



**GENERAL TERMS AND  
CONDITIONS OF BUSINESS FOR  
TRANSPORT WITHIN GERMANY**

STATUS AS AT 1 JANUARY 2012

*More than just a transport.*

## § 1 OBJECT OF THE CONTRACT

- (1) Kombiverkehr Deutsche Gesellschaft für kombinierten Güterverkehr mbH & Co KG, hereinafter referred to as Kombiverkehr, is active in business as an intermediate forwarding agent. Forwarding contracts with customers shall be subject to the applicable statutory regulations, in particular those of §§ 453 ff. HGB [Handelsgesetzbuch: German Commercial Code], unless the following provisions provide for any deviation.
- (2) Kombiverkehr's customer and invoice recipient is whoever instructs Kombiverkehr to ship the transport units in question.
- (3) The forwarding contract concluded between the customer and Kombiverkehr comprises arrangement of the shipment of loaded and unloaded transport units within the scope of national road-rail Combined Transport.

## § 2 OBLIGATIONS OF THE PARTIES TO THE CONTRACT

- (1) Under the terms of the forwarding contract, Kombiverkehr hereby undertakes to arrange for the shipment of transport units to the agreed destination as well as the required transfer procedures. Transfer comprises the loading and unloading of the transport units onto and off the freight wagon. Kombiverkehr furthermore undertakes to pass on information to the customer that Kombiverkehr has received in a case where an irregularity has occurred in connection with conveyance.
- (2) The customer is both the consignor and the recipient of the transport unit. The customer is to deliver the latter on the day of dispatch, either directly or through a representative (dispatcher) appointed by himself, to the loading and unloading

facility provided for the shipment; he is then to collect it on the day of receipt, either in person or through a representative (collector) appointed by himself, at the loading and unloading facility at the agreed destination.

## § 3 ENTRY OF THE CONTRACT INTO FORCE, STORAGE

- (1) The forwarding contract to be concluded between the customer and Kombiverkehr shall come into force when the shipment order form has been signed by both parties.

Manual signature may be replaced by a stamp, a mechanical booking indicator or by any other suitable method. If these formal requirements are not met, the contract will otherwise be formed in the alternative in accordance with general statutory provisions based on the relevant booking procedures.

- (2) Until any proof to the contrary is provided, the shipment order form shall serve as documentary confirmation of the conclusion and content of the forwarding contract and that Kombiverkehr has received the transport unit. It shall establish only the supposition that the customer has delivered the transport unit in a condition that appears to be safe for transport by rail. No further inference in respect of the external condition of the transport unit or the goods contained in it shall exist.
- (3) Transport units delivered before the agreed day of dispatch will be stored at the loading and unloading facility. This will be subject to a charge. Storage may be based on a separate warehousing agreement. In this case the customer expressly gives his consent to the storage of the goods on the premises of the operator of the relevant loading and unloading facility in question (cf. § 472 section 2 HGB). Storage shall come to

an end with the opening of the loading and unloading facility on the day of dispatch.

## § 4 END OF THE CONTRACT

- (1) The forwarding contract shall come to an end with the handover of the transport units to the customer or to the representative (collector) appointed by him at the agreed destination.
- (2) Any transport units not collected on the day of receipt will be stored at the loading and unloading facility at close of business. This will be subject to a charge. The goods may be stored without obtaining prior instructions on the basis of a separate warehousing agreement. In this case the customer expressly gives his consent to the storage of the goods on the premises of the operator of the relevant loading and unloading facility (cf. § 472 section 2 HGB).
- (3) If a transport unit that has been stored in this way is not collected within 10 working days of the day of receipt, Kombiverkehr will then have the right to take further measures in accordance with § 419 section 3 HGB without being obliged to obtain prior instructions to this effect.

## § 5 PROPERTIES OF THE INTERNATIONAL TRANSPORT UNITS AND GOODS

- (1) On handover of the transport unit the customer becomes liable for ensuring that the latter and the goods it contains are suitable for Combined Transport and in a safe condition for shipment, without this being dependent on negligence.<sup>1</sup>

- (2) When taking delivery of the transport unit Kombiverkehr may subject it to external inspection from ground level while it is still on the delivery vehicle. Kombiverkehr will not be obliged to check either the goods, their packaging, stowage and fastenings or the customer's specifications or the documents supplied.
- (3) The customer shall be liable for the correctness and completeness of the specifications he makes on the shipment order form, without this being dependent on negligence.

