

# GENERAL TERMS AND CONDITIONS FOR THE ENGAGEMENT OF CONTRACTORS

Kindly be advised that this document serves as an English Interpretation and Translation of the German Document titled: **ALLGEMEINE GESCHÄFTSBEDINGUNGEN. FÜR DIE BEAUFTRAGUNG VON AUFTRAGNEHMERN.** For any misunderstandings or misinterpretations from the English Version, the German Version will be the only applicable document used for clarity.

## I. Scope of Application

1. These General Terms and Conditions of Transport shall apply to all orders placed with subcontractors (contractors) by EMONS Spedition GmbH, Emons Transporte GmbH, Emons Logistik GmbH, Emons Allgäu GmbH, Emons Multitrans GmbH, Emons Air & Sea GmbH as well as companies affiliated with these as principals (hereinafter: principals). Furthermore, the German Freight Forwarders' Standard Terms and Conditions (ADSp) shall apply in the respective current version.
2. By submitting an offer to the principal and by accepting an offer from the principal in knowledge of these GTC, the contractor agrees to the validity of these General Terms and Conditions as well as the ADSp, currently in the 2017 version. These GTC as well as the ADSp in their latest version are available for download at [www.emons.de](http://www.emons.de).
3. In the event of discrepancies or conflicts, these General Terms and Conditions shall take precedence over the ADSp.
4. Any deviating General Terms and Conditions of the Contractor shall not apply, except of the ADSp (current version) included in the order.
5. These General Terms and Conditions also apply if the order between Emons and the contractor is brokered via a freight exchange.

## II. Information duties and provision of vehicles

1. The correct parking of vehicles with or without trailers, mountings as well as the correct parking of swap bodies at the ramps, docking gates and the forwarding yard is governed by the posted operating instructions as well as by the regulations of the employers' liability insurance association. In general, two-axle trailers are to be secured against rolling away with at least one wheel chock in addition to the parking brake, three-axle trailers with an additional two wheel chocks.
2. Vehicles and swap bodies are to be parked exclusively in parking spaces that can be found on the list of secured parking spaces. Sleeping in the vehicle is prohibited for the driver in connection with the prevention of theft from the vehicle. Parking of loaded vehicles, trailers and swap bodies in unguarded parking places is prohibited and shall be considered frivolous in the relationship between the Customer and the Contractor within the meaning of 435 of the Commercial Code or Article 29 of the CMR.

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**III. The obligations of the contractor**

1. Notwithstanding § 412 of the German Commercial Code (HGB), the Contractor shall be obliged to load and unload the goods. Furthermore, he shall be responsible for loading the goods in such a way that they are safe for transport and operation, as well as for guarding the goods while in his care.
2. The Contractor undertakes to ensure that foreign driving personnel carry an official certificate with an officially certified translation in German pursuant to Section 7 b (1) sentence 2 of the GüKG present with them on every transportation.
3. Furthermore, the Contractor undertakes to employ foreign drivers from third countries only with the required work permit and driver certificate.
4. The Contractor undertakes to hand over all documents to be carried to the Client for inspection upon request in the event of checks by the Client.
5. The Contractor further undertakes to instruct the driving personnel in accordance with the provisions of these General Terms and Conditions.
6. The contractor assures to have the necessary permits and authorizations for the respective transport (permit, eurolicense, third country permit, CEMT permit, Swiss license).
7. The Contractor undertakes to include this obligation to submit documents and the other obligations already described above - insofar as this has been conceded by way of exception - in the freight contract with executing carriers. In this respect, the Contractor also undertakes to monitor compliance with these regulations by the executing carriers. The Contractor undertakes to tolerate comprehensive checks by the Customer and its vicarious agents.
8. The Contractor shall ensure that only vehicle drivers are used who have the necessary permits, certificates and other documents to carry out the transport.
9. The Contractor shall ensure that he himself or the vehicles/drivers he uses can be reached at all times, in particular by telephone.
10. In case of fire, theft or other criminal offenses which may have an influence on the execution of the transport order as well as in case of accidents, as far as they are not merely minor accidents, the Contractor shall be obliged to call in the local police.
11. After the transport has been carried out in accordance with the contract and the consignment has been delivered to the consignee, the Contractor shall immediately send all proofs of delivery to the Client in writing or electronically. In the event that proof of delivery cannot be provided, the freight shall be retained for lack of proof of delivery. A lump-sum compensation of EUR 25.00 shall be owed for the additional work expenditure, which shall be due 14 days after the agreed delivery date. This lump-sum claim for damages shall not apply if the Contractor proves to the Customer that it has incurred no or lower expenses due to the non-availability of the delivery receipt. In the latter case, the claim for damages shall be reduced accordingly. Further claims shall remain unaffected by this provision.

