

# Terms and Conditions – Transport Order

## **1) Basic Agreements**

a) This transport is subject to the terms and conditions of the CMR. You are always liable towards us as for own-name transactions. The terms of Article 34 CMR are not valid. No terms that contradict these conditions shall be applied. In particular, you cannot appeal to the validity of the AÖSp (General Austrian Forwarders' Terms & Conditions) or other conditions (e.g. order confirmations etc.). Any deviating counter-confirmations do not constitute a part of this Contract and are invalid.

b) The consumption of alcohol and/or drugs is strictly forbidden during execution of this Contract.

c) The vehicle used must be in good technical condition, must use modern technology and, especially, must be serviced and inspected regularly on a preventative basis. Only use vehicles, trailers, semitrailers, tanks, swap bodies/containers, cranes, technical equipment and other equipment that are in good working order and that are suitable for the job in question. The cargo area must be cleaned to ensure the cargo cannot be contaminated.

d) The use of sub-carriers is only permitted with our prior written authorisation. If we have authorised the use of sub-carriers as an exception, you must check the same thoroughly in advance and you must provide proof that these carriers have previously executed several contracts (at least 5) for you. The use of sub-contractors with whom you have no prior business relationship, particularly via freight exchanges, is prohibited without exception.

e) We take for granted that you have obtained the permits and authorisations required for the transport. This also applies to the regulations of all countries in which you shall travel in relation to fulfilment of this Contract.

f) You guarantee and are liable for ensuring that all drivers you use are employed in accordance with the laws of the country in which the vehicle is licensed. This applies especially to foreign drivers.

g) If you transport hazardous substances for us, you are obligated to appoint a qualified hazardous goods officer in your company.

h) You must ensure that you are in compliance with all regulations to combat illegal employment in the road transport sector (e.g. GüKBillBG –German Act Against Illegal Employment in Commercial Road Haulage).

i) Customer protection is considered to be agreed; on receipt or placement of orders or other contact with customers of Berger and all companies that are involved in the Transport Contract in some way, all claims against Berger on the part of the client shall be forfeit. Moreover, it is agreed that infringement of this competition and customer safeguard clause shall incur a contractual penalty, regardless of culpability, in the amount of €5,000 per transport regardless of the actual level of damages. Any claim for damages beyond this is not affected. The right of mitigation by court is excluded.

j) This Transport Contract is binding if no objection is made within one hour of receipt.

k) This Contract is subject to Austrian law to the exclusion of the conditions of IPR. The competent court of law for A-6300 Wörgl is agreed as the place of jurisdiction for all disputes between the parties arising from this Contract, including disputes about the effective existence of this Contract.

l) We are entitled to offset the claims with payable counter-claims regardless of legal basis.

m) Compliance with reporting obligations and payment of the minimum wage are mandatory in several EU states. In some instances, the legislation provides for strict entrepreneurial liability and criminal sanctions in the event of underpayment. As proof of compliance with all applicable regulations in terms of payment of the minimum wage and compliance with the associated reporting/documentation obligations, we shall require return of the "Agreement Guaranteeing Compliance with the Provisions of the Minimum Wage Act" signed by an authorised officer of the firm, within 3 days after acceptance of this order. The clarification therein shall also apply to future transports.

n) You guarantee compliance with all national and international regulations and laws.

o) The company policy and the code of conduct of Berger Logistik GmbH, available in the current valid version on [www.berger-logistik.com](http://www.berger-logistik.com), are binding if it comes to acceptance of the transport order.

p) As a contractor, you undertake to carry personal protective equipment (PPE minimum standard: safety shoes and body-covering clothing, safety vest or warning clothing, work gloves, ear protection, safety goggles and safety helmet) in the vehicle per driver. The general instruction to your staff for the obligatory application of the PPE according safety guidelines, which are issued when loading into the company premises for loading and unloading and the compliance with signposted and issued safety instructions at the loading and unloading point.

## **2) Acceptance and Delivery of Cargo**

a) The vehicle you supply for the commissioned transport must, unless otherwise agreed in this Transport Contract, correspond to the requirements for a vehicle covered by the CMR. Damage to tarpaulins and superstructures, condensation in the cargo area, unswept cargo areas and not odourless cargo areas may lead to refusal of the vehicle in question at the loading point and to charges for costs and compensation.

b) In the event of different products being loaded in one cargo unit, these must be clearly separated and care must be taken to prevent crosscontamination caused by incompatible products.

c) The driver must check and confirm the number of packages to be transported. The Confirmation of Receipt to be signed by the driver at the relevant loading point is the proof hereof.

d) If the driver does not note any well-founded reservations on the Confirmation of Receipt, then the accepted cargo is deemed to be complete, to have been packed and loaded safely, and to have been accepted in a damage-free state.

e) The loading and unloading dates specified above are fixed and are hereby agreed. You will be invoiced for any incurred costs in the event of noncompliance with the handover or unloading date, or non-presentation of the agreed mode of transport. You must present yourself with the vehicle at the loading area on the agreed loading date. In the event of non-presentation, you will owe a contractual penalty (regardless of culpability) in the amount of 80 % of the freightage. This does not affect our right to assert a claim for higher damages.

