



## **General Terms and Conditions of Business (GTC) of SWOP Seaworthy Packing GmbH**

version effective from 1 Juli 2020

### **Section 1 Scope of application**

- (1) These terms and conditions shall apply to all agreements concerning services provided by Seaworthy Packing GmbH (SWOP) within the scope of its activities as specified in Section 2.
- (2) Agreements diverting from these terms and conditions shall be made in writing and signed in accordance with Section 126 German Civil Code (BGB). Agreements made by fax or e-mail do not suffice. Conflicting terms and conditions of the client are not recognised.
- (3) In addition to these terms and conditions, the client shall comply with the provisions of public law, including customs regulations.
- (4) These General Terms and Conditions of Business shall not apply to contracts with consumers within the meaning of Section 13 German Civil Code (BGB).

### **Section 2 Services provided by SWOP**

- (1) SWOP offers its customers in Hamburg, Bremerhaven and Wilhelmshaven the following services:
  1. packaging of goods, especially for sea transport; protection of the goods against mechanical damage or damage caused by adverse climatic conditions or seawater;
  2. handling of goods; packing, stripping and stuffing of goods in containers and similar means of transport; stowing on ships and other vehicles;
  3. Storage of goods, for transportation or disposition reasons;
  4. other forwarding and logistics services.
- (2) The services contractually owed by SWOP are solely governed by the service scope agreed with the respective client in accordance with Section 3 and the specific order confirmation.

### **Section 3 Agreements with SWOP**

- (1) Contracts with SWOP shall be made in writing. SWOP may require that the order is placed in writing before it is confirmed.
- (2) The remuneration for the services rendered by SWOP is determined by separate agreement; in the absence of such agreement, SWOP's Schedule of Prices and Conditions as amended shall apply, or the usual price shall be paid. [*available under [www.SWOP.eu/AGB](http://www.SWOP.eu/AGB)*]
- (3) If SWOP issues an offer including a cost estimate, it is bound to the cost stated for a period of 30 days. If an order is placed based on the offer, the total price may not exceed the offer by more



than 15%. SWOP may make the submission of a written offer conditional on the prior payment of the cost thus incurred; this fee will be deducted from the remuneration once the order is placed.

- (4) SWOP is entitled to engage sub-contractors as vicarious agents.

#### **Section 4 The client's duties of cooperation**

- (1) The client shall inform SWOP in writing of all circumstances that are significant for the execution of the order at the time the order is placed, especially with regard to the type, nature, dimensions, weight, centre of gravity of the goods and any specific technical features, if applicable, as well as the approximate value of the goods.
- (2) The client shall consign the relevant goods to SWOP on the agreed date or within the agreed time period, and at the agreed place in a suitable condition and ready for the execution of the order.
- (3) The client shall inform SWOP in writing in due time before the goods are delivered, if the goods require special precautions or measures with regard to the services to be rendered because of any specific properties, including the exact details of these specific properties. The client shall arrange for the measures required for safe handling in cases where the required special precautions or measures cannot be implemented by SWOP (such as maintaining a certain temperature for refrigerated containers or other temperature-controlled goods), and implement these measures as well as cover related costs. The client shall distribute large consignments among several BL.
- (4) The client shall inform SWOP in writing of the exact nature of any danger and, if necessary, the precautionary measures to be taken in good time before the handling is commenced prior to the delivery of goods from which, due to their specific properties, dangers may arise during handling. The client shall ensure that applicable regulations are observed if the handling of dangerous goods is subject to special legal or official regulations. Whenever dangerous goods cannot be stored at SWOP, they are stored at the EUROGATE Container Terminal Hamburg GmbH in Hamburg; if they must be stored in Bremerhaven, they are stored at the EUROGATE Container Terminal Bremerhaven GmbH; if they must be stored in Wilhelmshaven, they are stored at the EUROGATE Container Terminal Wilhelmshaven GmbH & Co. KG. In each case, storage is governed by the terms and conditions of the actual warehouse keeper and carried out at the expense of the client.
- (5) If work is carried out outside of SWOP premises the client shall ensure unobstructed working conditions at its own cost and shall be in charge of and responsible for lifting the packages and setting them down for the purpose of processing, packing or loading the packages. The client shall ensure that the technical requirements for the proper and safe execution of the order are in place for the duration of its execution.
- (6) In cases where the client does not fulfil one of the obligations mentioned in the preceding paragraphs or does not fulfil them on time, SWOP is entitled to terminate the contract after setting a deadline and to demand the agreed remuneration as well as any additional costs incurred due to the breach of contract; the amount saved by not rendering services shall be deducted. In cases where the client does not fulfil its obligations according to paragraph 5, SWOP is entitled, after a prior warning, to implement the required measures at the expense of the client.



