

## **General Terms and Conditions for Transport and Forwarding Services**

### **I. PREAMBLE:**

The General Terms and Conditions for Transport and Forwarding Services shall apply to all transport and forwarding orders placed by a company of the Finsterwalder Group of Companies (hereinafter referred to as Finsterwalder) with a contractor (hereinafter referred to as Contractor) for the performance of transport by lorry. The following companies in particular shall be deemed to be companies of the Finsterwalder Group within the meaning of these General Terms and Conditions for Transport Services:

- Finsterwalder Transport und Logistik GmbH, Halle
- Finsterwalder Transport & Logistik GmbH, Türkheim
- Finsterwalder Transport & Logistiek, Venlo (NL)
- Logfillment GmbH & Co KG, Kaufbeuren

These GTC apply exclusively to the contract. In addition, the obligations of the freight forwarder regulated in the ADSp 2017 (available at: [www.finsterwalder.com/assets/dokumente/adsp\\_2017\\_de.pdf](http://www.finsterwalder.com/assets/dokumente/adsp_2017_de.pdf)) shall apply to the contractor, unless the present GTC contain deviating provisions; other terms and conditions shall not become part of the contract, even if Finsterwalder does not expressly object to them. General terms and conditions of the contractor shall not become part of the contract, irrespective of whether they contain provisions that deviate from or supplement these Terms and Conditions. The General Terms and Conditions for Transport and Forwarding Services shall also apply if Finsterwalder concludes the contract of carriage without any further reservation in this respect in the knowledge of conflicting or deviating terms and conditions of the Contractor. Mandatory applicable legal provisions shall remain unaffected by these General Terms and Conditions for Transport Services.

### **II. CONCLUSION OF CONTRACT**

Finsterwalder shall draw up a transport order in which the details of the transport to be carried out are entered, based on the agreement reached between Finsterwalder and the Contractor verbally, by e-mail, fax or via communication portals of freight exchanges. Finsterwalder shall send the transport order to the Contractor as confirmation of the agreement already reached. The Contractor may object to the conclusion of the contract within 60 minutes of receipt of the confirmation, otherwise the transport shall be carried out in accordance with the details given in the transport order.

### **III. SUBJECT MATTER OF THE CONTRACT**

The Contractor undertakes to transport goods for Finsterwalder. It shall use suitable vehicles with sufficient capacity to transport the goods tendered in each case. The Contractor shall be responsible for the proper fulfilment of the contract. In particular, it shall

- a. to provide the vehicle in good time. In the event of failure of the vehicle used, the Contractor shall, after consultation with Finsterwalder, immediately use a suitable replacement vehicle; Finsterwalder shall be

## General Terms and Conditions for Transport and Forwarding Services

entitled, irrespective of this, to cancel the respective transport order and to use a suitable replacement vehicle itself and to charge the Contractor the additional costs incurred for this

- b. to observe the information and instructions given to him by Finsterwalder (Sections 454 (1), 418 HGB), in particular loading and unloading dates;
- c. Finsterwalder immediately of any obstacles to transport and delivery and to obtain his instructions (§ 419 HGB).

### III.1 GENERAL OBLIGATIONS

1. The Contractor warrants that it fulfils the legal requirements for the execution of the orders placed with it at all times, in particular that it or the subcontractors it uses
  - a. has the permit and authorisation required for the transport in accordance with §§ 3, 6 GüKG (permit, Euro licence, third country permit, CEMT permit, Swiss licence) and uses it in accordance with the statutory provisions (in particular the cabotage regulations). The vehicle crew must carry personal protective equipment (high-visibility waistcoat, safety shoes, helmet, work clothing, etc.). When transporting hazardous goods, the vehicle crew must be in possession of valid ADR certificates and the vehicle must be equipped with the ADR equipment required by law. The contractor must also observe and comply with individual specifications for driving to the loading and unloading points.
  - b. only deploys foreign drivers from third countries (non-EU/EEA countries) with the required work permit or driver's certificate and ensures that the driving personnel have the documents required under Section 7b (1) sentence 2 GüKG and carry them with them on every journey;
  - c. hands over to the freight forwarder or persons authorised by the freight forwarder all documents to be carried by the freight forwarder/agent for inspection upon request; this includes in particular  
Permission, licence and authorisations according to lit. a and, if applicable, additionally
    - Driver attestation according to lit. b
    - Documents for the driving personnel according to lit. b
    - CEMT trip report booklet;
  - d. instructs its driving personnel accordingly;
  - e. includes the obligations described in lit. a-d in a contract of carriage with executing (sub)contractors and monitors compliance with these regulations by the executing (sub)contractors.
2. The Contractor may only engage subcontractors with the prior written consent of Finsterwalder. In the event of an authorised subcontracting, the Contractor shall ensure that the subcontractor maintains valid insurance cover in

