

Loading Conditions for the Framework Contract for the Carriage of Goods

1. Relevant provisions

It is expressly stipulated that the CMR shall be applicable to any and all transports, even if the scope of application of art. 1 CMR or of sec. 439a of the Austrian Commercial Code (UGB, Unternehmensgesetzbuch) is not fulfilled. The provisions of the German Commercial Code (HGB, Handelsgesetzbuch) on freight business shall govern all transports carried out within Germany. In case of transports carried out within Germany, the increased liability of 40 special drawing rights per kilogram of the damaged or lost goods shall be deemed as agreed upon. The contractor may in any case not refer to his own general terms and conditions (T&C), even if they were included in order confirmations. Any conditions of the contractor opposing these loading conditions shall not be applicable. The contractor shall in particular not be allowed to refer to the applicability of the General Austrian Forwarders' Terms and Conditions (AÖSp, Allgemeine Österreichische Spediteurbedingungen) or any other terms and conditions. The contractor agrees that these T&C apply to any and all future transactions, independent of another express reference and independent of whether a reconfirmation was given, especially in case of oral, telephone or telex orders.

2. Cancellation, non-acceptance of cargo

If you do not accept these order conditions, this order shall be rejected without charges within 1 hour by writing the note "CANCELLATION" ("STORNO") across each page of the loading order. Please send this cancellation back to the email address/fax number indicated in the order of your contact person at Fluckinger Transport GmbH. In case of a cancellation after 1 hour has expired, in case that the transported goods or, respectively, the transport order are/is not accepted by the contractor, Fluckinger Transport GmbH shall be entitled to buy a replacement vehicle and charge to the account of the contractor a contractual penalty amounting to the freight payable for the replacement vehicle. A claim for damages exceeding the aforementioned shall not be affected thereby.

A flat-rate processing fee (regardless of culpability) of € 100.00 shall in any case be invoiced for expenses in connection with the aforementioned circumstances.

3. Demurrage

The assertion of demurrage shall be excluded in case of a waiting time or, respectively, an idle time at the sender's or, respectively, at the recipient's, etc. of up to 24 hours in each case. Saturdays, Sundays as well as public and bank holidays shall be left out of consideration, that is to say that on these days, demurrage never has to be paid. Furthermore, the assertion of a reimbursement of expenses or, respectively, of a claim for damages or of other costs shall be excluded if Fluckinger Transport GmbH cancels the order within 10 hours after it was placed. After the stipulated 24 hours time limit free of demurrage, a maximum sum of € 150.00 per day/per truck shall be charged as demurrage provided that the fault actually lies with Fluckinger Transport GmbH with the contractor bearing the burden of proof. However, demurrage shall be limited by charging a maximum of 3 days.

4. Prohibition of transshipment, extra cargo, transfer

Transshipments or, respectively, additional cargo shall be inadmissible without exception. Moreover, an invariable extra cargo prohibition shall apply unless Fluckinger Transport GmbH orders it in writing. Commissioning a subcarrier shall only be permitted after having obtained the express written consent of the responsible managing clerk of Fluckinger Transport GmbH. Stacking goods (e.g. in order to create additional cargo space, etc.) shall be expressly prohibited as well! A contractual penalty amounting to € 5,000.00 regardless of culpability and excluded from the mitigation right of the court, irrespective of the actual amount of damage, is agreed upon for the violation of one of these provisions. A claim for damages exceeding the aforementioned shall not be affected thereby.

5. Means of load securing

The contractor shall carry a sufficient number of means of loading (dunnage) and means of securing (lashing chains and straps, cargo bars), otherwise the vehicle shall be considered defective.

In order to fulfil the requirement of load securing, it is indispensable that the vehicle is fully equipped with tarpaulin hoops and side boards in case of tarpaulin constructions and locking bars and clamping rods in case of box bodies in accordance with the German industry standard (DIN). In addition, at least two load boards, 20 straps with long-lever ratchets, sufficient lashing points on the cargo area, 24 edge protectors and sufficient anti-slip mats are required for a secure loading for transport.

If the aforementioned agreements/instructions are not complied with, we reserve the right to have the vehicle equipped with the corresponding means of loading at your expense. Should this not be possible, we reserve the right to use a replacement vehicle and to charge a contractual penalty regardless of culpability amounting to the freight payable for the replacement vehicle to your account. A claim for compensation exceeding the aforementioned shall not be affected thereby. You shall be fully liable for all follow-up costs resulting therefrom! A processing fee of € 35.00 shall in any case be charged for these administrative expenses.