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**IV. Passing on of freight orders**

- 1. The freight carrier is prohibited from passing on transport orders of the principal to third parties (subcontractors) without prior written consent.
- 2. The Contractor shall ensure that only vehicle drivers are used who have the necessary permits, certificates and other documents to carry out the transport. Furthermore, the Contractor shall ensure that third parties comply with the legal requirements and these General Terms and Conditions of Contract.

**V. Prohibition of transshipment**

The Contractor acknowledges that transshipment is prohibited.

**VI. Transport of dangerous goods**

- 1. In the case of the transport of dangerous goods, the vehicle provided must comply with the applicable provisions of the GGVSE and the ADR and must have the equipment specified in the relevant provisions and in the order or its appendix. Furthermore, the Contractor shall ensure that only trained personnel are used and, if required, that the vehicle driver is also in possession of a valid ADR certificate. In addition, proof of the appointment of a dangerous goods safety advisor must be provided immediately after the assignment.
- 2. The consignor or customer shall provide the contractor on call with all information required for the execution of dangerous goods transports and shall communicate precautionary measures. If the goods are dangerous goods in the sense of GGVSE/ADR, all dangerous goods information such as UN number, designation, number(s) of danger label, packaging group as well as type and number of packaging and the quantity of the individual dangerous goods according to GGVSE/ADR in the respective valid version and the necessary protective equipment must be provided.

**VII. Tour Planning/Disposition**

The planning and scheduling of the tours shall be the responsibility of the Contractor within the scope of the order placed.

**VIII. Termination**

In the event of termination of the individual order by the Principal prior to acceptance of the consignment for transport, it is agreed that a claim by the Contractor pursuant to Section 415, Paragraph 2, Sentence 1, No. 1 and No. 2 of the German Commercial Code (HGB) is excluded, insofar as the termination by the Principal is not untimely.

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## **IX. Demurrage**

1. If loading and unloading take longer than a total of 4 hours, the Contractor shall be entitled to charge demurrage for its expenses.
2. For each full hour of compensation demurrage time, the Contractor may charge an hourly rate of EUR 25.00 - up to a maximum of EUR 250.00 per day.
3. The demurrage charge shall be invoiced separately. Appropriate evidence documenting the demurrage time must be submitted to the Customer with the invoice (confirmation of the loading or unloading point, tachograph chart, etc.). The submission of these documents is a prerequisite for the reimbursement of the demurrage.

## **X. Payment**

1. Payment of the remuneration stipulated in the price agreement shall be made upon presentation of the complete freight documents (proof of delivery, proof of exchange of loading equipment, if applicable, and other freight documents, if applicable) within 60 days of the invoice date at the latest.
2. The Contractor shall immediately notify the Customer in writing of any change of address, company name or bank details. The Customer shall observe the change with a period of 2 weeks from receipt of the notification.

## **XI. Default, assignment, lien**

1. Claims for demurrage, for further remuneration and for reimbursement of other expenses incurred in the execution of the order must be asserted by the Contractor in writing against the Client within a preclusive period of two weeks after the agreed delivery date or, in the event of delivery having taken place, within a preclusive period of two weeks after this delivery dates.
2. The assignment of claims arising from this contract shall only be permissible with the written consent of the Principal.
3. Claims arising from the contract of carriage and related claims arising from tort and unjust enrichment may only be set off against claims that are due, connected, undisputed in terms of reason and amount or established by final and binding judgment. The exercise of a lien on the goods provided or the assertion of a right of retention by the Contractor shall be excluded unless the Contractor's due counterclaims are undisputed or have been finally adjudicated. The claims against the Customer may not be pledged by the Contractor.

## **XII. Liability**

1. The liability of the contractor, its employees and vicarious agents for all damages incurred by Emons arising from or in connection with the placed order shall, unless otherwise agreed below and unless mandatory statutory provisions conflict with this, be based on the grounds for liability and the amount of liability in accordance with the latest version of the German Freight Forwarders' Standard Terms and Conditions (ADSp).

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2. **Notwithstanding clauses 23.1.1 and 23.1.2 as well as clause 24.1.1 of the ADSp 2017, the amount of liability shall be limited from 8.33 to 40 units of account (SZR) for each kg of gross weight of the consignment. In all other respects, the aforementioned provisions of the ADSp in their currently valid 2017 version shall apply unchanged.**

**XIII. Insurance**

1. The Contractor shall be obliged to insure the liability risks arising from the provision of transport, forwarding and warehousing services under the law as well as the respective individual orders at standard market conditions. This includes, among other things, the conclusion of a transport liability, forwarding and business liability insurance. At the request of the Customer, the Contractor shall take out hook load insurance appropriate for the respective order and provide the Customer with a certificate of insurance.
2. The Customer shall be entitled to check the concluded coverages at any time.
3. The contractor undertakes, in accordance with section 7a Para. 4 GüKG, to carry the proof of valid transport liability insurance during the transport and to hand it over to authorized inspectors on request for the purpose of inspection.