## **Section 5 Packaging**

- (1) SWOP shall pack the goods in a way that they are able to withstand the intended normal transportation, as it was communicated to SWOP, without damage.
- (2) SWOP shall only apply corrosion protection or preservation measures, if this has been agreed upon explicitly. In this case, the contracting parties shall determine the period of time for which the corrosion protection or preservation measures are to remain effective; unless otherwise agreed, the corrosion protection or preservation measures shall be applied until the packaging is opened for the first time, but no longer than a period of 3 months from the completion of the packaging process.
- (3) In cases where SWOP does not perform the service within the agreed period of time and SWOP or its vicarious agents are responsible for the delay, the client may demand compensation for damages incurred. This compensation is limited to ten times the remuneration for the service and a maximum of EUR 100,000; if the delay is due to intent or gross negligence on the part of SWOP, its legal representatives or vicarious agents, these limits do not apply.
- (4) Delivery of the goods to the client or the person designated by the client shall be deemed to be accepted if no complaint is lodged by the client or such person; following acceptance, the burden of proof is reversed. Any complaints must be made to SWOP in writing.
- (5) The client may only demand a reduction of the remuneration or a reimbursement for damages because of a defective service or due to loss or damage of the goods handled, if SWOP or its vicarious agents are proven to be at fault and if a remedial measure offered by SWOP has already failed or if the client cannot be reasonably expected to wait for a remedial measure. Potential claims for damages are limited to an amount of EUR 250,000 per order for financial losses and to an amount of EUR 1,000,000 per order for property damage. The limit shall not apply if the defect was caused by SWOP, its legal representatives or vicarious agents either intentionally or by gross negligence.

## **Section 6 Handling**

- (1) A separate cargo-handling contract shall be concluded between SWOP and the client for the handling of goods, i.e. unloading, transport, stowing and loading as well as related activities excluding packaging and storage. If goods handled by SWOP are to be delivered to third parties, the conditions under which the goods may be delivered are specified in the cargo-handling contract.
- (2) In cases where SWOP discovers obvious defects of the goods upon delivery, especially of the packaging, the company may refuse to accept and handle the goods. In cases where a defect is discovered after the goods have already been taken over by SWOP, the company shall, if possible, ask the client for instructions. If no instructions can be obtained from the client, SWOP shall take the measures it deems most appropriate in the interest of the client; the costs of these measures shall be borne by the client.
- (3) Goods handling and related activities are carried out by SWOP employees using belonging equipment; SWOP has the right to have the handling of goods carried out by third parties or to use third-party equipment. The client and its agents are obliged to supervise the goods handling and related activities and to cooperate, if necessary.



- (4) In addition, the following regulations, the liability provisions of which deviate from the statutory regulations, shall apply: the Bremische Hafenordnung for cargo handling in Bremerhaven, the regulations of the Kaibetriebsordnung des Unternehmensverbandes Hafen Hamburg for handling in Hamburg and the Hafenbenutzungsordnung WHV for goods handling in Wilhelmshaven, each as amended. [*available under [www.SWOP.eu/AGB](http://www.SWOP.eu/AGB)*]

SWOP is liable for violations of its obligations with respect to handling and all related services except packaging as per Section 5 and storage as per Section 8 in accordance with the legal provisions of Sections 425 to 439 German Commercial Code (HGB) on carrier liability, including services that are not governed by freight law.

**Notwithstanding the statutory provisions, liability for loss or damage of goods shall, however, be limited to 2 SDR for each kilogram of gross weight of the goods; liability for late delivery shall be limited to three times the amount of the handling charge for the goods delivered late.**

## **Section 7 Customs inspection/Official plant inspection**

- (1) SWOP shall present the goods to the competent authorities, if this was agreed by separate contractual agreement or if a competent authority issued an order to this effect.
- (2) Whenever SWOP staff or vicarious agents participate in the customs inspection or official plant inspection, SWOP and their employees or agents are liable for damages during packing and unpacking as well as for possible stowage errors only in case of intent or gross negligence and within the limits of Section 6.

