

**These General Terms and Conditions (T&C) of Fluckinger Transport GmbH (Fluckinger Transport GmbH = contractor) as well as the General Austrian Forwarders' Terms and Conditions (AÖSp) are available at [www.fluckinger.com](http://www.fluckinger.com)**

1. These General Terms and Conditions (T&C) shall apply to any and all services which Fluckinger Transport GmbH provides and, respectively, procures as the commissioned forwarder or carrier (hereinafter referred to as "Fluckinger Transport GmbH") for its contracting partner (hereinafter referred to as the "principal"). The principal agrees that these T&C apply to any and all future transactions, independent of another express reference, especially in case of oral, telephone or telex orders. Different terms and conditions of the principal which are not expressly acknowledged by Fluckinger Transport GmbH (in writing) shall not be valid, even if they are not expressly contradicted. The principal may in any case not refer to his own general terms and conditions (T&C), even if they were included in orders. Terms and conditions of the principal contradicting these "T&C of Fluckinger Transport GmbH" and the General Austrian Forwarders' Terms and Conditions (AÖSp) shall not be applicable. The principal furthermore agrees that these T&C apply to any and all future transactions, independent of another express reference, especially in case of oral, telephone or telex orders.

2. The agreement of these T&C does not affect the validity of conventions in their respective valid version insofar as their provisions mandatorily stipulate a different regulation, such as the CMR.

3. In addition, the General Austrian Forwarders' Terms and Conditions (AÖSp), as amended from time to time, published in the Official Journal of Vienna (Amtsblatt zur Wiener Zeitung) 1947/184, last amended by the Official Journal of Vienna (Amtsblatt zur Wiener Zeitung) 1993/68 (available on the internet in English and German at <http://portal.wko.at> as well as at [www.fluckinger.com](http://www.fluckinger.com)) shall apply. The principal declares to be a customer exempted from forwarding insurance (Verbotsskunde) pursuant to sec. 39 ff of the General Austrian Forwarders' Terms and Conditions (AÖSp). The General Austrian Forwarders' Terms and Conditions (AÖSp) shall also apply with respect to foreign principals.

4. The principal shall in any case not be entitled to reduce cargo or to set-off claims of Fluckinger Transport GmbH against counterclaims. An exclusion of set-off and retention shall apply in favour of Fluckinger Transport GmbH without exception.

5. If losses or damages of the goods are not visible on the outside, the sender or, respectively, the principal shall be obliged to provide evidence that the loss or the damage was caused during the period of liability. Damages visible on the outside shall be asserted vis-à-vis Fluckinger Transport GmbH in writing without delay upon delivery, damages not visible on the outside shall, however, be asserted vis-à-vis Fluckinger Transport GmbH in writing at the latest within seven days.

6. Fluckinger Transport GmbH shall have a right of lien and a right of retention concerning the goods or other items in its power of disposition as regards any and all due and undue claims to which it is entitled under the present contract vis-à-vis the principal. If the principal does not expressly announce the proprietor of the goods in the consignment note when the order is placed, Fluckinger Transport GmbH can assume that the cargo is the property of the principal. The principal shall be entitled to forbid the exercise of the right of lien if Fluckinger Transport GmbH grants an equivalent security (e.g. bank guarantee).

7. An exchange of means of loading is only insofar possible and acceptable and shall only be realized if the order has expressly been placed in writing and a surcharge of 10 % of the freight has been paid. Fluckinger Transport GmbH does not assume any obligation to return pallets, means of loading and empty casks and neither bears the so-called risk of exchange in any form whatsoever. If – for any reasons whatsoever – an exchange of means of loading is not possible at the sender's or the recipient's, the principal is not entitled to any claims against Fluckinger Transport GmbH, except in the case of intentional acts/omissions of Fluckinger Transport GmbH. The liability of Fluckinger Transport GmbH for "any differences of means of loading" is thus fully excluded.

8. Fluckinger Transport GmbH shall be entitled to charge demurrage amounting to € 400.00 per day (at least € 80.00 per hour) to the account of the principal; Fluckinger Transport GmbH shall also be entitled to demurrage if no fault lies with the principal. An entitlement to demurrage is substantiated if a waiting/idle time of 1.5 hours is exceeded in total.

