



GENERAL BUSINESS AND PACKAGING CONDITIONS OF DERDA LOGISTIK GMBH (CURRENT STATUS: 01.01.2019)

I. General

1. Scope

1.1 Our following General Terms and Conditions of Business apply exclusively to the packaging services provided by us. Conflicting general terms and conditions of business are only binding if we have expressly acknowledged their validity in writing.

1.2 Our General Terms and Conditions of Business and Packaging apply only to companies within the meaning of § 14 BGB (German Civil Code), legal entities under public law and special funds under public law.

1.3 Our General Terms and Conditions of Business and Packaging shall also apply to all future business with the Customer.

1.4 Should forwarding services and/or transport orders become subject of the contract in connection with packaging orders, the German Freight Forwarders' Standard Terms and Conditions (ADSp) 2003 shall apply to these.

2. Written form

Contract amendments and subsidiary agreements are only effective if they are made in writing; this also applies to the waiver of the written form.

II Conclusion of contract, scope and content of services

1. Offer

Our offers are subject to change without notice.

2. Scope of services

2.1 Our written order confirmation is authoritative for the scope of the services to be provided by us.

2.2 Unless otherwise agreed, the packaging service owed only includes the manufacture of the package from packaged goods and packaging material (packaging), the preservation of the packaged goods, the pre-storage and post-storage necessary for the purpose of manufacture and the storage of the packaged goods in the period from the beginning of packaging until its completion. The total storage period for this is – unless expressly agreed otherwise – limited to a maximum of 2 weeks. If this total period is exceeded, we reserve the right, after prior notification, to arrange for the goods to be transported and stored in an external warehouse or open-air storage facility at the customer's expense. Insofar as we only have to supply packaging material, we are only obliged by contract of sale, work and services are thus not owed.

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3. Impediments to performance

If unforeseeable performance difficulties arise for us which cannot be attributed to our area of risk, we shall be entitled to reimbursement of the necessary expenses and to appropriate additional remuneration. This shall apply in particular in the event that a shutdown in the customer's business causes increased costs for the personnel employed by us.

4. Prices

4.1 Our prices are valid plus the legal value added tax.

4.2 Our prices are based on the calculations existing at the time of the submission of the offer. If there is a significant change in the raw material prices for packaging material of at least 10% after conclusion of the contract, we shall be entitled to increase the agreed prices by the proportional additional expenditure.

5. Payments

Payments shall be made to our branch office free of charge without any deductions; the details are set out in our invoice.

III Prohibition of set-off and retention

Rights of set-off or rights to refuse performance in favour of the customer exist only insofar as the counterclaims are undisputed, legally established or ready for decision.

IV. Rights of exploitation, translations

All drawings, sketches and models remain our property. The exploitation rights and rights of reproduction (copyright) are our sole property. Transcripts, photos or copies may only be produced for our own use with our express written consent. Unless otherwise agreed, the client is responsible for the translation of texts, e.g. package lists, into foreign languages.

V. Duties of the client to cooperate and provide information

1. The Customer is responsible for ensuring that the packaged goods are made available in good time in a condition ready and suitable for the execution of the packaging order. Parts that are particularly susceptible to corrosion must be cleaned and treated with suitable contact corrosion protection agents and handed over to us.

2. The customer is obliged to inform us in writing in good time of the weight and other special properties of the goods. This includes, in particular, information about the centre of gravity, the attachment points provided for crane work and the necessary information about dangerous goods and hazardous substances.

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3. The principal must inform us in writing of any additional and special treatment of the packaged goods (also with regard to storage) that may be necessary. This applies in particular to the requirements of the respective transport route of the loading and transport equipment, as well as in the case of any planned subsequent storage with regard to general environmental pollution.

4. Unless otherwise agreed, packaging shall be carried out in our company; the timely delivery and removal of the goods shall be the responsibility of the customer. If the packaging order is to be carried out outside our company, the customer must provide sufficient space, energy (electricity, compressed air, etc.) and suitable lifting equipment and hoisting devices including the necessary operating personnel free of charge for a speedy and professional execution of the packaging order.