## § 6 HAZARDOUS GOODS

- (1) Prior notification must be given of hazardous goods if this has been indicated in the shipment schedules or in any other way.
- (2) A transport unit that is loaded with permissible hazardous goods must comply with the standards that have been laid down by statutory prescription or other official regulations for the conveyance of such goods by road and rail.
- (3) Unless otherwise stipulated by binding statutory provisions or provisions overriding these Terms and Conditions of Business, on handover of the transport unit the customer will be liable for
  - a) adherence to the requirements referred to in § 6 section 2 above,
  - b) the specifications given for the goods in their entirety, and the correctness of the way in which they are indicated in the shipment order form, based on the special requirements for the conveyance of hazardous goods,
  - c) forwarding any other documentation required,

<sup>1</sup> Basic information on securing cargo in Combined Transport can be obtained from the BGL/BGF manual „Laden und Sichern“ –Band 2: Ladungssicherung im Kombinierten Ladungsverkehr Straße/Schiene (“Loading and securing” volume 2: Securing loads in road-rail Combined Transport)

- d) giving notice of any precautionary measures that may have been prescribed by the authorities or are required for other reasons.
- (4) The customer shall be obliged to deliver the transport unit only on the day of dispatch and to collect it on the day of receipt. Should this not be the case, Kombiverkehr will be entitled, in accordance with § 410 section 2 HGB, to unload, store or return the goods at the customer's expense or, if required, to destroy the goods or render them harmless without being obliged to indemnify the customer.
- (2) Liability shall be limited
  - a) in the case of loss or damage to the goods as specified in § 431 HGB, to 8.33 Special Drawing Rights (SDRs) for each kilo of the raw weight of the damaged or lost shipment;
  - b) in the case of loss of or damage to the goods in a case of separate warehousing, to 5 euros for each kilo of the raw weight of the damaged or lost shipment, but not exceeding a maximum of 5000 euros per case of damage (§ 431 section 2 HGB shall apply analogously);
  - c) in case of failure to adhere to the delivery deadline, to three times the amount of the remuneration in the given case.

## § 7 PAYMENT, SET-OFF

- (1) Payment of the remuneration for the services provided by Kombiverkehr will be based on the Kombiverkehr respite scheme in accordance with the conditions laid down for this procedure by DVB Bank SE.
- (2) Any set-off or retention of payment in respect of claims arising from the forwarding contract is hereby excluded with the exception of counterclaims that have either been established at law or are not contested by Kombiverkehr.
- (3) Unless otherwise stipulated by binding statutory provisions or provisions overriding these Terms and Conditions of Business, liability for damages other than cargo damage, in particular in accordance with § 461 section 2 HGB, but with the exception of personal injury and damage to property belonging to third parties, shall be limited in amount to three times the sum that would be payable in a case of loss or damage, but not exceeding a maximum ceiling of 100,000 euros per case of damage. §§ 431 section 3 and 433 HGB shall nonetheless continue to apply.

## § 8 LIABILITY

- (1) Kombiverkehr's liability to the customer for damages caused by loss of or damage to the shipment or on account of failure to adhere to the delivery deadline derives from § 459 in conjunction with §§ 425 ff. HGB. Storage in accordance with a separate warehousing agreement shall be governed by §§ 467 ff. HGB. Transport schedules that have been indicated are not to be taken as delivery deadlines.
- (4) Liability for loss of or damage to the goods (cargo damage) shall be limited to 1 million euros per case of damage and 2 million euros for each damaging event, or to 2 SDRs for each kilo of the lost or damaged goods, whichever of the two amounts is higher. If there are several injured parties in one damaging event, Kombiverkehr will be liable on a pro rata basis in the proportion of the individual claims.

- (5) These liability limitations shall also apply to any claims external to the contract.
- (6) The above liability limitations and exemptions shall not apply if the damage has been occasioned
  - a) through deliberate intent or gross negligence on the part of the institutions or managerial employees of Kombiverkehr or through the violation of cardinal duties under the contract. In the latter case claims for compensation shall be limited to such typical damages as may be foreseeable in advance;
  - b) in cases as detailed in §§ 425 ff. and 461 ff. HGB by the institutions of Kombiverkehr or those persons indicated in §§ 428 and 462 HGB either by wilful intent or by negligent act in the awareness that damage was likely to be suffered.

## § 9 NOTIFICATION OF DAMAGE

- (1) It is incumbent on the customer when collecting the transport unit to register any reservations he may have on account of damage or amounts missing as per § 438 HGB either to Kombiverkehr's local representative or to the party responsible for delivery of the goods. If no such reservation has been expressed, it will be presumed that the transport unit has been delivered in a condition compliant with the terms of the contract.
- (2) Any reservations in respect of damage or missing amounts that cannot be externally identified are to be registered within five days.

## § 10 FINAL CLAUSES

- (1) The place of jurisdiction for all disputes arising from the forwarding contract or in connection with the forwarding contract shall be Frankfurt am Main for all parties. Legal action may also be brought against the customer in his jurisdiction.
- (2) The laws of the Federal Republic of Germany shall apply.
- (3) Only the German version of the general terms and conditions is legally binding.



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