**XIV. Cash on delivery**

1. The Contractor shall be obliged to settle any cash on delivery and collection amounts collected on behalf of the Customer with the Customer without delay and to have them receipted. The drivers of the Contractor shall be its vicarious agents in this respect.
2. The cash on delivery amount is to be collected from the recipient in cash. If this method of payment is not possible by the recipient, the Contractor shall obtain written instructions from the Client. Until receipt of the written instruction the goods will not be delivered to the consignee.
3. The Contractor shall deliver the freight and COD collected for the Customer to the Customer on the day of collection. Any set-off of such amounts against claims of the Contractor shall be inadmissible.

**XV. Exchange of loading equipment**

The parties agree on the exchange of pallets. The Contractor shall be responsible for providing evidence of the whereabouts of the loading equipment taken over. Pallets and other loading aids are to be exchanged step by step. For the exchange of loading equipment, the Contractor shall exchange the corresponding loading equipment of average type and quality in the same quantity directly with the Shipper.

The contractor shall inspect the exchanged packing materials for completeness and externally visible damage. Reservations regarding the quality are to be recorded in writing.

The remuneration for the Contractor's assumption of the exchange risk is included in the calculated freight rates.

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The contractor is obliged to document every exchange and non-exchange transaction in writing and to have the respective customer (loading and/or unloading point) stamp it with a company stamp and with the name (in block letters) and the signature of the issuer.

If the agreed pallet exchange was not carried out by the Contractor, the costs for balancing the account shall be charged to the Contractor by freight reduction. The amount of the freight reduction shall be based on the respective market price of the loading equipment. The Contractor shall be entitled to prove that the price charged is significantly lower.

If the documents for the exchange of packing material are not made available at the consignor's or consignee's premises, a non-exchange shall be assumed. The costs for the packing material exchange will be charged to the contractor by freight reduction, in the corresponding amount of the market price of the loading material.

If the order is processed electronically, the regulations in the driver's manual for the documentation of the packaging material exchange must be observed.

**XVI. Special activities**

**1. Waste disposal transports**

1.1 These Terms and Conditions shall also apply to the carriage of goods in disposal transport (carriage of waste for disposal or recycling). The Customer and the Contractor undertake to comply with all applicable public-law obligations relating to waste disposal transport. The Customer shall provide the Contractor with the accompanying documents required by waste law (e.g. waste disposal/recovery certificate, waste consignment bill). The Contractor shall keep the necessary waste-legal permits on hand. If hazardous wastes are transported, the regulations on hazardous goods/dangerous goods must be observed by the contractor.

1.2 Insofar as the Contractor has been commissioned to carry out heavy load transport and/or crane work, the Contractor shall ensure that suitable equipment is available at the place where the order is to be carried out, that all permits for the performance of the assumed services are available, all circumstances and properties required for the performance of the service have been checked (in particular the ground conditions and load-bearing capacity of a crane installation site including access roads, checking of all installations such as ducts, shafts, piping, media lines and all other aspects required for the static assessment of the performance of the service). The corresponding costs shall be borne by the contractor. The contractor shall also ensure that the axle loads and support pressures do not exceed the permissible values. Any waiting times that arise as well as delays in equipment and personnel deployment for which the customer is not responsible shall be borne by the contractor. The Contractor shall be solely liable for any damage resulting from the manner in which the order is executed.

The Contractor shall indemnify the Customer against all claims under private and public law which are asserted against the Customer on the basis of the Contractor's performance of the order.

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2. Activities not customary in forwarding

- 2.1 Logistics activities of the Contractor shall be governed by the law on contracts for work and services. At the beginning of the cooperation, the Customer and the Contractor shall conclude a target agreement, which shall specify the quantitative and qualitative standards to be achieved for successful performance of the logistic activity.
- 2.2 In this description of the minimum quality to be achieved (SLA = Service Level Agreement), key factors for successful order processing from the point of view of the Principal are described (KPI = Key Performance Indicators). The corresponding benchmarking is carried out at the end of each month and discussed between the contractor and the customer. If the Contractor falls short of the targets specified by the Client on two consecutive benchmarking dates, the Client shall have a unilateral extraordinary right of termination. Further claims shall remain unaffected by this provision.

