, in the case of an order, it becomes impossible to perform part of the service and the customer has a justified interest in refusing partial performance. If this is not the case, it shall pay the contract price attributable to the partial performance.

If the impossibility occurs during the delay in acceptance or if the customer is solely or predominantly responsible for these circumstances, it shall remain obligated to counter-performance. Further warranty claims shall be determined exclusively in accordance with Subclause XI. of these Terms and Conditions.

## **X. Warranty for defects**

1. The prerequisite of a warranty claim is the existence of a work defect upon the passing of risk, i.e. at the latest with the sending of the packed goods, with packaging in the customer's plant at the time of the hand-over. The customer is obliged to provide proof hereof.
2. If the packaging service also consists of the application of sufficient corrosion protection in accordance with the state of the art, the corrosion protection shall be deemed to have been provided in accordance with the contract if it lasts for the duration of the agreed preservation period, calculated from the date of packaging. We shall therefore not be liable for cases of corrosion after the expiry of the agreed preservation period.
3. The customer has to examine the packaging after receipt of the packed goods for defects without delay. Determined defects are to be complained about in writing. In case of obvious defects, the complaint must be received by us within 2 weeks from receipt of the packed goods. After expiration of this deadline warranty claims because of obvious defects can no longer be asserted.
4. We are to be given the opportunity to check defects or damages for which a complaint is made on site with respect to the reason and the amount.
5. With the existence of a work defect that is liable to warranty we are entitled, at our choice, within a reasonable deadline either to remedy the defect or to carry out a new packaging (so-called "subsequent performance").
6. In order to carry out the subsequent performance the customer has to give us the necessary time and opportunity; otherwise, we shall be released from the liability for the thus ensuing consequences.
7. If subsequent performance would involve disproportionately high costs for us, we may refuse such performance, accepting a right of withdrawal accruing to the customer.
8. The customer has a right within the scope of the statutory regulations to rescind the contract, should we- by taking the statutory exceptional cases into consideration - allow a reasonable deadline set to us for the subsequent performance to pass fruitlessly. In case of an only insignificant defect the customer shall merely be entitled to a right to reduction of the contractual price. The right to reduction of the contractual price shall otherwise remain excluded. Further claims shall be determined in accordance with Subclause XI of these Terms and Conditions.

## **XI. Liability, liability exclusion and limitation**

1. We shall be liable
  - for damages from the injury to life, the body or the health,
  - for other damages, which are due to a willful or grossly negligent breach of obligations and
  - in case of defects, which we maliciously failed to disclose or the absence of which we guaranteed.

In case of damages in connection with forwarding services, transport orders or transshipments/storages we shall be liable pursuant to the ADSp 2017. **It is pointed out that according to Subclause 23 ADSp the liability of the freight forwarder in case of loss of or damage to the goods is limited to 8.33 special drawing rights per kg and that in case of multimodal transports including carriage by sea a limitation to 2 special drawing rights per kg applies, in addition to EUR 1.25 million or EUR 2.5 million or 2 special drawing rights per kg, whichever is higher, per event of damage or loss.**

2. In case of a breach of essential contractual obligations (cardinal obligations) we shall be liable even with slight negligence, however limited to the foreseeable, typical damages. The term of cardinal obligation is either used for marking an essential concretely described breach of obligation, which endangers the achievement of the contractual purpose or explained abstractly as an obligation, the fulfillment of which renders the proper implementation of the contract possible at all and on the compliance with which the contractual partner may as a rule rely upon.
3. Any further liability for damages than provided for in Subclause XI.1 and XI.2 - irrespective of the legal nature of the asserted claim - shall be excluded.
4. The exclusion according to Subclause XI.3. shall also apply, insofar as the customer instead of a claim for compensation of the damages instead of the service requests reimbursement of fruitless expenses within the meaning of Section 284 BGB.
5. ***With neither willfully, nor grossly negligent culpable breach of essential contractual obligations by simple vicarious agents we shall be liable up to the maximum amount of EUR 250,000.00. The customer is at liberty with regard to this liability limitation to request the extension of the maximum liability amount in time to a value to be declared by it in writing. We will subsequently apply for the extension of the insurance cover and thus the scope of liability at our insurer. Maximum liability limits up to EUR 600,000.00 can be insured without any problems. Furthermore, we would have to negotiate individually with the insurers about an extension of the insurance coverage to the desired amount. The additional costs incurred by an extension of the maximum liability amount will be borne by the customer. The hedging of the damage risk by transport, storage or fire insurance held by the customer is customary for the industry and, as a rule, more reasonable in terms of costs for the customer.***
6. Insofar as the liability towards us is excluded or limited this shall also apply to the personal liability of our workers, employees, vicarious agents, representatives and subcontractors.

## **XII. Statute of limitations**

1. Claims for compensation for damages from the injury to life, the body or the health as well as for other damages, which are due to willful intent or gross negligence, shall become statute-barred according to the statutory provisions.
2. Subject to Subclause XII.1. all claims against us because of the loss or the damage to packaged goods or in any other manner, an improper fulfillment of the contract shall become statute-barred after the expiration of one year after delivery of the packed goods. In case of lost goods, the statute of limitations will begin at the time, at which they should have been delivered.
3. Other than the claims stated under Subclause XII.1. and XII.2., no matter for which legal grounds, shall become statute-barred one year after they are established and the customer has gained knowledge of the circumstances that substantiate a claim or after the time, at which it should have gained knowledge without gross negligence.
4. The statute of limitations according to Subclause XII.2. and XII.3. extends to contractual and non-contractual claims of any kind.

## **XIII. EDP information**

We collect the necessary data of our customers by complying with the German Data Protection Act [Datenschutzgesetz] in our EDP.

## **XIV. Place of jurisdiction, applicable law**

1. The place of jurisdiction is our registered seat; we are however also entitled to sue the customer at its head office.
2. German law shall apply to all legal relationships between the contractual parties; the validity of the UN Convention on Contracts for the International Sale of Goods is expressly excluded.

## **XV. Severability clause**

Should one of the above mentioned terms and conditions be or become invalid the other terms and conditions shall continue to apply.