

## General Terms and Conditions of trans-o-flex Schnell-Lieferdienst GmbH & Co. KG (August 2011)

### 1. Scope of Application / Contractual Relationship

- 1.1. These General Terms and Conditions (GTC) shall apply to all contracts concluded with trans-o-flex Schnell-Lieferdienst GmbH & Co. KG (trans-o-flex) in Germany, for all services, in particular the handling, the transshipment, the storage and organisation of the transport to the determined consignee (principally commercial consignees, public bodies, and freelancers) in the form of the conveyance of bulk materials. They also supplementary apply to individual agreements with the customer.
- 1.2. The services are processed by means of a trans-o-flex transportation system, to which distribution companies belong in their role as system partners. These companies manage the transports, transshipment, deliveries, and movement of goods for trans-o-flex as subcontractors. Therefore, whenever the following refers to trans-o-flex, this trans-o-flex system is always meant.
- 1.3. The customer does not place explicit individual orders. The individual order itself is placed when the trans-o-flex system partner takes over the goods during the regular takeover at the scheduled times. The exact scope of the order is determined by the data transferred in writing or electronically by the customer, which will be matched daily with the information available to trans-o-flex.
- 1.4. A shipment consists of one or more parcels and/or pallets which are addressed to a consignee's address with a data record, and which are settled together. A parcel is considered to be each collo or each individual complete pallet with a separate label.
- 1.5. To the extent these General Terms and Conditions do not contain anything to the contrary, the Allgemeine Deutsche Spediteurbedingungen (ADSp/General Terms and Conditions of German Forwarders) – in their relevant latest version – shall apply, supplemented by the statutory provisions. To international transports the provisions of the CMR (Convention on Contracts for the International Carriage of Goods by Road) and to airfreight shipments the Warsaw Convention respectively the Montreal Convention shall be applicable. Any contrary General Terms and Conditions of the customer are hereby expressly refuted.

### 2. Kinds of Goods/ Goods Excluded From Services

- 2.1. The colli handed over for conveyance must be packed compactly and suitable for stacking. The maximum weight of a regular parcel should not exceed 32 kg and their dimensions should not exceed 220 cm in length and 330 cm in girth. Parcels of the "parcel XL" - category must not exceed a maximum weight of 50 kg, dimensions of 270 cm in length and 450 cm in girth. For the purposes of billing, all parcels with larger dimensions are handled as pallets.
- 2.2. Insofar as consignments are supplied on euro pallets, in the category "pallet" their maximum dimensions should not exceed 200 cm in height (including the height of the auxiliary loading equipment itself) and 10 cm in overhang. The maximum weight should not exceed 500 kg. In the "pallet XL" category, pallets should not exceed a maximum weight of 800 kg with the same maximum loading height and the option of having an overhang of > 10 cm.
- 2.3. If pallets of category "pallet XL" exceed these dimensions or if a euro pallet cannot be stacked, a system surcharge may be charged accordingly.
- 2.4. A system surcharge will also be levied for non-conveyable colli (NC parcels) with a weight less than 32 kg and not in XL format. trans-o-flex reserves the right to charge accordingly.
- 2.5. In addition, The following items are excluded from national and international carriage except where special arrangements have been made:
  - a) consumer consignments
  - b) parcels which are insufficiently packaged or labelled,
  - c) goods of particular value such as precious metals, genuine jewellery, money, coins, antiques, objets d'art, furs, certificates, documents, securities, credit and telephone cards (class II securities);
  - d) parcels whose contents, shipment or outer appearance are in contravention of legal requirements;
  - e) firearms, explosive materials and military equipment,
  - f) consignments whose contents or external structure or nature could injure or infect persons or cause material damage;
  - g) living or dead animals or plants, human mortal remains, body parts or organs, perishable goods of any kind;
  - h) unpackaged removals goods
 Additionally, the following items are excluded from international shipping:
  - i) personal effects and ATA Carnet goods, consignments payable by letter of credit or FCR;
  - j) goods of which the import and/or export is prohibited by the legal requirements of the countries involved;
  - k) goods which have been or are to be declared by the customer in accordance with Art. 24 CMR and/or Art. 26 CMR. The same applies to value and interest declarations in accordance with the Warsaw Convention or Montreal Convention. The driver is not authorized to accept goods accompanied by a bill of lading in accordance with Art. 24 CMR and/or Art. 26 CMR. The driver has no power of representation allowing him or her to accept such an assignment on behalf of trans-o-flex.
- 2.6. The acceptance of such excluded goods (according to subpara. 2.5.) does not represent a waiver of a carriage exclusion stipulation. The customer is responsible for checking whether goods for consignment are excluded and informing trans-o-flex. In cases of doubt the Customer shall inform trans-o-flex and seek approval on a case by case basis.

