General Terms and Conditions for Transportation

Preamble:

The General Terms and Conditions for Transportation are effective for all transport orders that an affiliate of Finsterwalder Group (hereinafter “Finsterwalder”) places with a Carrier (hereinafter “Contractor”) for carrying out transport per truck. Affiliates of Finsterwalder Group in sense of these General Terms and Conditions for Transportation are the following companies:

- Finsterwalder Transport & Logistik GmbH, Halle, Germany
- Finsterwalder Transport & Logistik GmbH, Kaufbeuren, Germany
- Finsterwalder Transport & Logistik, Venlo, Netherlands

The Contractor’s general terms and conditions are not becoming part of the Contract, in fact, irrespectively if they contain differing or supplementing provisions to these Terms and Conditions. The General Terms and Conditions for Transportation are also effective if Finsterwalder concludes the freight contract being aware of conflicting or differing terms and conditions of the Contractor, to this effect unconditionally. Mandatory law remains unaffected by these General Terms and Conditions for Transportation.

CONTRACT CONCLUSION

1. Finsterwalder will issue a transport order about the agreement between Finsterwalder and the Contractor to carry out the transport that was made orally, per e-mail or fax, in which the details about the transportation to be undertaken are documented. Finsterwalder will submit to the Contractor the transport order as confirmation of the already made agreement. The Contractor may object to the conclusion of the contract within 60 minutes upon receipt of the transport order, otherwise the transport is to be carried out binding and according to the indications made in the transport order.

GENERAL DUTIES

2. The Contractor ensures that he is in possession of all necessary licenses regarding transportation and labor law and he further ensures that he will neither assign employees nor sub-contractors who don’t fulfill the stated requirements with carrying out the transport. Upon Finsterwalder’s request the Contractor will submit the necessary licenses. Furthermore, the foreign drivers have to carry a certificate together with its certified translation in the German language according to Sec. 7 b Para. 1 Sentence 2 GüKG [Güterkraftverkehrsgesetz; Road Haulage Law]

3. The vehicle crew has to carry the personal protection gear (reflective vest, safety shoes, helmet, work clothes etc.).

4. In case of transport of hazardous goods, the vehicle crew is to be in possession of valid ADR-Certificates and the vehicle is to be equipped with the ADR-Equipment according to legal requirements.

5. The Contractor guaranties that the contractual services are carried out according to the valid legal regulations, in particular regarding driving periods and cabotage regulations according § 7 a GüKG.

6. The Contractor ensures that the goods delivered to him are stored, transported, delivered or taken solely at safe establishments and secure transshipment locations. Furthermore the contractor ensures during the aforementioned points, the goods are protected against unauthorized access and only reliable personnel is employed. In case of subcontraction another contractor shall be obliged monotonous. In case of noncompliance the contractor shall be liable for all claims resulting from this clause.
SPECIAL TRANSPORT DUTIES

7. The Contractor has to load, store and fix the freight transport and fail safe, the same applies to unloading, and he ensures that he is in possession of sufficient load securing equipment (tension belts, corner protector, etc.) in order to do so, he further ensures that the truck used is in proper technical condition and is suitable for transporting the type of goods agreed upon. The loading space of the truck used has to be dry, clean and odorless. If not agreed otherwise, any additional loads or reloading is prohibited.

8. The Contractor has an increased duty of control in regards to packing and marking of the goods and has to inspect the goods respectively before taking over the goods. The Contractor has to immediately report to Finsterwalder if he detects visible packing defects and insufficient marking of the goods as well as apparent incorrect or incomplete documentation in the freight documents, in particular quantity, weight and size discrepancies have to be reported without delay.

9. In case of transporting hazardous goods it is sufficient if Finsterwalder informs the Contractor orally about the exact type of hazard and, as case may be, the safety measures that have to be taken.

10. The Contractor has to obtain the necessary accompanying documents for carrying out the transport himself as a matter of principle, unless he takes over the goods directly at Finsterwalder.

11. In case of breaks during transport, the truck is to be parked on a guarded parking lot.

12. The Contractor may only hire sub-contractors with Finsterwalder’s prior written consent. In case of authorized sub-contracting, the Contractor will take care that the sub-contractor submits valid insurance coverage according to para. 13 of these Terms and Conditions and that he complies with the requirements stated in para. 2 to para. 5 of these Terms and Conditions.

