

# GTC Principal

## General terms and conditions of the Gatt Continental Transport GmbH for the transport order (GTC Principal)

### 1. Validity

These general terms and conditions which can be viewed at (<https://www.gatt-ct.com/general-terms-conditions-principal>) at any time, exclusively apply if GATT Continental Transport GmbH, hereinafter referred to as „principal“ places forwarding and freight orders with the „contractor“ or commissions the contractor with other services. The transport order is binding even without confirmation. A written counter-confirmation with parts of the contract amended by the contractor is deemed invalid. Oral additional agreements are not valid. Irrespective of enquiries regarding capacity made by telephone, the transport contract is only concluded on the basis of the transmitted transport order, including the principal's general terms and conditions contained therein. No conditions contradictory to these terms and conditions apply. Under no circumstances can the contractor rely on his own general terms and conditions, even if these are included in order confirmations. In particular, the contractor cannot invoke the validity of the General Austrian Forwarders' Terms and Conditions (AÖSp) or other terms and conditions (e.g. in order confirmations, etc.). Any counter-confirmations to the contrary do not form part of the freight contract and are invalid. At the latest, the contractor reconfirms his acceptance of these general terms and conditions when taking over the transported goods for carriage at the place of loading.

### 2. Relevant Provisions

The application of the CMR is expressly agreed for all road-transport, even if the scope of application of Art. 1 CMR or § 439a Commercial Code (UGB) is not fulfilled. The contractor is always liable to the principal, as if he is acting as principal. The provisions of Article 34 CMR do not apply. For transport within Germany, the provisions of the German Commercial Code (HGB) on freight business apply. For transport within Germany, the increased liability of 40 special drawing rights per kilogram of damage or lost goods are deemed as agreed. The application of the AÖSp are expressly excluded in the case of transport orders placed by the principal with the contractor.

### **3. EU-Mobility Package**

Due to the provisions that came into force with the European Mobility Package (in particular Directive 2020/1057 as well as Regulation (EU) 2020/1055 and Regulation (EU) 2020/1054), the contractor/carrier is subject to further obligations, in particular with regard to

- Reporting obligations
- Keeping documents available in the vehicle
- Application of the host country wage law
- Transmission of documents after a corresponding request by the control bodies
- Use of the standard form of the public interface of the internal market information system (IMI) in accordance with Regulation (EU) No 1024/2021
- Market access and cabotage rules
- Obligations with regard to driving times and rest periods

The contractor/carrier guarantees to comply with all provisions that apply in the EU as a result of the introduction of the European Mobility Package. This also applies to the provisions of the Austrian Wage and Social Dumping Prevention Act (LSD-BG) and comparable regulations applicable in Europe. Should claims be made against the principal in any way due to violations by the contractor/carrier, he shall fully indemnify and hold the principal harmless.

### **4. Cancellation, non-acceptance of freight**

The transport order of the principal is binding. In the event of non-acceptance of the cargo or the transport order by the contractor, the principal is entitled to purchase a replacement vehicle and charge the contractor a contractual penalty in the amount of the freight to be paid for the replacement vehicle. Any further claim for damages remains unaffected. In any case, 80 % of the freight price is charged to the contractor as a contractual penalty if the order is cancelled. The principal can cancel the transport order free of charge up to one hour before the agreed loading date.

### **5. Prohibition of transshipment, additional cargo, transfer**

Transshipment and additional cargo are not permitted. The commissioning of a sub freight carrier is only permitted with the express written consent of the principal's relevant dispatcher. Should the use of sub freight carriers be permitted by the principal by way of exception, they must be strictly checked by the contractor beforehand and have already verifiably and duly carried out several orders (at least 5) for the contractor. The assignment of cargo to sub-contractors who have not previously had a business relationship with the contractor, in particular via freight exchanges, is prohibited without exception. Stacking of the goods (e.g. to create additional loading space etc.) is also explicitly forbidden! For the violation of one of these provisions, a no-fault contractual penalty of € 5,000.- which is excluded from the judicial right to reduce the penalty, is agreed, irrespective of the actual amount of damage. This does not affect any further claim for damages. Under no circumstances can loads be transhipped into a storage/intermediate warehouse/warehouse without the explicit permission of the principal. In the event of an infringement, a penalty amounting to 95 % of the freight is charged.

### **6. License plates**

If the loading order contains no license plates at all, if they are not correct or if they change, the contractor is obliged to inform the principal of the correct license plates immediately. This way, the contractor avoids delays in loading and processing of the freight invoice.