The contractor alone shall be responsible to guarantee the proper storing of the cargo as well as the load securing; this shall also apply if the sender actually loaded the goods himself.

6. Transport obstacles

The contractor shall ensure in each transport on his own initiative that the transport can be realized without any obstacles and shall verify beforehand if authorizations have to be obtained or if measures regarding customs (of any kind whatsoever), etc. have to be taken (execution of transit procedures, etc.). In case of unforeseeable transport delays or, respectively, transport damages or transport goods losses, Fluckinger Transport GmbH shall be informed without delay by telephone and in writing. The contractor shall indemnify and hold Fluckinger Transport GmbH harmless from all damages resulting therefrom.

7. Exchange of means of loading

The carrier (as the contractor) shall be obliged without exception to immediately exchange the means of loading (pallets, mesh boxes, meat hooks, plastic boxes, etc.) at the sender's as well as at the recipient's; he shall in any case also bear the so-called risk of exchange. The remuneration for this risk of exchange is already included in the freight price. If the exchange of means of loading is not carried out properly, the carrier as the contractor shall pay for any pallet not exchanged or, respectively, not returned € 18.00, for any mesh box € 100.00 and for any other means of loading the local trade price. Additionally, a flat-rate processing fee of € 30.00 per transport and return costs for the means of loading not exchanged of € 1.00 per km covered from Volders to the place of return or, respectively, the place of collection where the exchange was not carried out shall be paid. Fluckinger Transport GmbH shall in any case be entitled to these claims also without the carrier being at fault. Furthermore, the contractor shall be obliged to keep traceable records of the exchange of pallets for each individual transport on his own initiative. These records and, respectively, documentation/proofs shall be forwarded after the transport without delay, at the latest together with the freight note. Please note: only original pallet notes will be accepted! The freight shall not be due before these documents have been forwarded. In case of refrigerated transports, it is additionally required to forward a legible temperature protocol in order to have the freight note become due. In the event of missing documents or, respectively, records of means of loading, a contractual penalty regardless of culpability and excluded from the mitigation right of the court amounting to the freight per

transport order becomes due, that is to say that the claim for freight charge forfeits. Claims for damages exceeding the aforementioned shall in any event not be affected thereby.

8. Freight notes, terms of payment, proof of delivery

Freight notes of the contractor shall only become due as soon as the invoice was provably forwarded to Fluckinger Transport GmbH together with the original transport documents (CMR consignment note, delivery notes, pallet notes, etc.). The risk of forwarding these documents shall be borne by the contractor. The period for payment shall be 60 days with this time period of 60 days only starting to run with the complete receipt of the invoice together with the aforementioned transport documents by Fluckinger Transport GmbH.

The contractor is aware of the fact that a settlement of accounts of customers of Fluckinger Transport GmbH can only be made if the proofs of delivery have been forwarded in good time and in full. The contractor shall thus undertake to forward any and all documents of the transport such as delivery notes, consignment notes, pallet notes, etc. in the original form to Fluckinger Transport GmbH at the latest within 10 working days after unloading has been completed. If this time limit is not complied with – without prejudice to other rights – a processing fee of € 30.00 will be due.

9. Set-off, exclusion from rights of lien and retention

Fluckinger Transport GmbH shall be entitled to set-off claims against counterclaims (regardless of the legal ground) as well as to freight reductions in case of faulty performance. Any prohibition of set-off or, respectively, retention (in particular sec. 32 of the General Austrian Forwarders' Terms and Conditions (AÖSp)) is hence expressly contradicted. The contractor shall not be entitled to a right of lien or retention within the framework of the goods delivered to him in fulfilment of this contract. Any rights of lien and retention are therefore expressly excluded. The contractor shall be obliged to include corresponding provisions also in the contracts that he might enter into with any subcontractors commissioned by him (if Fluckinger Transport GmbH has permitted the use of subcontractors in writing). The contractor may not set-off any claim against claims or, respectively entitlements of Fluckinger Transport GmbH.