5. The Customer shall be responsible for adequate insurance of the goods to be packed or packaged (transport, storage, fire insurance).

VI. Reservation of title

1. We reserve title to all packaging materials supplied and processed by us until all our claims against the customer have been satisfied. This also applies in the event that the individual materials have been paid for.

2.1 The ordering party is permitted to resell the goods subject to retention of title in the course of normal business operations, whereby he hereby assigns to us his claims against his customers from the resale as security for the settlement of all our claims secured by the retention of title.

2.2 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 accordance with the value resulting from the ratio of the price of our materials to the value of the newly created uniform item. If the latter objects are sold, the above item 2.1 shall apply accordingly. Through the partial assignment made thereafter, we shall acquire a share of the claim corresponding to our co-ownership share.

3. If the value of all security interests exceeds the amount of all secured claims by more than 20%, we are obliged to release a corresponding part of the securities at the request of the customer.

VII. Bearing of risk

The material risk is determined according to § 644 paragraph 1 sentence 3 BGB. As far as there is no case of § 644 para. 1 sentence 2 BGB and § 645 BGB, the risk of remuneration is transferred to the customer with the dispatch of the packaged goods, in case of packaging at the customer's premises with the handover. If the packaging order is to be carried out outside our company and if the completely or partially performed service is damaged or destroyed before handover due to force majeure, war, riot or other objectively unavoidable circumstances for which the Customer is not responsible, we shall be entitled to invoice the performed services according to the contract prices and, in addition, to demand the costs which we have already incurred and which are included in the contract prices of the part of the service not performed.

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VIII. Contractual lien

We are entitled to a lien and right of retention on the objects of the customer which have come into our power of disposal due to all claims arising from the contract as well as due to undisputed or legally binding claims from other contracts concluded with the customer. The period of one month stipulated in § 1234 BGB is reduced to 2 weeks. If the customer is in default, we may freely sell goods of the customer in our possession in such quantity as we deem necessary to satisfy our claims after having threatened to sell them. For the pledge or self-help sale, we can charge a sales commission of the net proceeds in the amount of local rates.

IX. Time of performance- delay in 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 down payments, advance payment or similar.

2. fixed performance times shall only be deemed agreed if they are guaranteed in the written order confirmation. Even then, however, they are not fixed dates within the meaning of § 361 BGB (German Civil Code), if they are not expressly designated as such.

3. in the event of delays in performance due to force majeure, riot, strike, lockout and operational disruption through no fault of our own (including those of our suppliers), the performance period shall be extended by the period of time until the disruption is rectified. In such a case, we may, at our discretion, also withdraw from the contract to the exclusion of any claims for compensation. We shall inform the customer of the beginning and end of such circumstances without delay.

4. the customer may withdraw from the contract without notice if the entire performance becomes finally impossible for us before the transfer of risk. Furthermore, the Customer may withdraw from the contract if, in the case of an order, the performance of part of the service becomes impossible and the Customer has a justified interest in refusing partial performance. If this is not the case, he 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, he shall remain obliged to counter-performance. Further warranty claims shall be determined exclusively in accordance with Section XI of these terms and conditions.

5. in the event of a defect in the work subject to warranty, we shall be entitled, at our discretion and within a reasonable period of time, either to remedy the defect or to carry out repackaging (so-called „subsequent performance“).

6. the customer must give us the necessary time and opportunity to carry out the supplementary performance; otherwise we shall be released from liability for the consequences arising therefrom.

7. if a subsequent performance would involve disproportionately high costs for us, we may refuse such subsequent performance, accepting a right of withdrawal accruing to the customer.

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Within the framework of the statutory provisions, the client has a right to withdraw from the contract if we- taking into account the statutory exceptions- allow a reasonable period of time set for us for subsequent performance to elapse without success. If the defect is only insignificant, the client is only entitled to a reduction of the contract price. The right to reduce the contract price shall otherwise be excluded. Further claims shall be determined in accordance with section XI of these terms and conditions.