## General Terms and Conditions for Transport and Forwarding Services

accordance with Section VII of these Terms and Conditions and complies with the requirements of Section III of these Terms and Conditions.

The drivers and subcontractors used by the contractor must have the necessary qualifications (driving licence class C, dangerous goods driver training, etc.).

3. The Contractor shall be obliged to notify Finsterwalder immediately of any material changes to its operating structure, in particular
  - a. on the discontinuation of official authorisations
  - b. on the composition of the vehicle fleet
  - c. on the discontinuation of further clients
  - d. if only marginally employed workers are still employed.
4. During the term of the contract, the Contractor undertakes to
  - a. to pay the minimum wage in accordance with § 20 MiLoG to all employees it employs in Germany in good time within the meaning of § 2 MiLoG;
  - b. in accordance with § 17 MiLoG, to record the start, end and duration of the daily working hours of its employees by the end of the seventh calendar day following the day on which the work was performed at the latest and to keep these records for at least two years starting from the date relevant for the recording; valid legal ordinances on the obligation to document working hours in accordance with § 17 MiLoG may be applied;
  - c. in accordance with § 16 MiLoG, as an employer based abroad, to submit a written notification in German to the competent customs administration authority before the start of each work performance; valid legal ordinances on the notification obligation pursuant to § 16 MiLoG may be applied.

In the event that the Contractor employs a subcontractor, it must oblige the subcontractor to fulfil the obligations described in a-c.

5. The Contractor warrants that the goods provided to it will only be stored, transported, delivered to or accepted at secure business premises and secure handling locations. Furthermore, the Contractor warrants that during the aforementioned points the goods provided are protected against unauthorised access and that only reliable personnel are deployed. In the event that an order is passed on, another contractor shall be obligated to the same effect. In the event of non-compliance with this obligation, the contractor shall be liable for all damages resulting therefrom.
6. In the event that the Contractor employs a subcontractor, it must oblige the subcontractor to fulfil the obligations described in III 1.

## **General Terms and Conditions for Transport and Forwarding Services**

7. If the contractor culpably breaches the obligations under III 1, it shall be obliged to pay a contractual penalty for each case of breach in an amount to be determined by Finsterwalder at its reasonable discretion and to be reviewed by the competent local or regional court.
8. If the Contractor culpably breaches the obligations under III 1, Finsterwalder shall be entitled to terminate the contractual relationship with the Contractor without notice and without the need for a prior warning.
9. The Contractor shall indemnify Finsterwalder against all third-party claims under civil law which are based on a breach of its obligations under Section III 1 or on the breach of these obligations by subcontractors or lenders engaged by it.