LIABILITY AND INSURANCE

13. In case of German national transports, to which apply Secs. 407 et. seq. HGB [Handelsgesetzbuch; German Commercial Code], the maximum limit of liability for damage to goods in the amendment of Sec. 431 Para. 1 HGB is 40 special drawing rights for each kilogram of the gross weight of the freight.

14. The Contractor is obligated to insure his transport related liability according to the relevant legal provisions related to freight for goods and delay damage with a coverage of at least EUR 1,000,000 per transport order and damaging event. The coverage has to be made available by the insurer and be valid in case of cause of damage through qualified fault, e.g. according to Sec. 435 HGB or Art. 29 CMR as well as for the increase of the standard liability in Sec. 431 HGB to 40 special drawing rights per kilograms of the gross weight. As proof of scope of coverage, the Contractor has to submit to Finsterwalder a complete copy of the insurance policy and the corresponding insurance conditions.

15. The Contractor has to inform Finsterwalder instantly about delays, damages, impending standing times or other circumstances that may endanger agreed upon deadlines, in order to enable Finsterwalder to immediately undertake steps for clarification and coordination with the customer to minimize losses. In case of negligent noncompliance of the duty to inform, Finsterwalder is entitled to charge a contractual penalty of EUR 25.00. Finsterwalder’s own handling expenses which occur due to the Contractor’s lack of keeping agreed upon deadlines will be charged as a lump-sum of EUR 50.00, even if Finsterwalder’s customer does not claim for damages. Secs. 425, 429, 431 HGB remain unaffected. Noncompliance with the agreed upon deadline in connection with simultaneously neglecting the proactive duty to inform leads therefore to a contractual penalty of EUR 75.00.

16. Finsterwalder’s liability independent of fault according to Sec. 414 HGB is limited to the extent of an amount of EUR 100,000.00, unless Finsterwalder caused the damage willfully or frivolously and being aware that a damage is likely to occur.
General Terms and Conditions for Transportation

17. Other claims for damages against Finsterwalder or Finsterwalder’s vicarious agents are excluded in case of breach of non-contractual duties. Finsterwalder’s liability for breach of contractual duties is limited to damage that is characteristically for the contract and foreseeable. Exclusions and limitations of liability for other damage claims against Finsterwalder or Finsterwalder's vicarious agents according to para. 16 of these Terms and Conditions do not apply in case of willfully or grossly negligent causing the damage or when life, body or health is injured.

PAYMENT OF FREIGHT CHARGES

18. If not agreed otherwise, payment is due 40 days upon receipt of invoice.

19. The freight rate included in the transport order includes all costs, surcharges, plus legal taxes (e.g. sales tax) and is due within the agreed on payment deadline upon receipt of the Contractor’s invoice as well as the original consignment note signed by the authorized recipient. The freight documents have to be submitted to the principal within 10 work days after carrying out the transport. In case this deadline is exceeded, without a circumstance that Finsterwalder is responsible for being the cause, Finsterwalder is entitled to charge a handling fee of EUR 50.00. The Contractor is free to proof lower handling expenses.

DEMURRAGE

20. If not agreed otherwise, demurrage is compensated for already through the freight in the frame of loading and unloading of up to 4 hours each.

SET-OFF, RETENTION, SUBROGATION

21. Finsterwalder may set off claims by the principal with own claims. The affected Finsterwalder affiliate in each case may also set off claims acquired through subrogation of the other Finsterwalder affiliates named in the preamble.

22. The Contractor may only set off legally established or undisputed claims against claims of the respective Finsterwalder affiliate issuing the transport order. The Contractor may only exercise his right to retention insofar his counterclaim is legally established or undisputed. The Contractor may not assign his claims from the freight contract to a third party.

LIEN ON OUTSTANDING ACCOUNTS

23. The Contractor has no right of lien for undisputed claims from other contracts concluded with Finsterwalder to the goods consigned by Finsterwalder.

