

## GENERAL TERMS AND CONDITIONS OF BUSINESS

**Status Oct., 1<sup>st</sup> 2019**

### **Preamble**

Our general terms and conditions of business (Terms and Conditions) are intended to give ourselves and our business partners a common understanding of what CONTARGO stands for, and how and according to what rules we behave towards each other within our business relationship. The following basic principles are particularly important for us:

- We keep our agreements;
- We do anything for our customers, provided it is sustainable and legal;
- If something is not right we make it right, and we learn from our mistakes;
- Sustainability has the highest priority with us.

### **1. General:**

- 1.1 In all the activities it undertakes, CONTARGO works on the basis of these general terms and conditions of business (Terms and Conditions) and the General German Freight Forwarding Terms and Conditions (ADSp) 2017.
- 1.2 The ADSp 2017 apply as a complement and concretisation of these Terms and Conditions. If a contradiction should arise between the individual conditions, the ADSp 2017 is subordinate.
- 1.3 These Terms and Conditions exclusively apply. General terms and conditions of the customer or otherwise formulated contractual conditions of the customer do not apply, even if they only contain conditions supplementary to the Terms and Conditions of CONTARGO.
- 1.4 These Terms and Conditions and the ADSp 2017 shall also apply as framework conditions for all future business with the same customer, without the necessity to point this out in each individual case.

### **2. Bases of Price and Performance:**

- 2.1 The prices offered cover only the services carried out in relation to goods of normal size, weight and nature and in relation to the information provided by the customer. CONTARGO may increase the prices according to the actual costs insofar as information provided by the customer regarding the goods and the services to be rendered was incorrect.
- 2.2 The customer is obligated to take over the low water surcharges and energy surcharges applicable in each case.
- 2.3 If CONTARGO's costs increase or if, following conclusion of the contract, transportation charges – in particular demurrage, port charges, handling tariffs – taxes or duties are introduced or increased, CONTARGO is entitled to adjust the price accordingly, unless CONTARGO is

responsible for the increase. The same applies in the case of increases in costs after conclusion of the contract due to changes in tariff agreements for the personnel employed by CONTARGO or its vicarious agents.

- 2.4 For repair, maintenance and assembly work carried out on containers, swap bodies, trailers, semitrailers or related equipment, prices are calculated on the basis that any waste material passes into the ownership of CONTARGO without remuneration. The prices offered for this work are non-binding and only become binding on written confirmation by CONTARGO.
- 2.5 All invoices of CONTARGO are payable within ten calendar days of receipt without deductions in the currency stated on the invoice.

### **3. Contracting of third parties:**

CONTARGO is entitled to make use of third parties in the fulfilment of its obligations, with CONTARGO retaining free choice of the third party.

### **4. Special duties of information / Prohibited goods:**

- 4.1 If hazardous goods – including substances and objects which, because of their nature, their properties or their condition present any sort of risk - or waste are to be transported/stored or handled, CONTARGO is to be informed in good time in writing of the exact nature of the hazard and, where necessary, of the precautions that need to be taken. Moreover the customer is obligated to provide all necessary information and to observe national and international regulations.
- 4.2 Explosive goods (Hazardous Goods Class 1 – excepting Hazardous Goods Class 1.4S), radioactive goods (Hazardous Goods Class 7), infectious substances (Hazardous Goods Class 6.2) and hazardous waste are excluded from transport/storage and handling.
- 4.3 If the customer does not deliver or collect the loading unit containing hazardous goods or waste – this also applies to bulk goods/break bulk – at the terminal on the day of the transport or within the requirement of the “24-hour Rule” or if the customer fails to instruct CONTARGO to store the goods/loading unit at a suitable hazardous goods storage facility (hazardous substances storage facility), CONTARGO is entitled
- a) to store the goods/loading unit at a suitable hazardous goods storage (hazardous substances storage facility) at the expense of the customer;
  - b) to unload, return or, in so far as necessary, destroy the goods or render them harmless, without being liable to pay the consignor compensation;
  - c) to require the customer to replace all the expenses necessitated by this measure.
- 4.4 For temperature-controlled goods the customer is obliged to state the specified temperature along with a tolerance range.