### **7. Credit notes, term of payment, proof of delivery**

The principal works exclusively with a credit note procedure. The credit note will only be issued once the original trans-

port documents (CMR consignment note, delivery note, loading equipment notes, etc.) have been verifiably sent to the principal. The contractor bears the risk for the transmission of these documents. The contractor is aware that an invoice can only be issued to the principal's customers if proof of delivery is sent in full and in good time, confirmed in the original by the recipient. The recipient's first name and surname must be stated in the proof of delivery. The contractor therefore undertakes to send all transport documents, such as delivery notes, consignment notes, pallet notes, loading and weighing notes etc., to the principal in original within 10 days at the latest. If this deadline is not met, a processing fee of € 30.- is due, without prejudice to other rights. The term of payment is 60 days, whereby this 60 -day period only begins with the date of issue of the credit note after the above mentioned transport documents have been received in full by the principal. A 3 % discount will be granted for payment within 10 days of receipt of complete documentation.

## **8. Offsetting, exclusion of the rights of lien and retention**

The principal is entitled to make offsets against counterclaims (irrespective of legal basis) and to freight cuts in the event of inadequate performance. The principal is entitled to offset all claims of group companies against the contractor against claims of the contractor against the principal. The principal is also authorised to offset his own claims against the contractor against claims of the contractor against group companies of the principal. Therefore, any prohibition of offsetting or retention (in particular § 32 AÖSp) is expressly rejected. The contractor does not have a right of lien or retention on any of the goods handed over to him in the course of fulfilling this contract. Any rights of lien or retention of the contractor are therefore explicitly excluded. The contractor is obliged to include corresponding provisions in the contracts concluded with any subcontractors he may engage (if the principal has given written permission for the use of subcontractors). The contractor cannot offset any claims against any demands or claims of the principal. The Principal, on the other hand, shall be entitled to set-off. The offsetting prohibition therefore applies exclusively at the expense of the Contractor. Claims against the Principal may not be assigned or ceded to third parties.

## **9. Obligation to report damage**

The contractor is obliged to report every case of damage immediately to the principal and the contractor's freight forwarder's liability insurance. In the event of damage exceeding the amount of € 2,000.- the contractor must immediately commission an authorised expert or claims agent to assess the damage. The contractor must - in the case of other claims for damages - obtain instructions from the principal. Furthermore, the contractor is obliged to make available without delay all information that could be required by the principal or their insurer for further processing of the claim.

## **10. Loading equipment exchange**

The contractor is obliged to immediately exchange loading equipment without exception, both at the sender's and the consignee's premises; he also bears the so-called exchange risk. The contractor must therefore carry a sufficient number of proper and exchangeable loading equipment. The fee for this exchange risk is already included in the freight price. For each exchange of loading equipment, a corresponding loading equipment note invoice must be sent to the principal with the freight. In the absence of a loading equipment note, the principal is forced to assume that the contractor has not fulfilled his obligation. In the event that the contractor does not receive any loading equipment back at the place of unloading, the principal must be informed immediately so that he can clarify the matter while the vehicle is still at the place of unloading. If such notification is not given, or is not given in time, the contractor is responsible for the procurement of the loading equipment that has not been exchanged. If the loading equipment is not exchanged or not exchanged in full, this must be recorded and confirmed in writing with a justification on the CMR consignment note and on the loading equipment note. In the event that the exchange of loading equipment is not carried out properly, the freight carrier as contractor must pay the usual local trade price. In addition, a processing fee of € 25.- per transport and return costs for the non-exchanged loading equipment of € 1.- per km to the return or collection point where the exchange was omitted, must be paid. The return of the packaging by the contractor within 21 days is the subject of the freight contract and is settled with the freight. In any case the principal is entitled to these claims even if the carrier is not at fault. Furthermore, the contractor is obliged to keep traceable records of the Load exchange for each individual transport. These records or this documentation/evidence must be submitted immediately after the transport, at the latest together with the freight invoice. Attention: only original equipment notes are accepted! The freight is not due before these documents have been transmitted. In the case of refrigerated transports, a legible temperature record must also be sent when the freight in-

voice is due. In the case of missing documents or loading equipment records, a no-fault contractual penalty which may not be reduced at a judge's discretion, is due in the amount of the freight per transport order, i.e. the claim to freight remuneration expires. Any additional claims for damages remain unaffected in all cases. Basically, Düsseldorf pallets shall not be exchanged, however, the contractor must document the pallet movements in the same way as for the Euro pallets and provide the principal with the corresponding loading equipment note. If the contractor receives Düsseldorf pallets back at the place of unloading contrary to the instructions of the principal, the contractor must return them to the sender within 4 weeks. For Düsseldorf pallets not returned on time, the principal charges the contractor € 8.- per piece.

