

## **1. Validity**

CB Customs Broker GmbH (hereinafter referred to as CB) shall provide all customs services exclusively based on these General Terms and Conditions and the customs powers of attorney granted by the client.

The contractual conditions agreed below between CB and the client shall apply to all future business relations, even if they are not expressly agreed again. Different terms and conditions of the client or third parties are herewith excluded, even if CB does not separately object to their validity in individual cases.

The *Allgemeine Deutsche Spediteurbedingungen* (hereinafter: *ADSp*) [German Freight Forwarders' Standard Terms and Conditions] as amended shall apply in addition unless these contractual conditions provide for a different regulation. The client is aware of the content of the *ADSp* which form an integral part of the contract.

## **2. Conclusion of the contract**

By signing the customs power of attorney, if applicable together with a written clearance order, also by email, fax or website; the client offers to conclude a contract. Confirmation of the order or execution of customs clearance without changes to the content shall be deemed acceptance of the offer by CB.

## **3. Object of the contract**

CB shall act as direct customs representative according to Art. 18 (1) Alt. 1 Union Customs Code (UCC) i.e. on behalf and for the account of the client. To do so, the client shall grant a corresponding customs power of attorney to CB.

CB shall provide the following customs services:

- lodging customs declarations for the release of goods for free circulation and for placing goods under export procedure.
- lodging of customs declarations for placing goods under the NCTS transit procedure.
- lodging of customs declarations for placing goods under special customs procedures after prior consultation with CB.
- organisation and processing of activities related to the corresponding customs procedure (e.g., performance of administrative controls and inspection of the goods).
- correction of customs declarations.
- processing of or application for and receipt of post-release recoveries, repayment, and remission.
- completion of customs formalities for returning goods.
- destruction of goods under customs control.
- applying for documents (e.g.: proof of origin).

CB shall provide the above-mentioned services in accordance with statutory provisions. If CB is of the opinion that an instruction of the client violates statutory provisions or that proper customs clearance is not possible with the information provided by the client, CB shall have the right to refuse execution of the order.

This shall also apply if CB has already confirmed the order. In such cases, CB shall inform the client immediately about the non-execution and the reasons for this. CB shall await the client's further decision. It is the client's obligation to obtain the required documents and information.

## **4. Assurances of the client**

If the client is not itself the importer or exporter, the client shall give an assurance that it is acting by power of attorney of the importer or exporter and has the right to grant a sub-power of attorney to CB. The client undertakes to submit a corresponding power of attorney to CB.

## **5. Obligations of the client and CB to cooperate in relation to customs operations**

5.1. The client shall provide CB with all data and documents required for customs operations, including the customs tariff numbers to be used, in due time and without being requested to do so. These include in particular import and export authorisations, import licences, valid proof of origin and binding customs tariff information, available or provided at a later date, issued to the client. The client further undertakes to notify CB in due time if binding customs tariff information is no longer valid.

If a customs tariff number is not available at the time of the customs declaration, CB shall have the right but shall not be obliged to determine the customs tariff number independently based on the available information.

5.2 The client is obliged to provide CB upon its request with the relevant information concerning the goods to be customs cleared in due time. This includes in particular all data for customs valuation, requirements for the special treatment of the goods and other information relevant to transport which affect the customs services to be provided by CB.

5.3 The client is obliged to provide documents, which CB requires for presentation to the customs authorities promptly upon request, while meeting the deadlines set by the customs authorities.

5.4 The client guarantees the completeness and accuracy of the information provided in the order and the authenticity of all documents. CB is not obliged to check the information and documents for completeness, accuracy, and authenticity.

5.5 CB shall inform the client if there are doubts as to whether the information and documents are accurate or whether the information and documents are sufficient for customs treatment. CB shall await the client's further decision.

5.6 The client shall check and confirm that the import is not subject to any existing prohibitions and restrictions.

5.7 The client shall check and confirm that the export is not subject to any foreign trade and other prohibitions, or restrictions must be observed (e.g., in the form of reservations of authorisation). The client shall confirm in particular here that the export is made in accordance with embargo and other export control provisions of EU law, the export is in accordance with the requirements of the German *Außenwirtschaftsgesetz* [Foreign Trade and Payments Act] and the *Außenwirtschaftsverordnung* [Foreign Trade and Payments Regulation] and there are no further legal export restrictions (e.g., pharmaceutical legislation).

Should CB establish that the import or export is subject to prohibitions or restrictions, CB shall inform the client of this immediately. CB shall await the client's further decision.