PACKAGING EXCHANGE

24. The Contractor is obligated to return the loading tackles which were entrusted for smooth transport and loading to Finsterwalder within 20 work days upon receipt in the same amount and quality. The return is always to be agreed on with Finsterwalder previously.

The separate compensation of the return of loading tackles is considered with 3% in the agreed freight. In case the Contractor does not return the loading tackles in due time, Finsterwalder is entitled to claim for damages, unless the Contractor is not reliable for the belated return. Finsterwalder’s claim for damages amounts to EUR 6.50 replacement value per not returned Euro/Düsseldorf pallet and EUR 87.00 per pallet cage as well as EUR 6.50 handling fee per loading tackle. With other loading tackle the claim for damages is calculated from the replacement price usual in the market for the respective loading tackle plus EUR 6.50 handling fee per loading tackle.

The additional administrative expense will be charged with EUR 10.00 by Finsterwalder.

In this context, the Contractor is aware of the fact that the handling of loading tackle debts means high administrative effort for Finsterwalder in communication with own customers of Finsterwalder and in keeping pallet accounts.

CUSTOMER PROTECTION

25. The Contractor agrees that he will not take on and carry out any transport orders from Finsterwalder’s customers in regard to transportation by truck during the business relation and for one more year after termination of the business relation. This does not apply if customers of Finsterwalder Group were already customers of the Contractor when starting the business relationship. If the Contractor negligently breaches this duty, he agrees to pay a contract penalty in the amount of the average monthly turn over that Finsterwalder realizes with the respective customer. Further claims for damages of Finsterwalder remain unaffected.
26. Neutrality duties are to be complied with without exception, unless stated otherwise in the transport order. This includes that the Contractor must not communicate to the recipient or other third parties names and addresses or other identity markers of Finsterwalder’s customers and/or the supplier in the course of carrying out the transport and at delivery.

In case of negligent noncompliance of the neutrality duty, Finsterwalder is entitled to charge a contractual penalty of at least 50% of the agreed freight rate.

27. The Contractor agrees for the contract period time of cooperation in respect of any known information (e. g. information about clients or its customers) to maintain silence. This obligation shall survive the termination of the contract. A similar obligation has contractor impose its employees and agents.

**FINAL PROVISIONS**

28. The place of performance for the parties involved in the freight contract is the headquarters of the contracting company (in preamble indicated as “Affiliate”) of Finsterwalder Group.

29. For all legal disputes that may arise from the contractual relation between principal and agent or are connected to it is Halle place of jurisdiction for Finsterwalder Transport & Logistik GmbH in Halle and Memmingen place of jurisdiction for Finsterwalder Transport & Logistik GmbH Türkheim and Finsterwalder Transport & Logistik (a trade name of Chmicare BV) in Venlo. In case of legal actions aimed against Finsterwalder this place of jurisdiction is exclusive. Other places of jurisdiction opened in mandatory applicable legal provisions remain unaffected thereof.

30. Changes and amendments to the freight contract will only become effective if these are communicated between the contractual parties in writing or in text form and are documented.

31. Is or becomes one of the provisions of the General Term and Conditions for Transportation and further made agreements ineffective does this not affect the effectiveness of the remaining provisions and agreements. The contractual parties obligate themselves to agree upon a provision that comes closest to the ineffective provision in terms of content.

32. Additionally, the latest issue of the ADSp 2017 (German Forwarders’ Standard Terms and Conditions) apply. Pursuant to clause 23 of ADSp 2017, liability for loss and damage of goods, which is limited under Section 431 of the German Commercial Code (HGB) to 8,33 Special Drawing Right per kilogram (SDR/kg), is further limited to the higher of Euro 1,25 Million and 2 SDR/kg per claim provided that all claims per event are limited to the higher of Euro 2,5 Million and 2 SDR/kg; and where multimodal transport with sea carriage is involved to 2 SDR/kg. The ADSp 2017 are available on our website at http://www.finsterwalder.com/en/customer-service-center/terms-and-conditions/

**Contact:**

Christoph Hammerla  
Referent für Vertrags- und Versicherungswesen  
Finsterwalder Transport & Logistik GmbH  
Phone: +49(0)8245-9680-816  
E-Mail: christoph.hammerla@finsterwalder.com