## **11. Load securing equipment**

The contractor must carry a sufficient number of loading aids (wooden dunnage, etc.) and securing devices (lashing chains and lashing straps, clamping beams, etc.), otherwise the vehicle is not considered adequate. In order to meet the load securing requirements, it is essential that the vehicle is fully equipped with slot-in slats and side boards for tarpaulin bodies and locking and clamping bars for box bodies in accordance with the DIN. In addition, at least wooden dunnage, all side boards, two clamping boards, 2 locking beams, 20 belts with long-lever ratchets, 12 lashing eyes in the floor, 24 edge protectors and sufficient anti-slip mats are required for safe loading. In the event of non-compliance with the above mentioned agreements/instructions, the principal reserves the right to have the vehicle equipped with appropriate loading aids at the contractor's expense. If this is not possible, the principal reserves the right to use a replacement vehicle and to charge the contractor a no-fault contractual penalty in the amount of the freight to be paid for the replacement vehicle. Any further claim for damages remains unaffected. The principal holds the contractor fully liable for all consequential costs incurred! In any case, a processing fee of € 35.- is charged for these administrative expenses. Ensuring the proper stowage of the freight and securing the load are without exception the responsibility of the contractor, even if the sender has actually carried out the loading himself.

## **12. Dangerous goods**

In the case of dangerous goods transports, the contractor undertakes to use only drivers who are trained in accordance with ADR and carry a valid ADR certificate. The vehicles must be equipped for the transport of dangerous goods. In particular, all conceivable requirements must be met with regard to equipment (sewerage system cover, shovel, broom, fire extinguisher, binding agents, collection containers, breathing protection, etc.). When transporting dangerous goods (ADR), the contractor is also liable for the correct declaration on the freight documents, the correct labelling of the load and for carrying the necessary transport documents and the legally compliant identification of the vehicle. The contractor is obliged to ensure that all regulations concerning dangerous goods, in particular ADR and all national regulations in the countries affected by the transport are observed. The contractor confirms the existence of a dangerous goods officer in his company.

## **13. Authorisations and transport obstacles**

For each transport, the contractor must ensure on his own that the transport can be carried out without obstacles and must check beforehand whether permits have to be obtained or customs measures (of whatever kind) etc. have to be taken (completion of transit procedures etc.). The contractor must obtain all relevant customs information from the principal and is liable for proper customs clearance and all associated obligations. The costs incurred by the contractor for customs clearance are already included in the freight price. Therefore, he is not entitled to compensation for costs incurred in customs clearance (tariffs, fees, etc.). Furthermore, the principal is not liable for damages caused by incorrect information in the customs documents. It is assumed that the contractor has the necessary permits and authorisations for the transport. This also applies to all countries and their regulations which are travelled in the context of this order. In the event of unforeseen transport delays or transport damage or loss of goods in transit, the principal must be informed immediately by telephone and in writing. The contractor must indemnify and hold the principal harmless for all resulting damages. In the event of obstacles at the place of loading or unloading or in the event of a delay in acceptance or loading, the contractor must immediately obtain instructions from the principal. In the event of delays and/or obstacles of any kind, the principal must be informed immediately.

## 14. Due diligence

The contractor is obliged to select and supervise employees and other vicarious agents with the diligence of a proper freight carrier. The consumption of alcohol and/or drugs is strictly prohibited during the execution of the order. The contractor has to ensure the clean appearance and daily personal hygiene of the drivers. Hands must be washed or clean gloves must be worn before handling unpacked products. Furthermore, the contractor must ensure that the vehicle used is in perfect technical condition and corresponds to the state of the art, in particular the vehicle used must be preventively maintained and regularly inspected. Only faultless vehicles, trailers, semi-trailers, tanks, swap bodies/containers, cranes, technical facilities and other equipment suitable for the respective order must be used. Unless otherwise agreed in the transport order, the vehicle delivering the commissioned transport must meet the requirements of a sheeted vehicle according to CMR. Damage to tarpaulins and superstructures, water condensation in the freight hold, cargo areas that are not swept clean and a freight hold that is not odourless, can lead to vehicle rejections at the place of loading and to the charging of costs and compensation. The freight hold must be cleaned to ensure that there is no impairment of the cargo. For tank trucks, a cleaning certificate must be obtained from a certified cleaning company before loading. The provisions of the ADR, the road traffic regulations (StVO) and the law on motor vehicles (KFG) must be complied with to their full extent. The vehicle must be swept clean, clean and odourless and the tarpaulin must be absolutely tight. The minimum height of the semi-trailer must be 2.70 inside. The maximum statutory permissible total weight of the truck may not be exceeded. The contractor must ensure that the maximum permissible axle loads are not exceeded and that the load is properly distributed on the cargo area. In the event of non-compliance with the above mentioned agreements/instructions, the principal reserves the right to have the vehicle equipped by the shipper at the contractor's expense. If this is not possible, the principal reserves the right to purchase a replacement vehicle and to charge the contractor a contractual penalty in the amount of the freight of the replacement vehicle! This contractual penalty regardless of fault is excluded from the judicial right to reduce the penalty. Any further claim for damages remains unaffected. In any case, a processing fee of € 35.- is charged for these administrative expenses.