CB reserves the right to check whether goods or persons involved in the delivery process are on a sanctions list.

5.8 The client is obliged to check the conditions for customs clearance at a reduced customs duty rate. CB shall not have to inform the client about this. The obligation to be informed about any duty exemption or relief and documents required in this respect is solely the responsibility of the client.

5.9 A lodged customs declaration shall be corrected after prior written consultation with the client.

5.10 If delays in customs operations are expected or have occurred, CB shall notify the client in writing of the reasons and anticipated duration of the delay. CB shall in particular notify the client immediately if CB is prevented from performing in due time due to cooperation or input to be provided by the client.

5.11 The client undertakes to notify CB of any customs authorisations including authorisation numbers and their scope and any requirements. The client shall provide CB with a copy of the authorisation. Should changes in customs authorisations occur, the client must notify CB of this immediately.

5.12 CB undertakes to send the client copies of all customs, commercial and transport documents after execution of the order by courier. Formal and informal proofs of origin and certificates of origin (official documents) shall be sent to the client in the original.

5.13 CB shall forward documents from customs or other national authorities in the form of notices, enquiries, or other letters to the client. Such documents include in particular import duty notices and exit notices

following completion of an export procedure. The client is obliged to check statutory and official deadlines and to monitor compliance with them.

5.14 The client undertakes to keep all customs, commercial and transport documents, such as commercial invoices, if applicable previous proforma invoices, freight invoices, licence invoices, tax assessment notices, tax amendment notices, in a proper manner within the time limits laid down by law but at least ten years. The client shall also archive the EDIFACT messages exchanged with the customs administration in relation to export operations.

Should authorities make a claim against CB in relation to customs operations, the client undertakes to provide CB upon request with requested documents or information immediately and in full.

## **6. Additional obligations of the client to cooperate in transit procedure**

The client shall bear responsibility for the proper presentation of goods placed under customs transit procedure in due time. The client shall further ensure that the following instructions are sent to all further hauliers involved:

- The client shall ensure that the goods are handed over and taken over only with the corresponding NCTS control printout (Transit Accompanying Document) and any customs seals (package or vehicle seals) listed on the transit document are properly affixed. The Transit Accompanying Document must accompany the goods at all times.
- It must be noted on the delivery note, which shall be handed over to the responsible carrier by the client, that the goods are duty unpaid. The MRN (Movement Reference Number) of the Transit Accompanying Document must also be indicated on the delivery note.
- Goods must be carried over the itinerary and border crossing points specified in the Transit Accompanying Document. A change to the itinerary shall be permitted only by express consent of the principal CB.
- The carrier shall be obliged, where the consignment is transferred to a further haulier during transport, to hand over all required documents and to notify the haulier of the obligations under the transit procedure.
- Transhipment of goods under customs control to another vehicle and unloading may only take place under customs supervision.
- If the consignment or the customs seal is damaged, the nearest customs office must be notified, and the case must be reported to the nearest police authority. The client is obliged to inform CB immediately of any irregularity, which differs from the normal transport process or prevents presentation of the goods to the specified customs office of destination, by e-mail notification to the responsible person in charge.

Notwithstanding the obligations under these contractual conditions, the client shall be liable to CB for damages which arise from failure to comply with these obligations to notify.

- The client shall bear the costs and tax disadvantages caused by failure to present the goods or carry out customs clearance as a result of loss, theft, fraud or the identification of aliud goods in the transit procedure or as a result of other irregularities based on a violation of the client's obligations to cooperate laid down in this Article 6.
- CB shall not guarantee any permanent availability of a flat-rate transit document guarantee for conducting NCTS transit procedures.

## **7. Fiscal representation**

CB acts as fiscal representative pursuant to Section 22a et seq. UStG [German Value Added Tax Act]. For this purpose, the client shall grant CB a corresponding power of attorney for fiscal representation.

7.1 The client undertakes to send CB in due time all necessary documents and information required to carry out fiscal representation.

7.2 The client shall be liable for the completeness and accuracy of all information and documents presented which are required to carry out fiscal representation. Should CB incur financial or material damage in the context of CB's activity as fiscal representative, which was caused by the client due to insufficient, inaccurate, or incomplete information provided, or documents presented, the client undertakes to make good all damage to CB.

## **8. Transport and freight handling services**

Freight handling in Kelsterbach and Frankfurt and any transport, screening or warehousing services offered by CB shall be carried out based on the *Allgemeine Deutsche Spediteurbedingungen (ADSp)* as amended. These are basic contractual conditions for each order within the meaning of this Article ~~78~~.