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- 4.5 CONTARGO may refuse to accept a temperature-controlled consignment if the actual temperature deviates from the set temperature, taking the tolerance range into consideration, unless the customer frees CONTARGO in writing from any liability for maintenance of the temperature.
- 4.6 If the customer is in breach of his duties to provide information – also including those contained in paragraph 3 ADSp 2017 – CONTARGO may, depending on the gravity of the breach, refuse to fulfil the contract and withdraw from the contract. Damages resulting from this will be borne by the customer. CONTARGO's claim to remuneration/dead freight remains unaffected.
5. **Tank containers:**
- 5.1 In order to enable the safe transport, handling and/or storage of filled or empty, uncleaned tank containers, the customer assumes the following obligations on handover:
- a) The armatures must be closed;
  - b) The blind flange must be attached;
  - c) The protection cap for armatures must be in locked position;
  - d) The dome covers and any covering caps must be locked;
  - e) Any attachments, such as fill nozzles, must not overshoot the outer frame;
  - f) Any bands around the tank must be in excellent condition and fit precisely; it is imperative that the insulation of the tank container is not visible and does not protrude;
  - g) Tank containers with ascent aids require a sign warning of overhead electrical danger (ISO 6346). The label must also be affixed near the ascent aid.
  - h) Any frames, ascent aids and steps must not be damaged and must be in full working order and in a safe condition for transport;
  - i) Subsequently attached additional fittings are not permitted;
  - j) In the case of hazardous goods in particular, the payload must not adhere to the exterior of the tank container;
- 5.2 In the event of non-observance of these duties, legal consequences as described in 4.6 above apply.
6. **Installation of Flexitanks**
- 6.1 Unless otherwise agreed in the contract, CONTARGO takes on the correct installation of flexitanks.
- 6.2 Unless the flexitanks are provided by the customer, the choice of flexitanks regarding suitability for a specific purpose shall be made on the basis of written information to be supplied by the customer. Testing the suitability of the flexitank is the sole responsibility of the customer.
- 6.3 The flexitank must be carefully inspected by the customer before being used by him. Complaints to CONTARGO have to be made in writing. Before using the flexitank, but no later than on the next working day after the container has been taken over, the customer shall notify CONTARGO in writing of any defects found; otherwise the flexitank shall be deemed to have been handed over in good order and condition.
- 6.4 CONTARGO accepts no liability for the product quality of the flexitanks or for their defects, nor for consequential damages insofar as these have resulted from improper handling on the part of the customer.
- 6.5 CONTARGO has limited liability for culpably improper installation of the flexitanks, in the event of damage to goods up to the value of the goods and limited to 8.33 Special Drawing Rights per kg weight of goods affected by the damage; and for direct damages other than damage to goods, limited to a maximum of € 50,000.00 per claim. Paragraph 16.4 remains unaffected.
7. **Choice of transport means:**
- 7.1 The choice and sequence of transport means used is made by CONTARGO in consideration of the interests of both parties.
- 7.2 In so far as additional costs, in particular for parking the goods/loading unit, are incurred as a consequence of changed agreements on dates with the customer or the consignee, the customer shall be informed of this; costs that result from this will be borne by the customer.
- 7.3 The delivery of loading units in the seaport is based on the specifications of the written order. If the intended sea ship is delayed CONTARGO may adjust the delivery of the loading unit to the delay without prior notice to the customer, or deliver the loading unit at the time and date originally agreed.
8. **Weighing:**
- 8.1 If CONTARGO additionally performs weighing according to SOLAS guidelines as a part of the order received, nevertheless the customer, as charterer, remains solely responsible for fulfilling the obligation arising from the SOLAS guidelines. In the case of slight negligence CONTARGO is not liable. Liability for a loss of data is limited to the typical costs and efforts of recovery, calculated on the damage which would have occurred if reasonable data protection measures had been undertaken.
- 8.2 In so far as the order contracted to CONTARGO consists exclusively of the weighing, CONTARGO will accept liability for fulfilment with the due care of a diligent businessman. In the case of a culpable breach of the duty of care CONTARGO is liable for resultant foreseeable damage typical of the contract, limited at the most to the amount of EUR 10,000.-. If the limitation of liability does not correspond to the foreseeable damage typical of the contract, the customer is obligated to inform CONTARGO of this in writing beforehand. If in a case of this kind another limitation of liability is agreed, this agreement must be in writing in order to be valid. Paragraph 27 of ADSp 2017 and paragraph 16.4 of these Terms and Conditions apply accordingly.