### 3. Obligations and Duties of the Customer

- 3.1. The packaging (for collection orders too) is the customer's responsibility. The packaging must comply with the requirements of the mass transport, especially for sorting in an automatic parcel sorting unit. Also the packaging must adequately protect the goods against damage and unauthorised access to their contents without leaving outwardly visible traces. trans-o-flex cannot examine the packaging in detail due to the short handover windows that have been specified. trans-o-flex reserves the right however to reject packaging as deficient in individual cases.
- 3.2. The customer must attach a label according to legal transport requirements with the sender's address and full consignee address (not post-office box) to each parcel; this

also applies to every complete pallet. The customer bears the costs of any parcel that is not properly labelled.

- 3.3. If premium services are taken up, in particular, cash on deliveries (C.O.D.), or cheque collection orders, the parcel must have the correct labelling and the amounts in question must be clearly visible. The customer must label items of packaging that contain dangerous goods according to the legal provisions of the German Commercial Code (HGB), and in particular the Regulation on the domestic and international transport of dangerous goods by road and railways (GGVSEB) and European Convention on the transport of dangerous goods by road (ADR). The customer is responsible for the completeness and accuracy of the labelling.
  - 3.4. For each consignment and/or for each parcel the customer hands over a consignment or unit dataset containing all relevant information for shipment required for the generation of the trans-o-flex dataset. Where necessary, this dataset is sent together with the shipping documents. For each consignment the data must include the sending party, the exact recipient (no post-office box), weight, customer reference number, number of parcels, and, where necessary, information about special services. If there are missing shipment data, the individual order will be based on the label specifications, barcodes or other information that can be found on the parcel. The customer is responsible for not using an identical barcode within 90 days as the trans-o-flex system will not be able to make a distinction between two such barcodes.
  - 3.5. When sending dutiable goods, the customer shall provide all documentation properly and completely filled in, which are necessary for the customs proceedings. trans-o-flex rejects any responsibility for the contents of the accompanying documentation. The customer shall be fully responsible for the documentation.
- ### 4. Services Provided by trans-o-flex
- 4.1. The services include the organisation of the transport, the taking over, the transshipment, the distribution, and the organisation of the delivery of shipments on work days, from Monday to Friday. Additional services are only provided based on a written agreement.
  - 4.2. It is known to the customer that the shipments are transported in the form of consolidated shipments. Due to this form of mass transport, trans-o-flex cannot apply and ensure the same standards of custody as for individual transports. Therefore, the customer accepts the interface controls by trans-o-flex as described in the following as proper and diligent transport processing:  
The trans-o-flex driver acknowledges the collection of the goods at the customer site in an outwardly sound condition with a transshipment certificate. Insofar as the driver has been able to check the parcels (limited to a maximum of 50 parcels per assignment) and/or pallets in respect of visible damage and quantity during takeover and this has been acknowledged on the takeover certificate, the number of units noted shall be deemed by both parties to be binding and as having been accepted without visible signs of damage.  
When the shipments are recorded in the trans-o-flex system, the containers which arrived are immediately emptied after being opened in the distribution company accepting the collection, mixed pallets are unpacked, and each parcel is individually scanned. The parcels will be packed in mixed units (e.g. pallets or pallet cages), secured and labelled (relation label). Complete pallets and mixed units will be scanned during the loading process into a loading unit (e.g. trailer, swap body). After loading is complete, the loading unit will be sealed. If the complete pallets and mixed units are unloaded at a transshipment point (HUB) before reaching the delivery distribution company, the pallets and mixed units will remain completely unopened and will be examined during unloading and loading for completeness via scans and on sight for the intactness of their packaging. At the delivery distribution company, the complete pallets are scanned, the mixed units are opened and every individual parcel is scanned. An additional scan will take place during hand-over to the delivery drivers. The consignee confirms the receipt of the shipment by signature. There shall be no additional obligations for control by trans-o-flex.