## **9. Remuneration and payment terms**

9.1 CB shall provide the agreed services pursuant to the agreed service prices in euros, subject to value added tax at the statutory rate.

CB shall invoice the orders and the related expenses in principle per order. After consultation with the client, invoicing can also be carried out on a weekly or monthly basis as a collective invoice. For the first 5 orders of a client (new customer) with import duties, payment shall apply in advance. Afterwards, at the request of the client (which is now regarded as an existing customer) and after a positive creditworthiness check by CB, invoicing can also take place via single invoices or collective invoices on a weekly or a monthly basis. If the import duties exceed € 100,000 per order, contrary to the above provision, payment in advance will be required from existing clients before the order is processed.

9.2 Invoices shall be due for payment within 10 working days. If CB's deferment accounts for customs duties and/or import VAT are used, the client undertakes to settle the disbursed amount and to pay an advancement fee of 2% on capital disbursements. Where import duty is paid within 5 working days, the advancement fee shall not apply.

9.3 Capital disbursement fee: If CB makes its deferral account available, an additional capital disbursement fee of 1% of the disbursement amount will be charged (capital provision fee). This fee is not deductible.

Handling fees/handling charges/invoices from handling agents will be charged by CB with a processing surcharge of 15%.

9.4 When is an invoice considered acceptable? Objections or complaints must be made in writing to the contact address stated on the invoice within 10 days of the invoice being issued. After expiry of this period, the invoice shall be deemed to be factually and arithmetically correct by the client.

9.5 Objections: In the event of an objection to customs by CB, the invoice remains valid and is due for payment and a separate correction shall be made following the subsequent collection/reimbursement by customs.

9.6 The client undertakes further to pay other expenses to CB. Other expenses include:

- Financial penalties and fines imposed on CB by the financial or judicial authorities. This shall apply if such expenses relate to information which the client has provided to CB.
- Fees such as standing and waiting times, warehouse charges etc. if the fees are based on the client's failure to fulfil an obligation.
- Costs of legal defence to defend claims against CB which relate to the service provided for the client.
- If CB has agreed to charge the consignee for the agreed services and all fees, charges, interest, and expenses incurred, CB remains entitled to demand these from the client instead.

9.6 Reminders/ interest on late payments: If outstanding debts are not paid within the above-mentioned period or within the period agreed in the individual contract, reminder letters will be sent. For the 1st reminder letter, we charge 0€. For the 2nd reminder letter 20€. For the 3rd reminder letter 40€.

Interest on late payments is due from the 2nd reminder letter at a rate of nine percentage points above the respective prime lending rate (§ 288 para. 2 BGB). After the 3rd reminder letter and further 8 days for payment, we will automatically hand over the outstanding claim to a collection agency.

## **10. Securities**

CB shall have the right to perform orders or provide outstanding services only against advance payment or the provision of security if CB is aware of circumstances which reduce the client's creditworthiness or jeopardise the payment of outstanding claims.

## **11. Right of refusal**

CB reserves the right to refuse the services offered for good cause, in the case of:

- missing information / documents which are necessary for proper customs clearance.
- default in payment by the client.
- doubt as to the client's creditworthiness.

## **12. Vicarious agents**

The client authorises CB to use vicarious agents that undertake the services within the scope of the order for CB.

## **13. Right of retention**

Until full payment of the service, the charges and all related fees, CB shall be entitled, notwithstanding Article 20 of the *ADSp 2016* or a corresponding provision in an updated version of the *ADSp*, to a right of retention in respect of all documents which CB has received from the client or third parties during customs clearance. This right shall remain in force until the contractual relationship is executed in full.

## **14. Lien**

The client agrees that CB is entitled to a lien over the consignments to be customs cleared. The lien serves to secure the claims to which CB is entitled vis-à-vis the client.

## **15. Liability of the client**

The client assumes full liability vis-à-vis CB for the completeness and accuracy of all information required for CB to perform the orders and the timely submission of the necessary documents. The client shall bear all costs and tax disadvantages caused by inaccurate, incomplete, or late information or by failure to submit the necessary documents, even if these are not stated in Article 4 or 5 of these General T&Cs.

The client shall indemnify CB internally against claims of third parties, including customs and financial authorities, in relation to the service for the client.