If we incur costs or expenditure because you present a vehicle that does not correspond to requirements, we shall pass these costs on to you.

f) Additional cargo or transshipments on full loads are absolutely forbidden without our explicit authorisation.

g) 24 hours of demurrage-free time is agreed for both loading and unloading.

h) You are obligated to execute loading and unloading of the cargo. You are liable for damages that result from circumstances during loading and unloading. You must take care to ensure that the cargo is properly secured and complies with the applicable legal regulations. You must instruct the driver to check and ensure the quantity, quality, and suitability for transport of the packaging, loading and stowage on acceptance and delivery, even if the cargo has been loaded by the consignor. Loading must be stopped immediately if the quantity, quality or handover temperature of the cargo deviate from the details we specified, or if the packaging or stowage is defective, and may only continue after consultation with us and on our explicit instructions. Moreover, you must check that the accompanying paperwork is complete and corresponds to the cargo in question. You must inform us immediately of any inconsistencies and record reservations on the bills of lading.

### **3) Transportation and transport surveillance**

a) You must inform us immediately in the event of any delays and/or impediments.

b) On acceptance of this Contract and of the cargo, you shall ensure that the loaded vehicles, trailers and/or semi-trailers are properly and continuously guarded in the event of any stops during the time between acceptance of the cargo for transport and delivery of the same. You are obligated to ensure that loaded vehicles and transport units are properly locked in the event of any (even brief) stops (locked rear doors on trailers. The vehicles and transport units to be used must also be fitted with 2 independent and well-functioning anti-theft devices that use the latest technology, and these must be demonstrably activated during any stops, however brief. Curtainsiders must be equipped with cut-resistant tarpaulin.

It is absolutely forbidden to park loaded trailers/semi-trailers on their own (without the towing vehicle).

c) You as a contractor have an effective procedure for withdrawal and recall, which is tested once a year.

d) If there is any confusion because of contrary information at the loading area, you must inform us before transport begins.

e) You must contact the relevant authorities and us as the client immediately in the event of an incident that impacts product safety and quality.

### **4) CMR Insurance/Event of Damage or Loss**

a) You guarantee that you have procured sufficient freight forwarders liability insurance, which is of a type that is standard in Austria. This insurance policy must also cover liability for damages during loading and unloading procedures in accordance with Article 29 CMR. Moreover, you guarantee that you have paid the necessary premiums.

b) You are obligated to report every event of damage or loss to us immediately and to inform your liability insurance provider. In the event of damage or loss exceeding €2,000.00, you must immediately appoint a specialist or insurance adjuster to assess the damage or loss.

## **5) Loading Equipment**

a) Loading equipment exchange is hereby agreed. You are obligated to carry a sufficient quantity of proper and exchangeable loading equipment and to exchange this at the time of loading. The contractor bears the risk of pallet exchange. Remuneration for this risk is already included in the cargo price.

b) You must send us a corresponding loading equipment note with the freight note for every loading equipment exchange. If we do not receive such loading equipment notes, we will be forced to assume that you have not met your obligation.

c) We must be informed immediately if you do not get back any loading equipment at the unloading area, so that we can clarify the situation while your vehicle is still in the unloading area. You are responsible for the non-exchanged loading equipment if you do not inform us or do not do so promptly.

d) You must return loading equipment to the consignor within 4 weeks if, against our instructions, you did not exchange said equipment with the consignor. We charge 20.00 euros per unit for euro pallets that are not returned on time, additional we charge a handling fee in amount of 15.00 euros.

e) Düsseldorf pallets are not for exchange, but you must document the pallet movement as for euro pallets and send us the corresponding loading equipment notes. You must return Düsseldorf pallets to the consignor within 4 weeks if, against our instructions, you did not exchange said pallets with the consignor! We charge 8 euros per unit for Düsseldorf pallets that are not returned on time, additional we charge a handling fee in amount of 15.00 euros.

## **6) Freight Rates and Payment Agreement**

Payment is due 30 days after receipt of invoice and submission of original copies of all bills of lading receipts, delivery notes, confirmed loading equipment notes and other documents stipulated in the Transport Contract.

## **7) Special Agreement for Food Transports, Refrigerated Transports**

a) If your company holds a valid IFS certificate, you must execute this transport in accordance with your certification.

b) If your company does not hold a valid IFS certificate, you must comply with the following minimum standards for the transportation of food:

1)) The transport container and the vehicle must be clean and in working order. A cleaning certificate from a certified cleaning company must be obtained for tankers before loading.

2)) You must ensure that drivers have a clean appearance and good personal hygiene. Drivers must wash their hands or wear clean gloves before handling unpackaged products.

3)) Extra attention must be paid to avoid contamination due to emissions, exhaust gases, odours, foreign substances, packaging material, etc.

4)) Special requirements are mandatory and must be documented. This relates, e.g. to a lack of specific materials and ingredients (e.g. BVO, allergens, pork).