### **III.2 SPECIAL TRANSPORT OBLIGATIONS**

1. The Contractor must load, stow and secure (load) and unload the consignment safely for transport and operation and guarantees that it has sufficient load securing equipment (tension belts, edge protectors, etc.) to carry out these activities and that the lorry used is in perfect technical condition and suitable for the safe transport of the agreed type of goods. The loading area of the truck used must be dry, clean and odourless. Unless otherwise agreed, an absolute ban on loading and unloading applies.
2. The Contractor warrants to comply with the standards required in the transport order or to be in possession of the certificates/authorisations required in the transport order (e.g. HACCP, IFS, etc.).
3. The Contractor has an increased duty to check the packaging and labelling of the goods and must carry out a detailed inspection of the goods in this respect prior to acceptance. The Contractor must notify Finsterwalder immediately of any recognisable packaging defects and inadequate labelling of the packages as well as obviously incorrect or incomplete information in the freight documents, in particular deviations in quantity, weight and size.
4. When transporting dangerous goods, it shall be sufficient for Finsterwalder to inform the Contractor verbally of the exact nature of the danger and any precautionary measures to be taken.
5. As a matter of principle, the Contractor shall procure the accompanying documents required for performance itself, unless the Contractor accepts the goods directly from Finsterwalder.
6. If the journey is interrupted during transport, the lorry must be parked in a guarded car park.
7. The Contractor must observe and comply with the Finsterwalder status concept. A link to the Finsterwalder status concept is provided in the transport order. The Finsterwalder status concept includes the statuses "Loading point arrived", "Loading completed", "Unloading point arrived" and "Unloading completed" (delivered). If a status per transport order is not submitted, a lump sum of € 25.00 shall be deducted from the freight price as compensation. The contractor is permitted to prove that no damage or significantly less damage than the flat rate has been incurred.
8. In the event that the Contractor employs a subcontractor, it must oblige the subcontractor to fulfil the obligations described in III 2.

## **General Terms and Conditions for Transport and Forwarding Services**

9. The Contractor shall indemnify Finsterwalder against all third-party claims under civil law which are based on a breach of its obligations under Section III 2 or on the breach of these obligations by subcontractors or lenders engaged by it.

### **III.3 EXCHANGE OF PACKAGING**

1. The Contractor must exchange all loading equipment both at the consignor's and the consignee's premises. The contractor bears the risk of exchange at the consignee. He is also obliged to fully document the exchange or non-exchange of the loading equipment and to send these exchange documents (e.g. a receipted pallet note) to the client without delay, but at the latest with the freight invoice.
2. The Contractor shall be obliged to return the loading equipment provided to it for the purpose of smooth transport and loading in the same quantity and quality within 20 working days of acceptance. The return must always be agreed with Finsterwalder in advance. The separate remuneration for the return of the loading equipment is included in the agreed freight at a value of 3%. If the Contractor fails to return the loading equipment on time, Finsterwalder shall be entitled to claim damages unless the Contractor is not responsible for the failure to return the loading equipment on time. Finsterwalder's claim for damages shall amount to EUR 19.00 replacement value per pallet for each Euro/Düsseldorf pallet not returned and EUR 120.00 per pallet cage plus a handling fee of EUR 25.00 per transaction. In the case of other loading equipment, the calculation of the compensation shall be based on the standard market replacement prices of the respective loading equipment plus EUR 25.00 processing fee per transaction. The contractor shall be entitled to prove that no damage or significantly less damage than the lump sum has been incurred. The same applies to the flat-rate handling charges.

### **III.4 CASH ON DELIVERY AND CARRIAGE FORWARD SHIPMENTS**

1. In the case of cash on delivery consignments (goods and freight on delivery), the Contractor is obliged to deliver the consignment to the recipient only concurrently against payment of the costs incurred for the goods. Delivery may only be made against cash payment (or EC card/credit card). The Contractor shall surrender the amounts collected to Finsterwalder.
2. In the case of carriage forward consignments and other cases of freight transfer, the contractor is authorised to collect payment from the recipient. The Contractor shall be at liberty to process the payment; in particular, it shall be authorised to issue an invoice. If the recipient does not pay or does not pay in full, Finsterwalder shall pay the outstanding charges.

## **IV. RELATIONSHIP OF THE CONTRACTOR TO THIRD PARTY CLIENTS**

The Contractor shall also be free to work for third party clients.

## General Terms and Conditions for Transport and Forwarding Services

### V. FRONT PAYMENT

1. The freight rate included in the transport order includes all costs, surcharges and remuneration for the exchange of loading equipment, plus statutory taxes (e.g. VAT). Unless individually agreed, the term of payment is 40 days.
2. Within 7 working days of delivery, the contractor's invoice must be sent as a PDF by email to [rechnung@finsterwalder.com](mailto:rechnung@finsterwalder.com) and the consignment note acknowledged by the authorised recipient must be uploaded as a PDF in the status system. The invoice is then due for payment in accordance with the agreed payment term.
3. Unless the submission of the originals of the freight documents has been agreed with the Contractor, the Contractor is obliged to keep the originals of the freight documents and to submit them by post within 10 working days upon request by the Client. If the Contractor does not come into possession of the originals, it must pass on this obligation to retain them to its contractual partners. This shall not release the Contractor from the obligation to submit the documents to the Client.