## 15. Liability insurance

The contractor undertakes - before taking over a transport - to present the insurance policy to the principal without being asked, as confirmation of sufficient insurance coverage (minimum insurance sum € 600,000.- per case of damage) which is customary in Austria. This insurance must also cover liability according to Art. 29 CMR and damage during loading and unloading operations. If the principal is not presented with the insurance policy covering the freight forwarder's liability insurance before the transport is carried out, he is entitled to obtain insurance coverage for this transport in favour of the contractor; in this case the principal is entitled to deduct 4 % (but at least € 40.-) from the agreed freight price. The refund of premiums is not possible afterwards. The contractor must ensure on his own initiative that the above mentioned insurance policy is available to the principal. For cabotage transports the minimum insurance sum must comply with the respective national legal requirements. The principal must be informed immediately of any changes.

## 16. Temperature controlled transports

In the case of temperature controlled transports, it must be ensured that the temperatures specified by the principal are maintained and permanently determined and recorded by suitable measuring and monitoring devices. The vehicle must be equipped with a functioning temperature recorder. Before taking over the goods, the contractor must check whether the goods to be taken over are sufficiently pre-cooled (the burden of proof is on the contractor). For this purpose, he must carry appropriate measuring instruments. Refrigerated transports must only be carried out with a technically faultless and regularly maintained refrigerated vehicle. The contractor is obliged to keep temperature records for a period of 3 years from delivery of the goods and to hand them over to the principal upon request. Moreover, copies of corresponding recording protocols are to be sent to the principal in the course of invoicing, in addition to the documents mentioned in these terms and conditions. All measuring equipment must be checked at fixed intervals and according to defined recognised standards/methods and, if necessary, adjusted or calibrated. The results of the inspection, adjustment and calibration must be sent to the principal on request. Refrigerated and box vehicles must be equipped with sufficient mounting rods and other securing devices. Sufficient air circulation must be ensured for refrigerated transports. If there are no temperature records, the freight claim expires in its entirety. If the transport temperature cannot be found in the loading order, the contractor must, of his own accord, obtain instructions from

the principal regarding the transport temperature and the correct operating settings of the refrigeration unit.

When transporting fresh goods/temperature-controlled/refrigerated and pharmaceutical transports, the following applies in addition to points above: Fresh goods transports/refrigerated transports/pharmaceutical transports must only be carried out with a technically faultless and regularly maintained refrigerated vehicle. The floors of the vehicles must be kept clean and in immaculate condition. Vehicles must be selected whose floors are easy to clean and whose wall surfaces have a smooth finish. The surfaces of the vehicle must be waterproof, water-repellent and washable. The ceilings and doors of the vehicles and refrigerated vehicles must be made in such a way as to prevent the accumulation of dirt and condensation as well as undesirable mould growth and detachment of materials. Suitable refrigeration systems must be provided to create the air temperature conditions for the hygienic transport of fresh, frozen and pharmaceutical products.

The cleaning and disinfection of the vehicle are considered to be preparatory measures for transport. The freight carrier must draw up plans for cleaning and disinfection, adapted to the means of transport and the transported goods, and make them available to the principal at his request. Maintenance cleaning, deep cleaning and disinfection must be carried out.

With regard to food hygiene, reference is made to the EG-Hygiene-Package (Nr. 852/2004 and Nr. 853/2004). The principal's requirements with regard to fresh produce; refrigerated; and pharmaceutical transports are as follows: The contractor's employees are to be trained in HACCP issues and such training should take place at least once a year and the following points should be taught: Basic knowledge of transport and storage hygiene, such as temperature requirements, basic knowledge of cleaning and disinfection, measures to be taken in the event of pest infestation, basic knowledge of hazards to human health caused by microorganisms, pests, residues or foreign bodies. The training must be documented and its records must be kept for a period of 3 years and made available to the principal upon request.

The temperature requirements of the principal are based on the Agreement on the International Carriage of Perishable Foodstuffs (ATP). The specific temperature requirements of the specific product regulations remain unaffected. Before loading, drivers must observe the following: The cargo hold must be undamaged, clean, dry and free of odours/pests. The vehicle must be kept at a constant temperature. Before loading, the temperature printer must be checked, including whether there is sufficient paper and toner. The temperature must be maintained during breaks and/ or travel interruptions. The cold/ heating chain must not be interrupted. Any temperature deviation must be reported immediately.