  - 4.3. In case the consignee is not in or the shipment cannot be delivered, a second attempt of delivery will be made, unless there is agreement to the contrary. This does not include refusals to accept delivery. If a delivery is ultimately not possible, the customer will be notified in writing.
  - 4.4. Generally, shipments shall be delivered on the working day (Monday to Friday) following the day of taking on the goods during the usual business hours to the named consignee (regular Turn-Around Time - TAT). Insofar as the Customer desires additional services, such services are either detailed in Annex A or shall be agreed upon explicitly in a written addendum.  
For shipments to consignees on the East and North Frisian Islands as well as on Helgoland, the regular TAT shall regularly be extended by one working day in each case. The regular TAT can only be observed if the stated departure times at the customer's premises are adhered to.
  - 4.5. The customer is responsible for applying the appropriate informational pictograms for the individual services when requesting the special time-specific services for the tof-Plus 8, 10 and 12 hour service stickers and/or when using the standard business label. trans-o-flex will not activate any credit notes if the label is missing. From the 16th minute, the Plus service is considered late. In such a case, the customer will be entitled to claim compensation in the form of a difference amount between the requested and the Plus service which came afterwards.
  - 4.6. Delivery is deemed to have been affected with the signature of the consignee or other person, from which it can be assumed from external circumstances that they are entitled to take receipt of the parcel.
  - 4.7. For private consignees, it is also possible to make a substitute delivery to a neighbour's address (except for pharmaceutical goods or when otherwise specified by the sender). In this case, trans-o-flex is obliged to leave a notice to this effect with the intended consignee.
  - 4.8. trans-o-flex uses electronic means to verify that the delivery was made correctly. The digitalised form of the signature made by the consignee and its reproduction is expressly accepted by the customer as proof of delivery. If requested, trans-o-flex will inform the customer about the time of delivery.
  - 4.9. Included in the services is also the return of shipments to the customer which cannot be delivered or the acceptance of which was refused.
  - 4.10. In case that delivery or return of shipment is not possible due to missing information of

sender or due to other reasons, trans-o-flex shall be entitled to open the shipment in order to assert the customer or consignee. If such examination is without success, the goods shall be utilised after expiration of a reasonable period or, if necessary, destroyed beforehand.

4.11. The proceeds of such a disposal shall accrue to trans-o-flex. The sender consents in such cases to the ownership of the property passing to trans-o-flex. On the ownership of the property having passed to trans-o-flex the sender shall have no further right to demand its return, nor any claim for compensation. Insofar as the sender is not also the owner of the consignment contents, the sender herewith releases trans-o-flex from demands for return of the goods or claims for damages which may be lodged by the rightful owner (consignee or third party).

## 5. Dangerous Goods

5.1. Dangerous goods categorised as class 1 ADR will, in principle, not be accepted. Services for other dangerous goods require a special agreement prior to hand-over.

5.2. The customer is solely responsible and, in the event of damage, also liable for ensuring compliance with the relevant legal regulations with respect to the declaration, packaging, enclosure of shipping documents, written instructions, etc. The above shall also apply if the dangerous goods are handed over by a different person than the customer.

## 6. Cash on Delivery Shipments/Cheque Collection Orders

6.1. Cash on delivery (C.O.D) shipments must be clearly marked as such by the customer on the address label with the corresponding product label and to specify it in full in the dataset. The cash on delivery amount must be specified clearly on the label for domestic shipments, and in the accompanying dataset. The customer is responsible for ensuring that the consignment data for a COD order is received by trans-o-flex on the same day, as the correct processing of the COD service in the trans-o-flex system can only then be guaranteed.