9. If the transport order is cancelled, Fluckinger Transport GmbH shall be entitled to a contractual penalty amounting to 80 % of the freight price regardless of culpability. Claims for damages exceeding the aforementioned shall not be affected thereby.

10. Fluckinger Transport GmbH shall be entitled to use subcarriers. Nonetheless, Fluckinger Transport GmbH shall apply the due diligence of a prudent forwarder or, respectively, carrier when selecting the company it commissions.

11. The principal shall be obliged to ensure on his own responsibility that the cargo is loaded and unloaded. Damages which are due to circumstances during loading or unloading shall exclusively be attributable to the liability sphere of the principal. If loading and unloading are actually carried out by an assistant of Fluckinger Transport GmbH in the individual case, he shall be considered a vicarious agent of the principal. The principal shall in any case without exception assume the responsibility for loading and unloading. The principal shall ensure that the cargo is duly secured and conforms to the legal provisions. The obligation to secure the cargo shall exclusively be assumed by the principal, even if the goods were loaded by the truck driver. The principal assures that the packaging is suitable for transport.

12. A value increase of the maximum amounts pursuant to art. 24 of the CMR or a special interest in delivery pursuant to art. 26 of the CMR cannot be agreed upon (without exception).

13. The principal has the duty to warn as regards particular characteristics of the cargo. The principal shall hence inter alia announce separately if the value of the goods exceeds € 5.00 per kilogram, if they are dangerous goods, waste, if there is a special risk of theft related to the cargo. In addition, the principal shall inform Fluckinger Transport GmbH on a particular sensitivity of the goods and the proper handling (e.g. transport temperature, etc.).

**14.** The vehicles used by Fluckinger Transport GmbH shall generally be provided together with a truck driver. If two drivers were agreed upon and a freight surcharge was paid, Fluckinger Transport GmbH provides two drivers with the risk of theft being reduced as a result. The driving breaks stipulated by law can as a rule be taken in "conventional parking areas".

**15.** Specified loading and unloading dates shall not be considered delivery time limits pursuant to art. 19 of the CMR but only approximate guidelines/standard delivery times. Entitlements due to the exceedance of performance periods (of any kind whatsoever) shall expire if the principal does not notify Fluckinger Transport GmbH of them within twenty-one days after performance of service in writing. A liability of Fluckinger Transport GmbH for exceedances of loading dates/for non-compliance with "loading buffers" shall generally be excluded unless Fluckinger Transport GmbH missed these time limits due to "extreme gross negligence".

**16.** For reasons of precaution, we refer to the following extracts of the liability restrictions of the General Austrian Forwarders' Terms and Conditions (AÖSp).

*Sec. 54. a) To the extent that the forwarder (here: Fluckinger Transport GmbH) is actually liable, its liability is limited to:*

*cl. 2: € 1.09 per kg of gross weight of each damaged or lost package, however not to exceed € 1,090.09 per event of damage.*

*cl. 3: a maximum of € 2.180,18 per event of damage for any other damages.*

*b) Should the stated value of the goods be lower than the amounts set out above, the stated value forms the basis for assessment.*

*c) Should the relevant value in the sense of lit. b) be higher than the common market value or, respectively, in its absence, higher than the common value which is applicable to goods of the same type and character at the time and place they are handed over to the forwarder, said common market value or, respectively, other common value replaces the stated value.*

*d) In case of discrepant values, the lower value applies in each case.*

**17.** The entitlement to payment of freight is substantiated upon delivery of the cargo. In case of a default in payment, Fluckinger Transport GmbH shall be entitled to interests amounting to 1.5 % per month pursuant to sec. 29 of the General Austrian Forwarders' Terms and Conditions (AÖSp). Besides, the principal shall fully bear any and all incurred reminder fees as well as the costs related to the collection of outstanding debts.

**18.** The contractual relationship shall be governed by Austrian law under exclusion of the provisions of the Austrian International Private Law (IPR). The court having substantive jurisdiction for A-6020 Innsbruck in the individual case shall be competent for any and all disputes arising between the conflicting parties in connection with this agreement, including disputes as regards the validity of this agreement as well as disputes in connection with individual agreements entered into in fulfilling this agreement.

as of July 2015

Fluckinger Transport GmbH, 6020 Innsbruck  
ATU