**XVII. Prohibition of competition/customer protection/confidentiality**

- 1. Customer protection is agreed. Direct contact of the contractor with the customer's customers is prohibited. It is prohibited for the contractor to approach customers of the customer in order to acquire them. This also includes that the Contractor undertakes not to make any offers for relations that go beyond the the Client. Furthermore, the Contractor undertakes, for the duration of the Agreement, not to carry out transports with the vehicle(s) used for the Client - within the scope of this Agreement - for any company competing with the Client without the knowledge and prior written consent of the Client.
- 2. For the duration of this Agreement and for a period of 2 years after the termination of the cooperation, the Contractor undertakes to treat as confidential the information about the business relations and the clientele of the Client that has become known to it as a result of the cooperation with the Client.
- 3. The Contractor shall pay a contractual penalty of EUR 10,000.00 to the Customer for each case of infringement. Further claims for damages of the Customer shall remain unaffected by this provision.
- 4. In the event of a continuous violation, the contractual penalty shall be forfeited again for each commenced week. A reduction of this amount according to § 343 BGB is excluded. Furthermore, the Contractor undertakes to maintain secrecy about the agreed conditions of the cooperation - in particular the freight charge - vis-à-vis third parties, in particular vis-à-vis the sender or the Client's customer.
- 5. The obligations of confidentiality and customer protection shall apply equally to the Contractor's subcontractors and their vicarious agents. The Contractor shall ensure compliance with the aforementioned obligations by means of suitable agreements with these third parties.

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### **XVIII. Minimum Wage Act (MiLoG)**

1. The Contractor undertakes to comply with all obligations incumbent upon it under the Minimum Wage Act (MiLoG) in its operations when executing orders from the Customer.
2. The contractor furthermore undertakes,
  - a) subject to the prior consent of the Client, only to use subcontractors and rental companies and/or only to permit the use of subcontractors who pay the remuneration specified therein to their employees in good time in accordance with Section 20 of the Minimum Wage Act (MiLoG).
  - b) to use only such further subcontractors and rental companies and/or to permit only the use of such subcontractors who have in turn undertaken in writing vis-à-vis the Contractor to comply with the specifications contained in this Agreement - or with specifications having the same content.
  - c) to provide suitable evidence at the request of the Customer that the Contractor complies with the obligations set out in this Agreement as well as the obligations incumbent on it under the Minimum Wage Act (MiLoG).

### **XIX. Obligation/and indemnification agreement**

1. The Contractor irrevocably undertakes to indemnify the Purchaser upon first written request against any and all claims and demands of third parties, including but not limited to
  - Claims of the Contractor's own employees,
  - claims of employees of other subcontractors and contracted rental companies,
  - official claims including any fines imposed by a court of law - insofar as permissible - as well as conditions imposed by the authorities, and
  - also for the costs of legal action and legal defense incurred in connection therewith.
 Costs of legal defense legally binding, insofar as the claims and demands asserted are based on an alleged breach of the obligations incumbent upon the Contractor or a subcontractor engaged by it on the basis of the Minimum Wage Act.
2. The Contractor undertakes to inform the Client without undue delay if claims under civil law are asserted against the Contractor by its own employees or by employees of further subcontractors, provided that these claims are related to the Minimum Wage Act (MiLoG), or if administrative offense proceedings have been initiated against the Contractor and the administrative offense proceedings are related to the Minimum Wage Act (MiLoG).
3. In addition to the Contractor's obligation to indemnify, the Contractor undertakes to pay to the Client a contractual penalty at the Client's discretion for each case of breach of the obligations incumbent upon it under the Minimum Wage Act and for each case of breach of the obligations assumed under this Agreement.
4. In the event of a breach of the obligations arising from the Minimum Wage Act (MiLoG) by the Contractor and also in the event of a breach by the Contractor of the obligations assumed by it in this Agreement, the Customer shall be entitled to terminate the Agreement extraordinarily and without notice for good cause.

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**XX. Code of Conduct**

The contractor agrees to Emons' Code of Conduct. The latest version of this is available for download at [www.emons.de](http://www.emons.de). The contractor also undertakes to also adopt the standard of conduct that Emons and its management themselves take to heart. He will ensure that it is observed by the contractor, his employees and the subcontractors and suppliers employed by him.

**XXI. Final provisions**

- 1. The exclusive place of jurisdiction for all disputes arising from the contracts between the Customer and the Contractor shall be Cologne. The above agreement on the place of jurisdiction shall apply as an additional agreement on the place of jurisdiction in the case of Art. 31 CMR and 46 § 1 CIM, but not in the case of Art. 39 CMR, 33 MÜ, 28 WA.
- 2. The law of the Federal Republic of Germany shall apply.

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