6.2. Where the amount is not entered or is indistinctly recorded on the documents or the consignment data is missing, the order for COD services shall be deemed not to have been placed. This shall also apply if the unit is not labelled or the labelling is illegible.

6.3. Areas exempt from customs (Zollausschlussgebiete) will not be served.

6.4. All orders for C.O.D. shipments must be made out in the currency of the country of destination. C.O.D. amounts for transports in Germany will be collected in Euro. For transports in Germany, the C.O.D. amount must not exceed EUR 10,000; for foreign C.O.Ds, the maximum amount is EUR 5,000 per shipment.

6.5. Orders for the collection of cheques must be clearly labelled as such on the address label of each parcel for which the order is issued by the customer with the corresponding product label. The collection amount must be specified on this label. The currency must be clearly identified. The amount on the check collection order must not exceed EUR 25,000 per shipment. The customer is responsible for ensuring that the amount to be collection by means of a cheque collection is shown clearly, both on the label and in the dataset.

6.6. The customer bears the risk of loss for the forwarding of cheques. trans-o-flex is only obligated to examine the cheque for the correct entry of the amount to be collected. In case of doubt, the value entered in words shall be binding. There is no obligation to examine the authorisation of the signing person, the compliance with formal requirements when completing the cheque, and the creditworthiness. In particular, trans-o-flex will not assume any liability for the creditworthiness.

6.7. C.O.D. shipments will only be delivered against complete payment of the C.O.D. amount in the form approved by the customer.

6.8. To the extent the customer claims liability of trans-o-flex in the context of C.O.D. payments and cheque collection orders, the payment of trans-o-flex will only be made against assignment of the claim of customer against the consignee in the amount of such payment.

## 7. Remuneration for services

7.1. For national shipments the printed price lists, for international shipments the eurodollar price lists in their relevant latest version shall be applicable if there are no deviating agreements. The prices on the day the order was placed shall be applicable.

7.2. Services going beyond the scope of services in points 1.1. and 4. entitle trans-o-flex to calculate the resulting additional cost arising.

7.3. Instructions for redirection shall be invoiced separately.

7.4. Packaging and pallet weights are included in the chargeable weight.

7.5. The set-off by the customer with claims against trans-o-flex or the assertion of a right of retention shall be excluded, except for such claims that are either finally decided or have been acknowledged by trans-o-flex in writing.

7.6. All invoices by trans-o-flex shall be due at once and without deductions.

7.7. If the customer fails to raise a concrete objection to an invoice that was sent to him in writing within 4 weeks of receipt, the content of the invoice is acknowledged by the customer as being correct. In this respect, objections relating to the contents are excluded on expiry of this period of notice.

## 8. Liability of trans-o-flex

8.1. trans-o-flex's liability and limitation on liability is governed by sections 22, 23 and 24 of the ADSp. Liability is limited accordingly as follows:

**"trans-o-flex's liability in case of loss or damage of the goods shall be limited, with the exception of the stipulated storage,**

- to EUR 5.00 for each kilogram of the gross weight of the shipment;
- in case of damage occurring during transport of the goods using a means of transport instead of the legally defined limit of liability for such transport;

- in case of an agreement on transport by various means of transport including maritime transport instead to 2 SDR/kg;
- for each incidence of damage to an amount of EUR 1,000,000.00 or 2 SDR/kg at the most; whichever amount is the greater."

8.2. Irrespective of the number of claims from an incident of damage trans-o-flex's liability shall be limited in all cases to EUR 2,000,000.00 for each incidence of damage, or 2 SDR per kg of the goods lost or damaged, whichever amount is the greater. In case there is more than one claimant, trans-o-flex's liability shall be apportioned according to the size of the claims.