## **Section 8 Storage**

- (1) For the storage of goods, a separate storage contract is concluded between SWOP and the client. If goods stored by SWOP are to be delivered to third parties, the conditions under which the goods may be delivered are specified in the storage contract.
- (2) In cases where SWOP discovers obvious defects of the goods upon delivery, especially of the packaging, the company may refuse to accept and store the goods. In cases where a defect is discovered after the goods have already been taken over by SWOP, the company shall, if possible, ask the storing party for instructions. If no instructions can be obtained from the storing party, SWOP shall take the measures it deems most appropriate in the interest of the client; the costs of these measures shall be borne by the storing party.
- (3) SWOP is entitled to store the goods at third parties.
- (4) In cases where damage to the goods can be attributed to their natural condition, which particularly exposes them to damage, in particular due to breakage, rust, internal spoilage, drying out, leakage or normal shrinkage, or due to faulty or missing packaging or inadequate labelling by the storing party or a third party, it shall be presumed that the damage was caused thereby.
- (5) In addition, the storage conditions applicable in Hamburg (Hamburger Lagerungsbedingungen) as amended, including their liability provisions that deviate from the legal regulations, shall apply to the storage at all SWOP locations. [*available under [www.SWOP.eu/AGB](http://www.SWOP.eu/AGB)*]

**Section 12 of these storage conditions limits the legal liability for damaged goods to 2 SDR for each kilogram of the gross weight of the goods.**



## **Section 9 Forwarding**

Whenever SWOP takes on forwarding or logistic tasks, they shall be carried out in accordance with the general German freight forwarder's terms and conditions (ADSp 2017) recommended by the German association for forwarding and logistics (DSL) since 1 January 2017 including the corresponding liability regulations that deviate from the legal provisions.

**In item 23 of the ADSp 2017, these regulations deviate from the law with regard to the liability limit for damage to goods (Section 431 German Commercial Code (HGB)) in that they limit the liability in the case of multimodal transports, including sea transports, where the place of damage is unknown, to 2 SDR/kg, and limit the general liability for other cases to 8.33 SDR/kg additionally to EUR 1.25 million per damage claim and EUR 2.5 million per damage event, but at least 2 SDR/kg.**

## **Section 10 Insurance**

If the client has a higher interest than defined in these conditions, SWOP offers to take out an insurance covering this value at the expense of the client.

Prerequisite is at least an explicit written order of the client with all risk disclosures and the value to be covered, a mere declaration of value is not sufficient.

## **Section 11 Liability for objects other than those handled**

- (1) SWOP shall only be liable for damage to vehicles or other property of the client or third parties, which the client uses for delivery or collection of the goods, if the fault is proven to be attributable to one of its employees. Liability is limited to property damage, unless SWOP, its employees or vicarious agents have acted intentionally or recklessly in the knowledge that such damage would probably result.
- (2) In cases where clients use vehicles owned by a third party to take over or collect the goods, they are obliged to indemnify the company against any liability towards the third party in excess of the liability stipulated in paragraph 1.

## **Section 12 Liability of the client**

In accordance with section 414 German Commercial Code (HGB), the client shall be liable for damages and expenditure incurred by SWOP, because the goods are not in a proper condition or because the information requirements as set out in Section 4 are violated, even if the client is not at fault. Any further liability according to general provisions remains unaffected.

## **Section 13 Liability to third parties**

The client shall be obliged to indemnify SWOP against any liability in excess of the liability set out in Section 11 to a third party, with whom the client has concluded a freight, forwarding or storage contract, by agreement with the third party.



## **Section 14 Invoicing, payments, default**

- (1) The invoicing by SWOP will take place immediately after the performance or partial performance of a service, unless otherwise agreed.
- (2) The invoices are payable within 14 days as of date of invoice without deduction.
- (3) After expiration of the payment period, the customer is in default without specific notification. In case of repeated default of payment, SWOP reserves the right to demand payments in advance of beginning any service.
- (4) The delay of payment entitles SWOP to charge default interest at level of 9 percentage points over the actual basis interest for overdraft as well as a lump sum for damage caused by delay.

## **Section 15 Right of lien and right of retention, set-off**

- (1) With regard to all the receivables for services that SWOP has rendered towards the client, SWOP shall have a right of lien and a right of retention on the goods in its possession as well as on the accompanying documents, provided these goods are the property of the client or have been consigned to SWOP with the consent of the owner.
- (2) SWOP may exercise a right of lien or right of retention on the grounds of receivables related to other handling or storage contracts concluded with the client only if such claims are undisputed or have been determined by final judicial decision, and such rights exist against the owner of the goods.
- (3) A set-off or retention against claims of SWOP is not permitted, unless the counterclaim is due and undisputed or determined by final judicial decision.

## **Section 16 Applicable law, place of fulfilment, place of jurisdiction**

- (1) The legal relationship between SWOP and its clients shall be governed by German law.
- (2) The place of fulfilment is the respective operating site of SWOP.
- (3) The place of jurisdiction for all legal disputes arising from or in connection with the contractual relationship is Hamburg. Hamburg shall be the exclusive place of jurisdiction for all claims against SWOP.

## **Section 17 Severability**

If one of the provisions of these General Terms and Conditions is found to be invalid, in whole or in part, this shall not affect the validity of the remaining provisions.