During loading, the drivers must observe the following: Random temperature checks of the goods must be carried out and any deviations must be noted immediately on the CMR consignment note and the principal's scheduling department must be informed. Furthermore, attention must be paid to the external appearance of the goods (pallets and cardboard boxes). The air conditioning equipment (unit, vents) must function as specified. The driver must secure the load properly. Furthermore, the pallet height must be checked; if the pallets are too high, the loading staff and the scheduling department must be informed immediately. If the pallets are packed too high, air circulation is prevented. During loading, the unit must not be turned off under any circumstances.

After loading, the door closure must be checked and a safety lock fitted. It is forbidden to pass on information about the goods, route, breaks and addresses to third parties. The integrity of the safety lock must be checked at each stop. Only the instructions of the principal must be followed.

The vehicles for the transport of fresh products, quick (deep)-frozen and frozen foodstuffs, dairy products and fruit and vegetables must be selected and used in such a way that the highest temperature of the foodstuffs does not exceed the temperature specified by the shipper or according to ATP. The vehicle selected for fresh / quick (deep)-frozen foodstuffs must be designed with an insulated body and refrigeration system. For the carriage of fresh goods, quick (deep)-frozen and frozen foodstuffs, dairy products, fruit and vegetables, the vehicle must be selected in such a way that during transport, the highest temperature of the foodstuffs at any point in the load must not exceed the specified value.

The load compartment of the vehicle must be sufficiently pre-cooled (taking into account the outside temperature). Due to possible temperature differences, the thermostat of the refrigeration system must be set 3°C lower than required. The doors of the load compartment are to be opened only shortly before loading. When checking the load during transport, it must be ensured that the foodstuffs are not subject to any influence with negative effects on the quality. The start and end of loading must be documented.

If pharmaceutical products with temperature specifications have to be transported, the manufacturer's/shipper's specifications must always be observed. First of all, the trailer must be pre-cooled/ heated before loading, and after loading the unit must be set to continuous operation with the set point specification.

The temperatures of the foodstuffs / fresh goods / frozen / quick (deep)-frozen foodstuffs must be continuously monitored during transport. Special temperature conditions of the producer or the shipper are to be observed. The non-destructive temperature measurement is to be carried out between the packages with a temperature sensor (probe) with a flat head. The additional expenditure incurred by the freight carrier for this check is included in the agreed freight charge. Before the measurement, the probe must be cooled down as close as possible to the temperature of the product. During the destructive measurement, a hole is drilled into the product. The hole is drilled by using a pre-cooled instrument to penetrate the product in which the probe is inserted. It should be large enough to enclose the probe tightly. The probe should be inserted about 2.5 cm into the product.

With regard to the measuring device, the following must be observed: The response time must correspond to 90 % of the time between the initial reading and the final reading at a time interval of three minutes. The system should have an accuracy of  $\pm 0.5\text{ }^{\circ}\text{C}$  in the measuring range between  $-35^{\circ}\text{C}$  and  $+25^{\circ}\text{C}$ . During measurement in an ambient temperature between  $-35^{\circ}\text{C}$  and  $+25^{\circ}\text{C}$ , the measurement accuracy must not change by more than  $0.3^{\circ}\text{C}$ . The display resolution of the device must be at least  $0.1^{\circ}\text{C}$  (the higher the resolution of a measuring device, the more accurately a value can be represented). The accuracy of the system must be checked at regular intervals, but at least annually. A valid certificate of calibration for the system must be available.

Measurements and inspection of temperatures must be carried out in such a way that the quality of the foodstuffs is not impaired. Temperature measurements must in any case be taken at the point of loading and unloading. The temperature must also be monitored during transport. This monitoring must be carried out with the vehicle's own temperature measuring devices. Before taking over the goods, the contractor must check whether the goods to be taken over have been sufficiently pre-cooled (the burden of proof lies with the contractor). Measurements and inspections of temperatures must be carried out in such a way that the quality of the foodstuffs is not impaired. When checking the temperature, a non-destructive method must be used as a general rule (between the packages). The packages used for temperature measurement must be representative of the warmest point of the load. If random sample measurements are taken during transport with a fully loaded vehicle, the measurements must be taken near the doors. It is recommended to mark the packages used for the measurement. Before the measurement, the probe must be cooled down as close as possible to the temperature of the product.

The contractor is obliged to keep temperature records for a period of 3 years from delivery of the goods and to hand them over to the principal on request.

The vehicles must be equipped with sufficient mounting rods and other securing devices. In the case of refrigerated transports, sufficient air circulation must be ensured. In the absence of temperature records, the entitlement to the freight charge shall be forfeited in its entirety. If the transport temperature cannot be deduced from the loading order, the contractor must obtain instructions from the principal regarding the transport temperature and the correct operating setting of the refrigeration unit.