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9. **Takeover/return and control of loading units:**
- 9.1 On takeover the customer shall inspect the goods/loading unit for damage and make any complaint in writing. The return of empty loading units, in a roadworthy condition and free from residues, shall take place at the agreed place and time. In the event that these conditions are not adhered to, the customer must bear the resulting costs - including those for remedying defects and loss of rent.
- 9.2 The customer must hand over the goods/loading units to CONTARGO in a transport-safe and operationally safe condition in compliance with legal requirements and technical regulations. At takeover CONTARGO is only obliged to perform a visual inspection for evident damage at accessible points. A detailed control beyond this visual inspection – especially with tank containers – requires agreement between the parties.
- 9.3 The customer must ensure that the loading units are handed over to CONTARGO properly closed and, in the case of loaded loading units, that they are transferred sealed.
- 9.4 CONTARGO may inspect the contents of the loading unit if there are indications that the statements made in the accompanying documents are not accurate, the accuracy of the information is not confirmed by documentation, or a seal is damaged. The costs arising hereby are borne by the customer.
10. **Acceptance/delivery of goods:**
- 10.1 In so far as the loading unit is loaded by CONTARGO or its authorised agents, the time of acceptance is deemed to be the time when the loading of the loading unit onto the first of all used means of transport is started. Loading starts with the connection of the loading equipment and the loading unit.
- 10.2 In so far as the loading is carried out by the customer or his vicarious agents, the time of acceptance of the loading unit is deemed to be the time when the loading unit is correctly placed on the first of all used means of transport; the placement is complete as soon as the loading equipment and the loading unit have been separated.
- 10.3 If the loading unit is to be loaded with goods after the loading of the unit itself is completed, with regard to these goods acceptance has been completed by CONTARGO at the end of the loading, closure and sealing of the loading unit by the customer and takeover of the loading unit by CONTARGO.
- 10.4 The customer shall ensure that the loading units are taken from the unloading site/site of consignment in the order determined by CONTARGO.
- 10.5 In so far as unloading is performed by CONTARGO or its vicarious agents, the time of the end of the correct unloading from the means of transport used last is deemed to constitute handing over; unloading is ended as soon as the unloading equipment is separated from the loading unit.
- 10.6 In so far as the loading unit is unloaded by the consignee or by his vicarious agents, the time when unloading from the last means of transportation which is used is started is deemed to constitute handing over; unloading begins with creation of the connection between the loading equipment and the loading unit.
- 10.7 If goods are to be removed before unloading of the loading unit, with regard to these goods handing over is deemed to have taken place when the loading unit was placed ready for unloading, at the latest when the doors of the loading unit were opened.
- 10.8 The customer can himself load, or can have loaded, the loading unit onto the next transportation means to be used, or the consignee can unload the loading unit or have it unloaded from the delivering transportation means. In this process the regulations and instructions of the carrier must be observed. The customer shall bear the consequences of incorrect loading or unloading of loading units, in so far as they were not based on incorrect instructions on the part of the carrier.
11. **Waiting times:**
- 11.1 The goods/loading units are collected and delivered according to the transportation schedule or according to individual agreement. Waiting times resulting from dispatch for which CONTARGO is not responsible will be charged to the customer. Waiting times are deemed to be all times which exceed the unpaid time for loading and unloading at a terminal or a loading / unloading place as agreed in the individual case, or when a waiting time appropriate for the transport means and circumstances concerned is exceeded. Payment for waiting times is in accordance with the waiting time agreement within the respective tariff agreement per loading unit to be transported, for each individually agreed time interval which is commenced.
- 11.2 If it becomes evident after the goods have been accepted that long waiting periods will have to be expected at the destination terminal in the seaport for reasons which are outside the control of CONTARGO, CONTARGO is entitled, under consideration of the interests of the customer, to approach a substitute terminal in the (sea)port of destination and to let the goods be unloaded there at the customer's risk.
- 11.3 When the customer is informed of this situation, he is obliged to instruct CONTARGO straight away as to whether CONTARGO should organise the transfer from the substitute terminal to the destination terminal in the customer's own name and on the customer's account. The customer is also obliged to inform CONTARGO of special circumstances regarding the transported goods – such as e.g. the requirement to connect reefer containers to a reefer station, if the original order to CONTARGO does not include an obligation to maintain a specific transport temperature, or the customer should coordinate this directly with the substitute terminal, warehouse or transshipment terminal.
- 11.4 If CONTARGO cannot obtain instruction within an appropriate time, CONTARGO shall take those measures which are in the interest of the customer. As well as transfer, CONTARGO is also