### VI. STANDING MONEY

Unless otherwise agreed, standing times of up to 5 hours in total for national transport and up to 6 hours for international transport are already covered by the freight if the vehicle arrives on time for loading and unloading. The loading and unloading period begins at the time the vehicle is made available. In case of doubt, this is the time at which the driver reports to the shipper or recipient and hands over the freight documents intended for this person. The loading and unloading period ends when the vehicle leaves the company premises. In case of doubt, this is the time at which the driver acknowledges receipt of the goods by the shipper or the recipient acknowledges delivery of the goods to the driver. If the loading and unloading period is exceeded, the contractor is entitled to demurrage. The amount of demurrage is € 50.00 per hour and is limited to € 250.00 per day.

The Contractor must provide the Client with suitable (technical) evidence of its idle times (e.g. extracts from the lorry's telematics). Furthermore, the contractor must inform the client in good time and proactively about any possible exceeding of the idle time - this is generally the case if the idle time has lasted for at least one hour.

### VII. LIABILITY AND INSURANCE

1. The liability of the contractor in national road haulage is governed by the provisions of the German Commercial Code. **Notwithstanding Section 431 (1) and (4) HGB, however, the Contractor shall be liable up to a maximum amount of 40 SDR/kg gross weight of the consignment.** If Finsterwalder has agreed a lower liability with its customer in the event of loss of or damage to the goods, the Contractor's liability in relation to Finsterwalder shall be reduced accordingly.

## **General Terms and Conditions for Transport and Forwarding Services**

2. In cross-border transport, the contractor's liability is governed by the provisions of the Convention on the Contract for the International Carriage of Goods by Road - CMR - taking into account, inter alia, Articles 24 and 26 of the CMR.
3. The contractor is obliged to insure its liability under the transport contract in accordance with the relevant freight law regulations for damage to goods and delays with a sum insured of at least € 1,000,000 per transport order and damage event. This sum insured must apply both in the event of damage caused by qualified fault, e.g. pursuant to § 435 HGB or Art. 29 CMR, and for the increase of the standard liability of § 431 paragraph HGB to 40 special drawing rights per kilogram of gross weight and must be provided by the insurer. The Contractor must provide Finsterwalder with a complete copy of the insurance contract and the associated insurance terms and conditions as proof of this scope of cover.
4. Delays, damage, impending downtimes or other circumstances that could jeopardise compliance with the agreed deadlines must be reported to Finsterwalder by the contractor without delay so that Finsterwalder can immediately clarify and coordinate with its own customer in order to minimise damage. In the event of culpable non-compliance with the duty to inform, Finsterwalder shall be entitled to charge a contractual penalty of €25.00. The contractor is entitled to prove that the damage is lower.
5. Finsterwalder's own processing costs incurred as a result of the Contractor failing to meet agreed deadlines shall be charged to the Contractor additionally at a flat rate of € 50.00, even if Finsterwalder's customer does not claim any damages itself. §§ Sections 425, 429, 431 HGB remain unaffected. Failure to meet the agreed deadline while at the same time disregarding the proactive duty to provide information shall consequently result in a contractual penalty of €75.00.
6. Finsterwalder's strict liability pursuant to Section 414 (1) HGB is limited to an amount of € 100,000.00, unless Finsterwalder caused the damage intentionally or recklessly and in the knowledge that damage would probably occur.
7. Other claims for damages against Finsterwalder or Finsterwalder's vicarious agents shall be excluded in the event of a breach of non-essential contractual obligations. Finsterwalder's liability for the breach of material contractual obligations shall be limited to the foreseeable damage typical for the contract. The exclusions and limitations of liability for other claims for damages under these Terms and Conditions against Finsterwalder or Finsterwalder's vicarious agents shall not apply in the event of wilful or grossly negligent damage or injury to life, limb or health.