## **16. Obligations of CB to check in relation to other legal provisions**

16.1 CB is not obliged to check for any infringement of industrial property rights.

If CB has reasonable grounds to presume that an order is contrary to accepted principles of morality or violates statutory prohibitions, CB shall have no obligation to execute the order. In the event of force majeure, the client shall have no entitlement to execution of the order

by CB. Provisions on liability pursuant to Article 18 of these General T&Cs shall remain unaffected by this.

## **17. Data protection**

CB has the right to process personal data for the purpose of fulfilling the service to be provided and with due regard to applicable data protection requirements.

CB shall ensure that appropriate technical and organisational measures relating to data protection are implemented. CB shall further have the right to check data sent by the client in order to counteract any actions which are unlawful or in breach of the contract. This shall apply in particular where manipulation is suspected in relation to the customs declarations or the entire customs operation.

Further and more detailed information on the processing of personal data is included in CB's privacy policy. This is available to the public on CB's website.

## **18. Liability of CB**

18.1 Unless otherwise stipulated in these General Terms and Conditions, CB shall be liable according to statutory provisions.

18.2 If there are no mandatory statutory provisions to the contrary, CB shall not be liable for damages incurred by the client or the client's employees unless they were caused by grossly negligent or intentional conduct of CB, a legal representative or vicarious agent of CB.

18.3 Any liability for damages shall be limited to foreseeable damages which typically occur unless intentional violation of the contract is attributed to CB.

18.4 Liability for injury to life, limb or health shall remain unaffected by the above exclusions of liability and exemptions.

18.5 Liability for the violation of obligations, the fulfilment of which makes the due performance of the contract possible in the first place and where the client may rely on compliance with such obligations, shall furthermore remain unaffected.

18.6 Unless otherwise stipulated above, any further liability for damages than provided for in Article 18 of these contractual conditions shall be excluded without regard for the legal nature of the asserted claim. This shall apply in particular to damage claims due to other failure to fulfil an obligation or due to claims in tort for compensation in respect of property damages pursuant to Section 823 *BGB* [German Civil Code].

18.7 Where liability for damages vis-à-vis CB is excluded or limited, this shall also apply in respect of personal liability for damages of salaried staff, workers, employees, representatives, and vicarious agents of CB.

18.8 If CB provides the client with customs information or acts in an advisory capacity and such activities are not part of the contractually agreed service, this shall be free of charge and to the exclusion of liability.

#### **19. Limitation**

The period of limitation for claims made against CB, which are not based on intentional or grossly negligent conduct or injury to life, limb or health or violation of obligations material to the contract, is one year.

#### **20. Confidentiality**

20.1 The parties undertake to keep confidential information of the other party confidential for an indefinite period, in particular not to disclose it to third parties, to protect it against unauthorised access and to use it exclusively within the framework of cooperation. The right of ordinary termination of this obligation of confidentiality is excluded. Confidential information is:

Conclusion and content of the contract; information developed or generated within the framework of cooperation; all information or documents which is (are) disclosed to one party by the other party or through the other party within the framework of cooperation as well as the knowledge obtained within the framework of cooperation concerning operational and organisational processes of the parties.

20.2 This obligation shall not apply if and in so far as confidential information was already known to the other party at the time of concluding the contract or becomes known thereafter lawfully through a third party i.e. without this violating a confidentiality agreement, statutory provision or official order; confidential information is publicly known at the time of concluding the contract or becomes publicly known thereafter without culpable violation of the above obligation; confidential information was developed or ascertained independently by the other party; disclosure is required within the framework of cooperation or to safeguard the legal interests of the party and this is made in accordance with the above-mentioned obligation to auxiliary persons who are bound to confidentiality in writing or to advisors who are required to observe professional secrecy; one party has released the other party from the obligation or a mandatory disclosure obligation exists by virtue of statutory provisions, other applicable laws and regulations or a judicial or administrative decision. In such case, the parties shall inform each other of this immediately in writing or text form and shall mutually determine the scope of disclosure within the limits of what is legally admissible.

#### **21. Final provisions**

22.1 If individual provisions of these contractual conditions are or become legally invalid or null and void in whole or in part, this shall not affect the validity of the remaining provisions.

22.2 Place of performance for all services to be provided by CB is Kelsterbach.

22.3 German law shall apply including the directly applicable customs legislation of the European Union.

22.4 If the client is a trader, legal entity under public law or special fund under public law, any disputes shall be settled before a competent Frankfurt/Main court of law.

22.5 Exclusive place of jurisdiction for claims against CB is Frankfurt/Main.