- entitled to entrust the goods to a third party for safekeeping. In this case CONTARGO is only liable, insofar as permitted by law, for exercising due diligence in the choice.
- 11.5 CONTARGO is entitled to claim reimbursement for the necessary expenses incurred by all measures taken in accordance with points 11.3 and 11.4 and to claim appropriate remuneration, unless the obstacle is within the scope and control of CONTARGO.
- 11.6 Apart from this the provisions of § 419 HGB (the German Commercial Code) remain unaffected.
12. **Service hindrances:**
- 12.1. As well as those hindrances mentioned in paragraph 12.2 ADSp 2017 hindrances to service regarding inland waterway transport also include Low Water, for example a gauge value of <81 cm measured at the Kaub Gauge and/or <181 cm at the Duisburg/Ruhrort Gauge and/or <31 cm at the Emmerich Gauge in so far as the barge is required to pass this/these point(s).
- 12.2 In the event of hindrances to service, both parties are entitled to withdraw from the contract. This also applies if the order has already been partially executed. If one of the parties withdraws, CONTARGO shall be reimbursed for the costs which it deemed to be necessary to be incurred or which were incurred in the interest of the customer.
- 12.3 Governmental and/or official acts beyond CONTARGO's control do not affect the rights of CONTARGO towards its customer; the customer is liable towards CONTARGO for all claims arising out of such. Claims of CONTARGO against the state or third parties are not affected.
- 12.4 For the duration of the hindrance to service, CONTARGO is entitled, at its discretion
- a) either to carry out the transportation and to charge the freight costs agreed for the entire transportation route;
- b) or to withdraw from the contract completely and to charge for dead freight as well as to cause the already loaded goods/containers – at the cost and risk of the customer – to be unloaded at a suitable location or to be stored or to be transported onward by other transport means. All additional costs, additional freight costs and expenses which are caused by unloading at an intermediate port, storage or onward transportation will be on account of the goods.
- 12.5 In so far as goods/containers for export are to be transported via the seaport, the customer is obligated if required by regulations to undertake an electronic preannouncement of the accompanying customs documents of the goods/container in the Export Control System (or another designation for the system used by the relevant seaport) in good time before the arrival of the export container or the goods in the seaport. If this is not done the seaport operator will not accept the export container/goods. The additional resulting costs, for example transfer costs, storage costs, return costs or other costs shall be borne by the customer.
13. **Dead freight:**
- 13.1 CONTARGO can claim the whole of the agreed remuneration as far as agreed destination if
- a) the customer does not supply or only partially supplies the agreed goods, even after a suitable period of grace (not necessary in the case of fixed-time contracts);
- b) unloading of the goods is required at a terminal or the premises of a final customer which requires a shorter transportation route;
- c) the continuation of the transport is prevented permanently or for some period of time for reasons for which CONTARGO is not responsible;
- d) the transport is only performed in part, for reasons for which CONTARGO is not responsible, e.g. the means of transportation sinks or does not reach the destination for some other reason;
- e) the goods have been destroyed, lost, seized, withdrawn, damaged, decreased or rendered worthless by some other means for which CONTARGO is not responsible.
- 13.2 If the customer cancels the order two working days before the transportation is due to start or declares that the transport has to be postponed temporarily or indefinitely, CONTARGO is entitled to charge the customer half the agreed remuneration.
- 13.3 It is not a prerequisite for the assertion of these claims that the transport means are at readiness, or that the insufficient fulfilment of the contract is the responsibility of the customer or his vicarious agent; these claims also exist if the obstacle to the transportation is the result of a failure on the part of the customer to comply with information duties.
- 13.4 Claims for compensation for damages and demurrage, freight surcharges and also costs associated with general averages remain unaffected.
14. **Insurance of the goods:**
- To the exclusion of paragraphs 21.2. and 21.3 ADSp 2017 CONTARGO will only arrange insurance in accordance with paragraph 21.1 ADSp 2017 in the event that it is expressly instructed in writing to do so.
15. **Liability of the Customer:**
- 15.1 The customer is strictly liable to CONTARGO regardless of fault for all damages resulting from inaccurate, unclear, incomplete or late information and/or accompanying documents, as well as from non-observance of import regulations, export regulations and transit regulations or other legal provisions. Paragraph 29 ADSp 2017 remains unaffected.
- 15.2 If the customer culpably fails to fulfil in due time duties incumbent upon him, he is liable to CONTARGO for all costs and outlays incurred as a result, including the provision of personnel and resources.