## **17. Loading and unloading, load securing**

The contractor is obliged to carry out the loading and unloading. Damage caused by circumstances during loading or unloading falls within the contractor's liability. The contractor must ensure that the load is properly secured and complies with the statutory regulations. In particular, the contractor is obliged to ensure traffic safety as well as operational safety during transport and load securing. The contractor is solely responsible for securing the load, even if the sender has loaded the goods. The contractor must determine all sources of damage before the transport is carried out and, in particular check the suitability of the loading/stowage and packaging for transport. If necessary, the sources of damage must be eliminated or instructions are to be obtained from the principal. The contractor must check the number of pieces, the condition and the weight of the goods to be transported when taking over the goods. In the event of deviations in quantity, quality and temperature from the specifications given by the principal, as well as in the event of defective packaging, stowage or the impossibility of testing, loading must be stopped immediately and only continued after consultation with and explicit instructions from the principal. In the event of any discrepancies, the principal must

be informed immediately and any corresponding reservations must be entered on the consignment note. The signed acceptance confirmation is the relevant proof of the packages taken over by the driver at the respective place of loading. If different products are loaded in one loading unit, they must be clearly separated and special care must be taken to avoid cross-contamination caused by incompatible products.

In the case of container transports, the contractor is obliged to check the container for external damage, leaks and functionality prior to acceptance. If defects are found, these must be recorded by the contractor in writing in the consignment note and documented with photos. Otherwise, it shall be assumed that any damage found on or after delivery was caused by the contractor and that the contractor is liable for this. In the course of an all-round inspection, the contractor shall check the container in particular for bulges, cracks, foul odors and the escape of liquids. Furthermore, the contractor shall ensure that the container is securely locked and protected against theft. For this purpose, the Contractor shall fit a solid U-lock. For temperature-controlled container shipments, the Contractor shall verify that the proper temperature and cooling mode are set. The temperature settings and functionality of the refrigeration unit shall also be checked after each stop.

## **18. Surveillance duty/Security measures**

Upon acceptance of the order and taking over the cargo, the contractor undertakes to properly and continuously guard the loaded motor vehicles, trailers and/or semi-trailers at any time they are parked during the period between taking over the load for transport and its delivery. The contractor is obliged to ensure that loaded motor vehicles or transport units are properly locked whenever they are parked (even for short-term parking). Furthermore, the motor vehicles or transport units used must be equipped with two independent anti-theft devices - which are state of the art and function properly - and that must be verifiably activated each time they are parked, even if only for short-term parking. The rear doors of the trailers/containers must always be verifiably locked (at least with a solid shackle lock) so that access from outside by third parties is pre-vented in any case. After each break, the integrity of the lock or the outer walls of the cargo hold must be checked. The contractor must ensure that loaded transport vehicles (trailers, semi-trailers, swap bodies, containers, etc.) are always properly guarded during parking and that at night time, on weekends and public holidays they are only parked in a lighted and secured parking space or secured (fenced and adequately guarded) company premises. In general, only guarded parking spaces must be used. A list of guarded parking spaces is available at for example [www.iru.org](http://www.iru.org), [www.ania.it](http://www.ania.it). The route must be planned in such a way that - provided that the pre-scribed driving and rest periods are observed - no breaks, overnight stays or other parking procedures (except for short-term refuelling) are required on unguarded parking spaces. If necessary, the contractor is obliged to reserve guarded parking spaces as a precaution and to assign the driver accordingly. The isolated parking of loaded trailers/semi-trailers/swap bodies (without towing vehicle) as well as the parking of the transport vehicle in an unsecured area is prohibited without exception (even in a guarded parking space) and there is usually no insurance cover with conventional insurance companies (!!)

For all transports to England, due to the current risk of migration, the driver has to seal the load and lock the truck with a lock to prevent people from entering. Due to the current situation, parking within a radius of 100 km from Calais is expressly prohibited. The last 100 km to the port must be driven without stopping. It is also the driver's duty to make sure that no persons have boarded. The contractor is obliged to comply with the requirements of the UK Home Office and carry out the necessary „Vehicle Security Checks“. The Vehicle Security Checklist can be found at [www.gov.uk/government/publications/vehicle-security-checklist](http://www.gov.uk/government/publications/vehicle-security-checklist).