5)) For temperature-controlled transports you must ensure that you comply with the temperatures we have stipulated and that you measure and record them using suitable measuring and monitoring devices. The vehicle must be fitted with a working temperature recorder. Before acceptance of the goods, the contractor must check whether the goods to be

accepted are sufficiently pre-cooled. You must ensure that drivers make handwritten records of the temperatures checks they perform. You must inform us immediately of any deviations and failures of the refrigeration. You must send us the corresponding temperature records on request as part of invoicing in addition to the documents mentioned at point 6). The contractor must keep recording protocols for at least 3.5 years. All measuring equipment must be checked at specific intervals and in accordance with defined approved standards/methods and adjusted or calibrated as necessary. The results of the inspection, adjustment and calibration must be forwarded to us on request.

6)) All silo vehicles must be cleaned at an EFTCO-certified tanker cleaning station before loading. You must send us the cleaning document (ECD) as part of invoicing in addition to the documents mentioned at point 6).

c) If there is any confusion because of contrary information at the loading area, you must inform us before transport begins.

d) You must contact the relevant authorities and us as the client immediately in the event of an incident that impacts product safety and quality.

### **8) Additional terms depending on the mode of transport**

a) The preceding terms shall also apply analogously to all other transports (not just to HGV transports), regardless of the type of transport. The relevant clause shall be interpreted where applicable, so that it too shall be applied to the specific transport with the actual mode of transport used. The following regulations shall also apply depending on the type of transport:

b) Rail transportation and handling: The mandatory provisions of the CIM shall apply and the subsidiary provisions of the Austrian Commercial Code [Unternehmensgesetzbuch].

c) Air freight: The provisions of the Montreal Convention shall apply insofar as the scope of this Convention is fulfilled (Art. 1 MC). The provisions of the WA shall otherwise apply.

d) Inland waterway transport: The terms of the CMNI shall apply, insofar as the scope of this Convention is fulfilled. The Austrian Inland Waterways Shipping Act [Binnenschiffahrtsgesetz] shall otherwise apply.

e) Sea freight: All provisions of the United Nations Convention on the Carriage of Goods by Sea of 1978 shall apply (Hamburg Rules, HR). This Convention shall also apply even if the scope has not been fulfilled (Art. 2 HR). It is explicitly noted that Art. 23 HR shall also apply.

f) Multimodal transport: If the location of the occurrence of damage is known, liability shall be governed by the liability order applicable to the mode of transport in question (see above). If the location of the occurrence of damage is unknown, the carrier shall be liable pursuant to the liability legislation most advantageous to the client. This shall also apply to any periods of limitation and exclusion.

### **9) Complaints, statements of facts**

The contractor shall have sole responsibility for ensuring that a statement of facts (e.g. in rail freight) is obtained and a complaint is made (e.g. in air freight, sea freight and road freight).

### **10) Offsetting, right of lien, retention**

It is explicitly stipulated that Berger Logistik shall be entitled to set off claims made by the contractor with counterclaims (regardless of the legal basis), including compensation claims. It is explicitly stipulated that the contractor shall acquire no right of lien or retention as the result of fulfilling this contract to transport surrendered goods/containers etc.; all the contractor's rights of lien and retention in accordance with applicable legal provisions are hereby explicitly waived.

### **11) Demurrage/storage fees**

No demurrage or storage fees may be claimed (regardless of the nature of the claim, especially demurrage, detention costs etc.) for downtime/storage of modes of transport etc., unless Berger Logistik behaves recklessly in relation to the incursion of such damages.

### **12) General terms and conditions**

Any terms and conditions of the contractual parties, including any carrier conditions (e.g. General Austrian Freight Forwarders Conditions, AÖSp), transport conditions, B/L conditions etc. shall not apply to this agreement. The terms of the Transport Contract shall apply exclusively.

### **13) Liability**

The parties hereby agree that without exception the contractor cannot invoke any liability relief in the general terms and conditions, carrier conditions, B/L conditions etc., even if Berger Logistik has not explicitly refuted a reference to terms and conditions in business correspondence, bills of lading, the contractor's order confirmations. The terms of this Transport Contract shall apply exclusively. The contractor shall be liable for the culpability of all its associated staff and all other people it employs directly or indirectly in the course of executing this Contract. All mandatory liability restrictions shall apply (including those in the CIM, CMR; MC, HR; WA etc.), insofar as this is permitted by law, but not in the event of gross negligence on the part of the contractor. Berger Logistik shall accept no liability for damages, regardless of the legal basis, especially because of fault when the contract is concluded, delay, missing and/or false instructions, idle periods, consequential damages, because of unauthorized handling etc. Providing and insofar as Berger Logistik should nevertheless be liable, this liability shall be restricted to foreseeable and typically occurring damage. The preceding liability restriction in favour of Berger Logistik shall apply, insofar as this is permitted by law, except in the event of willful intent or willful negligence on the part of Berger Logistik.

### **14) Liability for agents**

The contractor shall be liable for executing transports as the carrier, even in the event that the contractor does not have its own fleet of transportation vehicles. This shall also apply if the contractor should be a declared "agent".