8.3. trans-o-flex's liability for other damages than damage to goods except for personal injury and damage to other goods than the transported goods shall be limited to three times the amount which would have to be paid in case of loss of the goods, in all cases to a maximum amount of EUR 100,000.00 per incidence of damage. Sections 431 Part 3 and 433 HGB (German commercial code) remain unaffected by this provision.

8.4. Contrary to the stipulations contained in item 27, Section 1 and Section 2 of the ADSp (General Conditions for German Carriers), the limitations of liability detailed above are valid in all cases except where damage is caused through wilful intent.

8.5. The customer undertakes to inform trans-o-flex in due time about any shipment with a value exceeding EUR 5.00 per kilogram or when the goods are particularly susceptible to damage, in order that trans-o-flex with the customer may take precautions and special security measures against theft - where necessary, in return for a special payment. Should the customer fail to do so, then in case of loss a theft shall be considered to have been possible only on account of the failure to notify.

8.6. trans-o-flex shall not be liable for consequential damage of loss, such as purely economic losses, falling earnings or lost earnings or profit, outlay for alternative measures, nor for damages arising from delays in customs clearance, with the exception of personal injury.

8.7. trans-o-flex shall not be liable for damage arising from circumstances beyond its control. Such damages include in particular those arising from force majeure (e.g. earthquake, storm, floods, fog, war, aviation accidents, embargos), from the nature of the shipment, unrest and revolt, actions or failure to act on the part of persons who are neither employees nor agents of trans-o-flex (especially clients, recipients, customs personnel etc.), strikes, electrical or magnetic damage to or deletion of electronic or photographic images, data or recordings.

8.8. If a damage results from the fact that the customer provided trans-o-flex with erroneous or incomplete data or no data at all (on time), or if trans-o-flex was handed over goods by the customer whose take over was excluded, the liability of trans-o-flex shall lapse, with the exception of personal injury.

8.9. The customer is aware that trans-o-flex will handle the cash on delivery amounts with care, will look after them separately, and will instruct the driver to maintain secrecy of the cash on delivery and cash on delivery payments, and generally to show particular care. The drivers are not armed and the vehicles are not protected from robbery in a particular manner. The drivers undertake to show particular care when handling the cash. Despite this care, the security of the cash cannot always be guaranteed, especially when force is used. For this reason, trans-o-flex is not liable for insufficient safety precautions, in particular, in the event of a robbery, with the exception of personal injury. The liability also lapses when the moneys received were counterfeit, when this was not grossly negligent at the least.

8.10. trans-o-flex expressly declares that claims for damages from third parties may result from a departure delays at customer's premises due to handling errors on customer's part, because such delays may cause additional delays within trans-o-flex's logistics system. trans-o-flex therefore expressly reserves the right to forward to the customer any such claims which are lodged by third parties against trans-o-flex.

## 9. Insurance

Generally, trans-o-flex will not procure insurance for the goods to the benefit of the Customer, unless the Customer requests such coverage in writing. In such a case it is possible to conclude a value-dependent goods transport insurance policy which covers the full goods value in case of loss or damage up to a maximum of EUR 500,000.00 per claim.

## 10. Data protection

trans-o-flex is entitled to use and process the data provided by her/him to trans-o-flex including individual related data in electronic and other forms for the purpose of the implementation of the contractual relationship (including the invoicing) as well as for the fulfilment of the legal duties of trans-o-flex. In this context, trans-o-flex shall also be allowed to pass the data to third parties with whom trans-o-flex co-operates in the fulfilment of its obligations and the exercising of its rights.

## 11. Written Form

To be valid, all additional and deviating agreements must be in writing. This requirement also applies to the waiver of the requirement of written form itself.

## 12. Invalidity of clauses/ place of jurisdiction

12.1. The invalidity of an individual provision of these General Terms and Conditions shall not result in their total invalidity. Other provisions remain valid. The invalid provision shall be replaced by a provision coming as close as possible to the original economic intent of the provision in a legally valid way.

12.2. Place of performance and place of jurisdiction shall be Weinheim, Germany.

For the working relationship, unless otherwise determined, German law - for international trans-ports the provisions of the CMR - shall be applicable.