10. Processes under customs

In case of transports to areas outside of the customs territory of the EU, the contractor shall be obliged to take care of the required export duty clearance as well as any and all transit customs clearances possibly required and/or import duty clearances in the country of destination. If possible, goods which have to be transited as well as goods which have to be delivered outside of the customs territory of the EU shall be delivered within the framework of the community/common transit process or under a TIR Carnet. The contractor shall be responsible for drafting any customs documents required in order to carry out the transport on the basis of the information and documents provided by Fluckinger Transport GmbH. In cases of doubt, the contractor shall on his own initiative obtain instructions/information from Fluckinger Transport GmbH before starting to carry out the transport.

11. Duty to care

The contractor shall be obliged to select and monitor employees and any other vicarious agents with the due diligence of a prudent carrier. He shall in particular take care that only the following impeccable equipment suitable for the respective order is used: vehicles, trailers, semi-trailers, tanks, swap bodies/containers, cranes, technical facilities and other equipment.

The provisions of the ADR and the Road Traffic Regulation (StVO, Straßenverkehrsordnung) shall fully be complied with. The vehicle shall be well-swept, clean and odourless and the tarpaulin shall be fully leakproof. The minimum height of the semi-trailer shall amount to 2.70 on the inside.

If the aforementioned agreements/instructions are not complied with, we reserve the right to have the vehicle equipped by the shipper at your expense. Should this not be possible, we reserve the right to buy a replacement vehicle and to charge a contractual penalty amounting to the freight payable for the replacement vehicle to your account. This contractual penalty shall be excluded from the mitigation right of the court and imposed regardless of culpability. A claim for damages exceeding the aforementioned shall not be affected thereby. A processing fee of € 35.00 shall in any case be charged for these expenses.

12. Monitoring obligation/safety measures

The contractor shall be obliged to ensure that loaded motor vehicles or, respectively, transport units are duly locked up whenever they are (also only for a short term) parked. The vehicles or, respectively, transport units used shall furthermore be equipped with 2 independent anti-theft systems – corresponding to the state-of-the-art and functioning – which have to be activated provably whenever the vehicles or, respectively, transport units are parked, also if only for a short term. The rear doors of the trailers/containers shall always provably be locked up (at least with a massive U-lock) so that third parties are in any case prevented from accessing them from the outside. The integrity of the lock or, respectively of the external walls of the cargo space shall be checked after every break. The contractor shall take care that loaded transport vehicles (trailers, semi-trailers, swap bodies, containers, etc.) are at any time duly monitored during the time they are parked and that they are only parked in an illuminated and secured parking area or on secured (fenced and sufficiently monitored) business premises during the night, during weekends as well as during public and bank holidays. Generally, only monitored parking areas may be used. A list of monitored parking areas can for example be found at www.iru.org, www.ania.it. The itinerary shall be planned in such a way that – by observing the stipulated driving and rest periods – no breaks, overnight stays or any other parking processes (except for short-term fuelling processes) are necessary in unmonitored parking areas. If necessary, the contractor undertakes to precautionary reserve monitored parking spaces and schedule the driver accordingly. Parking loaded trailers/semi-trailers/swap bodies (without a drawing vehicle) in an isolated way as well as parking the transport vehicle in an unsecured area is prohibited without exception (also in a monitored parking area) and in this event there is mostly no insurance cover of conventional insurances (!!).

13. Vicarious agents

The contractor shall be obliged to provably inform his employees and other vicarious agents, especially subcontractors, (in writing) on the obligation to comply with the provisions of these loading conditions and to make sure – with the due diligence of a prudent carrier – that these safety measures are also actually complied with. The contractor shall furthermore ensure that the truck drivers used dispose of all authorizations legally required under the provisions applicable to the employment of foreigners and, respectively, to the posting of workers. The proofs and documents required by the respective applicable legal provisions (in particular work and stay permits) shall be taken along by the driver. The contractor undertakes to exclusively provide drivers who have at least such a knowledge of the language that is spoken at the place of departure and the place of acceptance to be able to sufficiently communicate with the sender and the recipient as well as with the authorities. The contractor confirms that the driving personnel disposes of a valid driving licence valid internationally and a certificate pursuant to the EU Directive 2003/59/EC (EU training of professional drivers). The driver has to be particularly trained for all requirements of the transport and carry the necessary certificates. In particular, the requirements in the scope of the ADR and the Road Traffic Regulation (StVO), load securing and in the field of safety provisions/safety clothing shall especially be observed. For reasons of safety, the driver shall always wear safety shoes, a helmet, long outerwear and a safety vest whenever loading or unloading (unless the safety provisions applicable to the loading or unloading of goods stipulate higher requirements). In case of transports within the framework of ADR, the driver shall take along/wear the necessary safety equipment. If the aforementioned agreements/instructions are not complied with, we reserve the right to have the vehicle/the driver equipped by the shipper at your expense. Should this not be possible, we reserve

the right to buy a replacement vehicle and to fully charge the costs to your account. You shall be fully liable for all follow-up costs resulting therefrom! A processing fee of € 35.00 shall in any case be charged for these expenses.