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- 15.3 The customer is responsible for third parties engaged by him; this applies in particular to observance of the operating regulations /codes of practice that apply with regard to the CONTARGO terminals.
- 15.4 If following takeover of the goods or container there are grounds to suspect that due to the condition of the goods/container there may be danger, including danger to life and limb, the environment or other things, or if this danger is already present, the customer must if requested by CONTARGO ensure an immediate and effective remedy, or CONTARGO is entitled to carry out all measures that are necessary and/or ordered by public authorities, in order to minimise or prevent the hazard/damage. In the absence of fault of CONTARGO the customer must reimburse all costs and damages incurred as a result.
- 15.5 Apart from this the customer is liable for any culpable breach of obligation, including the liability of his vicarious agents and assistants.
- 15.6 The customer shall hold CONTARGO, its employees and vicarious agents (such as subcontractors and third party service providers) harmless on first request from claims by third parties in as far as CONTARGO is not responsible for these third party claims, and/or in as far as the claims exceed the contractual or legal liability of CONTARGO. The obligation to indemnify includes all sanctions against CONTARGO imposed by authorities and organisations as a result of a breach of duty on the part of the customer.
16. **Liability of CONTARGO:**
- 16.1 The grounds and extent of the liability of CONTARGO are in accordance with sections 22 ff. ADSP 2017.
- 16.2 If CONTARGO is only responsible for handling, CONTARGO shall be liable for breach of its obligations in connection with the handling of goods and all associated services, including transshipment-related interim storage, only in the event of fault. In this case, if there is a failure to hand over punctually liability for the proven damage is limited to a maximum of three times the handling fee; in the case of loss, damage or destruction of the goods liability for the proven damage is limited to 8.33 Special Drawing Rights (SDR) per kg of the weight affected, and for indirect damage other than to goods to a maximum of € 125.000,00 per claim.
- In the event of damages, expenditure and/or delays arising from force majeure neither party has a right to claim reimbursement or damages from the other. Force majeure includes especially, but is not limited to, natural events such as storms of 8 Bft or stronger, flooding, lightning, snow, ice, hail; theft – in as far as CONTARGO has taken reasonable measures to prevent it – and other events which it was not within the power of the party concerned to prevent by reasonable means. This ruling also applies to the authorised storage of containers at the terminal concerned.
- 16.3 The extent of the liability of CONTARGO for the loss, damage or destruction of loading units is limited to the fair value, taking the residual value into account.
- 16.4 In the case of wilful intent or negligence equivalent to intent according to § 435 of the German Civil Code (HGB) on the part of CONTARGO and its vicarious agents (such as subcontractors and third party service providers) or injury to life and limb or in cases of mandatory legal liability, the liability limitations in paragraphs 16.2 and 16.3. do not apply.
- 16.5 Otherwise the parties assume that the above limitations of liability correspond to foreseeable damage typical of the contract; if this is not the case the customer shall inform CONTARGO of this in writing. If a different limitation of liability is agreed in this case it must be in writing in order to be valid.
- 16.6 The limitations of liability also apply to claims under tort.
17. **General average:**
- 17.1 The Rheinregeln IVR in the currently valid version apply for the general average.
- 17.2 The general average statement will be opened and processed at the location determined by CONTARGO or by an average adjuster named by CONTARGO. The entire cargo on board of the vessel shall participate in the general average.
- 17.3 The customer shall be liable to CONTARGO as joint and several debtor for all contributions made to the general average by the customer's goods.
- 17.4 CONTARGO is entitled to require a written undertaking for these contributions and also to require a cash contribution. If the requested cash contribution is refused or not paid on time, CONTARGO shall be entitled to exercise a lien on the containers and the cargo.
- 17.5 In each and every case in which the liability of CONTARGO is either excluded or limited CONTARGO is not liable to render contributions due from the customer even if the danger has been caused by the act, neglect or default of CONTARGO's servants or agents. Customers are not entitled to withhold payment of any such contributions or to set off against them any claims for damages or recourse. Right of retention as regards the general average contribution is expressly excluded.
18. **Choice of Law and legal venue**
- 18.1 All contracts concluded with CONTARGO shall be subject to German law.
- 18.2 The exclusive legal venue for all disputes with merchants in the legal sense, legal persons under public law or special funds under public law is Duisburg.
- 18.3 However, CONTARGO shall also be entitled to bring an action against the customer at the latter's place of domicile.
19. **Severability and safeguard clause:**
- 19.1 If any provision of these General Terms and Conditions is held to be invalid or unworkable, or if any provision should become invalid or unworkable, the validity of the remaining provisions of the

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General Terms and Conditions shall not be affected. In place of the invalid or unworkable provision, another valid and workable provision shall replace it whose effects are as close as possible to the economic objectives pursued by the contractual parties with the invalid or unworkable provision. The foregoing provisions shall apply correspondingly in the event of gaps or omissions in the General Terms and Conditions,

- 19.2 These General Terms and Conditions of Business are available in English, Dutch and in German. In case of doubt, only the German version shall apply.