## **VIII. OFFSETTING, RETENTION, ASSIGNMENT**

1. Finsterwalder may set off its own claims against claims of the Contractor. The Finsterwalder company concerned may also set off claims acquired by assignment against claims of the other Finsterwalder companies named in the preamble.



## **General Terms and Conditions for Transport and Forwarding Services**

2. The Contractor shall only be entitled to offset or withhold payment against claims of the Finsterwalder company placing the transport order arising from the freight/forwarding contract and related non-contractual claims if the counterclaim is due, undisputed, ready for judgement or legally established.
3. The Contractor may not assign its claims arising from the transport order to third parties.

### **IX. PLANT RIGHTS**

The Contractor shall have no lien on the goods handed over by Finsterwalder for carriage for undisputed claims from other contracts concluded with Finsterwalder.

### **X. CUSTOMER PROTECTION/CONFIDENTIALITY**

1. The Contractor undertakes to protect the customer. During the business relationship and for a period of one year after termination of the business relationship, the Contractor undertakes not to accept and execute any transport orders for Finsterwalder's customers that involve carriage by lorry, either directly or indirectly via third parties. This shall not apply if the customers of the Finsterwalder Group of Companies were already customers of the Contractor when the business relationship was established. If the Contractor culpably breaches this obligation, it undertakes to pay Finsterwalder a contractual penalty in the amount of the average monthly turnover which Finsterwalder achieves with the customer concerned. Further claims for damages by Finsterwalder shall remain unaffected.
2. Neutrality obligations shall be complied with without exception, insofar as this is specified in the transport order. This includes in particular that the contractor may not disclose the names and addresses or other identity features of Finsterwalder's customer and/or a supplier to the recipient or other third parties in the course of the transport and upon delivery. In the event of culpable non-compliance with the neutrality obligation, Finsterwalder shall be entitled to charge a contractual penalty of at least 50% of the agreed freight rate. The Contractor shall be entitled to prove that the damage is lower.
3. The assertion of further claims by Finsterwalder shall remain unaffected. The contractual penalty shall be offset against any (further-reaching) claim for damages.
4. The contractor undertakes to treat as confidential all information that becomes known to it during the execution of the transport contract that is not publicly accessible. The information may only be used for the purpose of providing the service. This obligation shall also apply after termination of the contract. The contractor shall impose this confidentiality obligation on other legal entities that it uses to fulfil its obligations under the transport contract.

### **XI. DATA PROTECTION**

1. The Contractor undertakes not to disclose any business and trade secrets to third parties.



## **General Terms and Conditions for Transport and Forwarding Services**

2. The Contractor is prohibited from processing, disclosing, making accessible or otherwise utilising personal and company-related data obtained within the scope of the contract outside of the execution of this contract. This provision shall survive the termination of the contract.
3. The Contractor undertakes to process data records taken over from (existing) customers in accordance with statutory regulations and in particular the applicable provisions of the General Data Protection Regulation (GDPR).

## **XII. FINAL PROVISIONS**

1. The place of fulfilment for the parties involved in the freight contract is Kaufbeuren, Germany.
2. The place of jurisdiction for all legal disputes arising from or in connection with the contractual relationship shall be Kaufbeuren, Germany. In the event of legal action against Finsterwalder, this place of jurisdiction shall be exclusive. Other places of jurisdiction provided for in mandatory legal provisions shall remain unaffected. German law shall apply to international carriage unless the CMR or mandatory national/international provisions (i.e. provisions which cannot be derogated from by choice of law) take precedence/must be mandatorily applied.
3. Amendments and supplements to the contract of carriage shall only become effective if they are communicated and documented between the contracting parties in writing or in text form.
4. If a clause of the General Terms and Conditions for Transport and Forwarding Services and the other agreements made is or becomes invalid, this shall not affect the validity of the remaining agreements. The contracting parties undertake to agree instead on a provision that comes as close as possible to the regulatory content of the invalid clause.