14. Driving periods, minimum wage

The contractor alone shall be responsible for complying with any and all legal requirements regarding driving and rest periods as well as the lawful remuneration of the driving staff. Mandatory provisions concerning the fulfilment of registration obligations as well as the payment of the minimum wage are applicable in several EU countries. The legal provisions partially stipulate an entrepreneurial liability regardless of culpability as well as criminal sanctions if the minimum wage is not paid. The contractor shall be obliged to provably inform his employees and other vicarious agents, especially subcontractors, (in writing) on the obligation to comply with the respective provisions on minimum wage and to make sure – with the due diligence of a prudent entrepreneur – that these safety measures are also actually complied with. Upon request, the contractor shall fully indemnify and hold Fluckinger Transport GmbH harmless from any and all expenses/costs/claims/entitlements (regardless of the legal ground) which arise in connection with the violation of this agreement or the non-compliance with minimum wage provisions (including the statutory orders issued in this regard), that is to say also unlimited as regards the amount. This shall particularly also apply if administrative costs, representation and also consulting costs are incurred.

15. Obligation to notify damages

The contractor shall be obliged to notify Fluckinger Transport GmbH and the transport liability insurance of the contractor without delay of every event of damage. In case of damages exceeding the amount of € 2,000.00, the contractor shall commission an expert or, respectively, a claims agent without delay to evaluate the damage. The contractor shall – in case of other claims for damages – obtain instructions from Fluckinger Transport GmbH. Moreover, the contractor undertakes to provide any information that might be necessary to further process the damage suffered by Fluckinger Transport GmbH or, respectively, its insurer, without delay.

16. Dangerous goods

In case of a dangerous goods transport, the contractor undertakes only to use drivers who have been trained according to the ADR and who carry a valid certificate of ADR. The vehicles have to be equipped for realizing a transport of dangerous goods. Particularly, any and all possible requirements concerning the pieces of equipment have to be complied with (drainage cover, shovel, broom, fire extinguisher, binding agent, collecting vessel, respiratory protection, etc. ...). In case of a transport of dangerous goods (ADR), the contractor shall in addition be liable for the due declaration on the freight documents, for the correct labelling of the cargo and for carrying the required transport documents as well as for the lawful designation of the vehicle. Besides, any and all national provisions in the countries concerned by the transport shall be complied with.

17. Transport liability insurance

The contractor undertakes to present to Fluckinger Transport GmbH without request – before taking over a transport – the insurance policy serving as a confirmation for a sufficient (minimum insurance sum € 600,000.00) and in Austria the insurance customary in the corresponding line of business. This insurance shall also cover a liability pursuant to art. 29 of the CMR and damages caused when loading and unloading. If Fluckinger Transport GmbH is not provided with the insurance policy covering the transport liability insurance before carrying out the transport, Fluckinger Transport GmbH shall be entitled to obtain an insurance cover for this transport in favour of the contractor; in this case Fluckinger Transport GmbH shall be entitled to deduct 4 % from the freight price agreed upon. The contractor shall ensure on his own initiative that the aforementioned insurance policy of Fluckinger Transport GmbH is obtained.

18. Waiver of objection regarding transport for account of third parties (Lohnfuhrverbot)

The contractor expressly waives to lodge the objection of the “contract of transport for account of third parties” (“Lohnfuhrvertrag”); if the present contractual relationship is actually classified as a contract of transport for account of third parties, the contractor expressly agrees that this contractual relationship is governed by the liability provisions of cargo right (CMR).

19. Customer protection

Customer protection shall be deemed to be agreed; if accepting or procuring orders or otherwise contacting customers of Fluckinger Transport GmbH and all companies which participate in the transport order in any way whatsoever, all entitlements of the contractor vis-à-vis Fluckinger Transport GmbH shall be forfeit. In addition, a contractual penalty amounting to € 35,000.00 regardless of culpability and excluded from the mitigation right of the court, irrespective of the actual amount of damage, is agreed upon for the violation of this clause on the restraint of competition or, respectively, on customer protection. A claim for damages exceeding the aforementioned shall not be affected thereby.