## **19. Vicarious agents**

The contractor is obliged to demonstrably inform his employees and other vicarious agents, in particular subcontractors, (in writing) of the obligation to comply with the provisions of these terms and conditions and ensure with the diligence of a prudent freight carrier that these safety measures are actually followed. Furthermore, the contractor must ensure that the truck drivers employed have all foreign employment or employee secondment permits and are employed in accordance with the laws of the country in which the vehicle is registered. The driver must carry the proofs and documents (in particular work and residence permits) required by the applicable legal provisions. The contractor undertakes to provide only drivers who have at least knowledge of the language at the place of departure and takeover in order to be able to communicate sufficiently with the sender and consignee as well as the authorities. The contractor confirms

that drivers have a valid internationally accepted driving licence and a certificate according to Directive 2003/59/EC (EU professional driver training). The driver must be specially trained for all transport requirements and carry the necessary certificates. In particular, the requirements of the ADR and road traffic regulations (StVO), regarding load securing and safety regulations/safety clothing must be fulfilled. For safety reasons, the driver must always wear safety shoes, helmet, long outer clothing and a high-visibility vest during all loading and unloading activities (unless safety regulations at the place of loading or unloading make higher demands). For ADR transports, the driver must carry/wear the necessary safety equipment. In the event of non-compliance with the above mentioned agreements/instructions, the principal reserves the right to have the vehicle equipped by the shipper at the contractor's expense. If this is not possible, the principal reserves the right to purchase a replacement vehicle and to charge the contractor for the costs in full. The principal holds the contractor fully liable for all consequential costs incurred! In any case, a processing fee of € 35.- is charged for these administrative expenses.

## **20. Driving time, compensation**

In many European countries, laws are in place to pay the minimum wage for driving personnel, to combat wage and social dumping, and to comply with obligations to register. In some cases, the legal provisions stipulate strict contractor's liability and criminal sanctions in the event of underpayment of wages. For the purpose of compliance with these provisions, the following is agreed: The contractor ensures that he has obtained knowledge of these legal provisions. The contractor further assures that he will ensure compliance with all such provisions; this includes, in particular, the timely payment of the mandatory minimum wage, the fulfillment of the obligations to register, in particular the reporting of the deployment plan, in accordance with the registration forms provided for this purpose, providing the corresponding wage and work records in order to check the minimum wage, which are to be submitted to the authorities for verification upon request, ensuring that the truck driver keeps records of the start, end and duration of the daily working time. These records must be kept for at least two years. The contractor is obliged to demonstrably inform his employees and other vicarious agents, in particular subcontractors, (in writing) of the obligation to comply with the minimum wage provisions or the provisions of this agreement and to ensure with the diligence of a prudent freight carrier that these measures are actually followed. Upon request, the contractor must immediately provide the principal with appropriate evidence of compliance with these statutory provisions without delay. The contractor commits to fully indemnify and hold the principal harmless, i.e. also unlimited in terms of the amount, for all expenses/costs/claims/outstanding accounts (irrespective of legal grounds) arising in connection with the violation of this agreement or non-compliance with the minimum wage provisions (including the regulations issued in this connection). This also applies in particular to administrative expenses, representation costs as well as consulting costs incurred.

## **21. Customer protection**

Customer protection is deemed to be agreed; upon acceptance or passing on of orders or other contact with customers of the principal as well as all companies involved in any way in the transport order, all claims of the contractor against the principal are forfeited. In addition, a no-fault contractual penalty of € 35,000.- irrespective of the actual amount of damage and which is excluded from the judicial right to reduce the penalty, is agreed for the violation of this non-compete or customer protection clause. This does not affect any further claim for damages.

## **22. Demurrage**

The assertion of demurrage is excluded in the event of a waiting period or standing of up to 24 hours. Saturdays, Sundays and public holidays are not taken into account, i.e. they are always free of charge. After the agreed 24-hour demurrage exemption, a maximum of € 150.- per day/ per truck may be charged as demurrage, if the principal is actually at fault, whereby the burden of proof lies with the contractor. The demurrage is limited to a maximum of 3 days in terms of length.

## **23. Obligation of confidentiality**

All transports are subject to an obligation of confidentiality, which strictly prohibits the contractor from disclosing any information that becomes known to him in the course of the execution of the order to third parties. The contractor is liable for all vicarious agents. In the event of unauthorised disclosure of information to third parties, a contractual penalty regardless of fault of € 10,000.– which is excluded from the judicial right to reduce the penalty, is due. The principal expressly reserves the right to assert claims for further damages.

## **24. Loading dates, delivery deadlines**

The contractor must arrive with his vehicle at the place of loading at the agreed loading time. If the vehicle is not provided, a contractual penalty is due, amounting to 80 % of the freight (regardless of fault) which is excluded from the judicial right to reduce the penalty and independent of the actual damage. For late arrival at the place of loading, a contractual penalty regardless of fault of € 100.–/hour is due. Any further claim for damages remains unaffected in both cases. The unloading dates are deemed to be delivery deadlines within the meaning of Art. 19 CMR. The loading and unloading dates are absolute fixed dates. The contractor acknowledges that adherence to the delivery deadlines is particularly important to the principal and that he therefore has a particularly important interest in adhering to the delivery deadlines. In the event of delays of any kind, the principal must be informed immediately. If the contractor does not comply with this obligation, the principal is entitled to a deduction of 30 % of the freight. For a delay in delivery, a contractual penalty in the amount of € 100.–/hour is due regardless of fault.