XI. Liability, exclusion and limitation of liability

1. we are liable

- for damages resulting from injury to life, body or health,
- for other damages which are based on an intentional or grossly negligent breach of duty and
- in the case of defects which we have fraudulently concealed or whose absence we have guaranteed.

We work exclusively on the basis of the latest version of the German Freight Forwarders' Standard Terms and Conditions. These limit in paragraph 23 ADSp the legal liability for damage to goods in the case of damage or loss whilst in the care of a forwarder to € 5/kg, in accordance with § 431 of the German Commercial Code (HGB); in the case of multimodal transports, including sea transport to 2 SDR (special drawing rights)/kg; furthermore, to € 1 Millions or € 2 Millions respectively, or 2 SDR/kg per damage or loss event, whichever is the greater. In addition it is agreed that (1) section 27 ADSp does not extend the liability of the freight forwarder or the attribution of fault or neglect to persons or other third parties, contrary to legal regulations such as § 507 HGB (German Commercial Code), Art. 25 MÜ, Art. 36 CIM, Art. 20, 21 CMNI, in favour of the principal, (2) the freight forwarder, as carrier, is not included in the list of charges specified in § 512 Abs. 2 No. 1 of the German Commercial Code (HGB), (3) the freight forwarder, as carrier in the sense of the CMNI, is not liable for nautical fault, fire on board or defects of the vessel under the conditions specified in Art. 25 Par. 2 CMNI.

2. in case of breach of essential contractual obligations (cardinal obligations) we are liable even in case of slight negligence, but limited to the foreseeable, typical damage. The term „cardinal obligation“ is either used to denote a concretely described essential breach of duty which endangers the achievement of the purpose of the contract or is explained in an abstract way as a duty the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner may regularly rely.

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3. Any further liability for damages other than that provided for in Clauses XI.1 and XI.2 is excluded, irrespective of the legal nature of the claim asserted.

4. The exclusion according to section XI.3. also applies if the customer, instead of a claim for compensation for damages, demands compensation for futile expenses in the sense of § 284 BGB (German Civil Code).

5. in the case of neither intentional nor grossly negligent culpable violation of essential contractual obligations by simple vicarious agents, we are liable up to a maximum amount of € 250,000.00. with regard to this limitation of liability, the client is free to demand the extension of the maximum liability amount to a value declared by him in writing in due time. We will thereupon apply for the extension of the insurance cover and thus the scope of liability with our insurer. Maximum liability limits of up to 600,000 euros can be insured without any problems. In addition, we would have to negotiate individually with the insurers about an extension of the insurance cover to the desired amount. The additional costs arising from an extension of the maximum liability amount are borne by the client. The insurance of the risk of damage by a transport, storage or fire insurance held by the client is customary in the industry and is regularly cheaper for the client.

As far as the liability towards us is excluded or limited, this also applies to the personal liability of our employees, staff, collaborators, vicarious agents, representatives and subcontractors.

XII. Limitation of actions

1. claims for compensation for damages resulting from injury to life, body or health as well as for other damages based on intent or gross negligence shall be time-barred in accordance with the statutory provisions.

2. subject to section XII.1, all claims against us for loss of or damage to packaged goods or for any other improper performance of the contract shall become time-barred one year after delivery of the packaged goods. In the case of lost goods, the limitation period shall commence at the point in time at which the goods were to be delivered.

3. claims other than those mentioned in Clauses XII.1. and XII.2., irrespective of the legal grounds, shall become statute-barred one year after they arise and the Customer becomes aware of the circumstances giving rise to the claim or after the point in time at which he should have become aware of them without gross negligence.

4. the limitation of actions according to clauses XII.2. and XII.3. extends to contractual and non-contractual claims of all kinds.

XIII EDP Note

We record the necessary data of our clients in our EDP system in compliance with the Data Protection Act.

XIV Place of jurisdiction, applicable law

1. place of jurisdiction is our place of business; however, we are also entitled to sue the customer at his place of business.

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2. German law shall apply to all legal relations between the parties to the contract; 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 terms and conditions be or become invalid, the remaining terms and conditions shall continue to apply.

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