20. Obligation of secrecy

All transports are subject to an obligation of secrecy which strictly disallows the contractor to disclose to third parties any information of which he has gained knowledge when carrying out the order. The contractor shall be liable for any and all assistants. If information is disclosed to third parties without an authorization, a contractual penalty amounting to € 10,000.00 regardless of culpability and excluded from the mitigation right of the court becomes due. Fluckinger Transport GmbH expressly reserves the right to assert a damage exceeding the aforementioned.

21. Fixed prices

The prices mentioned in the offer or, respectively, the order of Fluckinger Transport GmbH shall be deemed fixed prices. Surcharges or, respectively, expenses, costs (of any kind whatsoever) will not be recognized.

22. Unloading according to the consignment note/loading order

The goods may only be unloaded at the address of the recipient or at the delivery address indicated in the loading order/consignment note. Changes may only be made with the express consent of Fluckinger Transport GmbH. If the information in the consignment note differs from the transport order, Fluckinger Transport GmbH shall be consulted before realizing the transport.

23. Loading dates, delivery periods

The present transport order shall be binding if it is not contradicted vis-à-vis the contractor within one hour upon receipt of the order. The contractor shall arrive at the loading place with his vehicle on the agreed loading date. If the vehicle is not provided, a contractual penalty amounting to € 250.00 (regardless of culpability) excluded from the mitigation right of the court and irrespective of the actual amount of damage becomes due. If the contractor arrives late at the loading place, a contractual penalty regardless of culpability amounting to € 100.00/hour becomes due. Damages exceeding the aforementioned shall in both cases not be affected thereby. The delivery periods shall be deemed the unloading dates in the sense of art. 19 of the CMR. The contractor acknowledges that it is essential for Fluckinger Transport GmbH that the delivery periods are complied with. Before taking over the transport order, the contractor shall check if the delivery period can be observed.

24. Loading and unloading, load securing

The contractor shall be obliged to carry out loading and unloading. Damages which are due to circumstances during loading or unloading shall be attributable to the liability sphere of the contractor. The contractor shall ensure that the cargo is duly secured and conforms to the legal provisions. The obligation to secure the cargo shall exclusively fall to the contractor, even if the sender loaded the goods. The contractor shall investigate all sources of damage before carrying out the transport and in particular control the transportability of the load-

ing/stacking as well as the packaging. If necessary, the sources of damage shall be removed or, respectively, instructions of Fluckinger Transport GmbH shall be obtained. When taking possession of the goods, the contractor shall verify the quantity, the quality and the weight of the transport goods. In case of any deviation or if a verification is impossible, the contractor shall declare on the consignment note to reserve corresponding rights and have the reserves signed by the sender before departing.

25. Refrigerated transports

When carrying out refrigerated transports, the contractor shall control the transport temperature on a regular basis. Refrigerated transports shall only be carried out with a refrigerated vehicle which is in a perfect technical condition and regularly maintained. Before taking possession of the goods, the contractor shall verify if the goods to be accepted are sufficiently pre-cooled (the burden of proof being borne by the contractor). The contractor shall be obliged to store temperature protocols for a period of 3 years upon delivery of the goods and to hand them over to Fluckinger Transport GmbH upon request. Refrigerated and box vehicles shall be equipped with sufficient locking bars and other means of safety. Sufficient air circulation has to be guaranteed in case of refrigerated transports. If temperature records are missing, the claim for freight shall fully forfeit. If the transport temperature cannot be derived from the loading order, the contractor shall on his own initiative obtain instructions from Fluckinger Transport GmbH regarding the transport temperature as well as the correct operation setting of the refrigeration unit.

26. Statutory limitation

Any and all claims vis-à-vis Fluckinger Transport GmbH, irrespective of their legal ground and irrespective of the degree of culpability, shall become statute-barred within 6 months. The statutory limitation shall in any case start to run on the day the respective transport order is placed.

27. Applicable right, place of jurisdiction

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-6111 Volders 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. The contract language shall be German.

This agreement shall also be valid without a confirmation!

**We wish you a safe transport
FLUCKINGER TRANSPORT GMBH**

Confirmation:

Stamp/signature