Any further claim for damages remains unaffected. Furthermore, in the event of a delay in delivery, a processing fee of € 75.– is due. Before accepting the transport order, the contractor must check whether the delivery deadline can be met. If the place of loading and/or unloading changes, the contractor is obliged to carry out the changed transport order; the freight price will be adjusted accordingly.

## **25. Fixed prices**

The prices stated in the offer or order of the principal are fixed prices. Surcharges or expenses, costs (of any kind whatsoever) will not be accepted.

## **26. Unloading according to consignment note/transport order**

The goods must only be unloaded at the consignee address or delivery address specified in the transport order/consignment note. Changes must only be made with the explicit approval of the principal. If the details in the consignment note differ from the transport order, this must be discussed and cleared with the principal before execution.

## **27. Contractual language**

The contractual languages are German and English. In case of difficulties of interpretation, ambiguities and contradictions, the German version prevails.

## **28. Waiver of objection based on "Lohnfuhrvertrag"**

The contractor explicitly waives the objection based on a „Lohnfuhrvertrag“; should the contractual relationship actually be classified as a „Lohnfuhrvertrag“, the contractor explicitly agrees to subject this contractual relationship to the liability provisions of the CMR Convention.

## 29. Statute of limitations

All claims asserted against the principal, irrespective of legal grounds and the degree of fault, are subject to the Statute of Limitations following the expiration of a period of six months. The limitation period begins in all cases at the time the respective transport order is placed.

## 30. Additional provisions by type of means of transport

These provisions shall apply mutatis mutandis to all other transports (not only to truck transports), irrespective of the type of means of transport. If applicable, the respective clause is to be interpreted in such a way that it also applies to the specific transport with the actually used means of transport (for example: ship, train, plane). Depending on the type of means of transport, the following additional provisions shall also apply if their legal scope of application is not given, provided that they do not conflict with these GTC:

- In road transports: The regulations of the CMR and subsidiarily, the provisions of the UGB apply.
- In rail transport including transshipment: The mandatory provisions of CIM and subsidiarily, the provisions of the UGB apply.
- In air freight: The provisions of the Montreal Convention apply if the scope of application of this convention (Art. 1 MÜ) is fulfilled. Otherwise the provisions of the WA apply.
- In inland waterway transports: The provisions of the CMNI apply, provided that the scope of application of this Convention is fulfilled. Otherwise the Austrian Inland Navigation Act (Binn-SchiffG) applies.
- In sea freight: All provisions of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules or HR for short) apply. This also applies if the scope of application (Art. 2 HR) is not fulfilled. It is expressly pointed out that Art. 23 HR is also deemed to be agreed.
- In multimodal transport: If the place where the damage occurred is known, liability shall be governed by the liability rules applicable to the means of transport in question (see above). If the place where the damage occurred is unknown, the carrier shall be liable in accordance with the liability law most favourable to the principal. This shall also apply to any limitation and exclusion periods.

All limitations of the Contractor's liability, in particular those regulated in the above-mentioned conventions/laws, shall not apply in the event of intent and/or gross negligence for which the Contractor is responsible. The Contractor shall bear the burden of proof for the absence of gross negligence or intent. The contractor shall be liable for the negligence of all servants called in by him and all other persons of whose services he makes direct or indirect use in the performance of the transport.

## 31. Disclaimer/Limitation

The liability of the principal for all damages is excluded, irrespective of the degree of fault and irrespective of the legal grounds (for example: damages in connection with defective loading, securing of cargo, seizure of vehicles, seizures, detentions, etc.). Should the preceding exclusion of liability violate mandatory provisions and thus be ineffective, the liability of the principal shall be limited to at least 8.33 special drawing rights per kilogram of the transported goods. This limitation of liability shall therefore apply, for example, to claims of the contractor against the principal on account of damage arising from the provision of information, instructions, documents handed over by the principal and damage arising from defective packing (for example: Art. 7, 10, 11, 12, 22 CMR).

### **32. Applicable law, jurisdiction**

All disputes between the parties are governed by Austrian law, excluding the provisions of the international private law (IPR). All disputes between the parties, including disputes on the existence of agreements between the parties, shall be decided exclusively by the court having subject-matter jurisdiction for the municipality of A-6130 Schwaz. The contractual languages are both German and English.

This agreement is valid without confirmation!