

## **STANDARD CUSTOMS TERMS AND CONDITIONS OF OTTO GROUP LOGISTICS**

(Order placement terms and conditions – direct representation)

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### **§ 1 Application**

- 1 Otto Group Logistics GmbH (Otto Group) shall process customs declaration orders only on the basis of these order placement terms and conditions (*Terms and Conditions*); this shall apply, even if those orders are offered in combination with logistics services of Otto Group.
- 2 These Terms and Conditions shall apply only to entrepreneurs within the meaning of § 14 **BGB** (*Bürgerliches Gesetzbuch = Civil Code*).
- 3 The Terms and Conditions stipulated below between Otto Group and the principal shall apply to all future business relationships. This shall apply, even if they have not been expressly re-stipulated.
- 4 The principal's or a third party's terms and conditions of business shall not apply, even if Otto Group does not contradict their application under separate cover on a case-by-case basis. Even if Otto Group makes reference to a letter containing or cross-referencing the principal's or a third party's terms and conditions of business, such shall in no way be construed as Otto Group's agreement that those terms and conditions of business apply.
- 5 The German Freight Forwarders' Standard Terms and Conditions, as they may be amended from time to time, shall also apply insofar as these Terms and Conditions do not provide for any terms in derogation thereof. The principal is cognizant of the content of the German Freight Forwarders' Standard Terms and Conditions, and said content shall be a fixed constituent of the contract.

### **§ 2 Contract formation**

- 1 In signing the customs power of attorney (order), the principal is making an offer to form a contract.
- 2 Said offer shall be deemed to have been accepted by Otto Group, if Otto Group does not contradict it without undue delay of receipt thereof.

### **§ 3 Service with Otto Group acting in direct representation**

- 1 Otto Group offers declaration services as a direct representative (Article 18(1) of the Union Customs Code (*the Union Customs Code*)) for various customs procedures.
- 2 Unless otherwise stipulated, Otto Group shall be obligated to carry out orders for customs import and export clearing, customs warehousing clearing, clearing

through the **NCTS** procedure, filing for documents (issuing proofs of origin), tariffs relating to the application of applicable customs legislation, the return shipment and the destruction of goods, post-release recoveries, repayments and remissions, as well as Intrastat notifications in the name and for the account of the principal. Unless otherwise stipulated, the order shall extend to any and all import duties (including, but not limited to, customs duties and import turnover tax) relating to the clearing of goods for free circulation.

- 3 Unless the principal is himself, herself, or itself an importer or exporter, Otto Group shall assume the tasks in the name and for the account of the principal as set forth in § 3(1) and § 3(2) of these Terms and Conditions.

#### **§ 4 Principal's assurance**

- 1 The principal shall issue Otto Group a power of attorney commensurate with Otto Group's specifications. Insofar as the principal for his, her, or its part is engaged on behalf of an importer or exporter, as the case may be, the principal shall assure that he, she, or it has been duly empowered by the importer or exporter, as the case may be, to place the customs representation order with Otto Group. The principal shall assure that he, she, or it is the buyer of the goods to be declared or is acting under a power of attorney issued by the buyer thereof.
- 2 The principal is cognizant that he, she, or it and/or the importer, on whose behalf he, she, or it is acting, shall become the declarant within the meaning of the Union Customs Code by filing the customs declaration. Inasmuch, the contractual basis shall be Article 5(15) of the Union Customs Code.
- 3 The principal or the importer, as the case may be, shall have the right to effect a full pre-tax deduction. The principal shall be obligated to advise Otto Group under separate cover in the event that the pre-tax deduction does not apply.

#### **§ 5 The principal's payment duties**

- 1 Otto Group shall process orders in accordance with service prices that have been individually stipulated.
- 2 The principal shall be obligated to pay (a) such fee contemplated under § 4(1) of these Terms and Conditions and (b) any and all duties and other out-of-pocket expenses advanced by Otto Group in connection with the performance of the order for the principal. Here, Otto Group shall have a claim to the compensation of any out-of-pocket expenses that Otto Group may believe to be necessary given the circumstances. In individual cases, Otto Group can demand that it be held harmless from such duties and other out-of-pocket expenses.
- 3 Other out-of-pocket expenses shall include, but not be limited to:

- a any necessary costs for pursuing any legal defense against any unjustified claims made against Otto Group, as may arise in connection with its engagement for the principal;
  - b any customs fines and penalties for delays for advancing costs to the customs collection office.
- 4 Consulting services rendered, duties paid, and other out-of-pocket expenses of Otto Group shall generally be invoiced per order placed. At the request of the principal, it can be stipulated that collective invoices or credits (weekly or monthly, for instance) be issued. Payment shall be rendered within ten (10) days of receipt of invoice, as evidenced by the customs power of attorney (order), via direct debit absent any deductions or via credit card, via invoice, or via bank transfer rendered to:
- Otto Group Logistics GmbH  
Bank: DZ Bank AG Deutsche Zentral Genossenschaftsbank  
(IBAN) **DE87 5006 0400 0000 1331 07 (BIC) GENODEFFXXX**
- 5 After said deadline has expired, the principal shall be in payment default. Otto Group shall have the right to cease performances of orders on-going as of such date without having to render any compensatory performances therefor. Such shall be without prejudice to further claims.

## **§ 6 Collateral provided by the principal**

- 1 In the event that orders are cleared through an **NCTS** procedure, Otto Group shall at all times have the right to require of the principal that a bank guarantee be provided, in which the defense of unexhausted remedies (§ 771 **BGB**) is forfeited. Said guarantee shall serve to secure Otto Group's receivables claims against the principal with regard to any potential import duties and any fine notices, as may result therefrom.
- 2 The collateral can equal up to 25% of the customs value scheduled to be cleared by Otto Group over the initial six (6) weeks of its engagement. Should the guarantee be demanded at any time in the future during the contractual relationships, then said guarantee shall equal up to 25% of the customs value of the goods cleared over the six (6) weeks prior to the demand.
- 3 A guarantee amount adjustment can be requested by each party, if the value of the goods cleared over the previous three (3) months prior to the adjustment demand has changed by more than 15% over the value of the goods on which the last collateral had been based.
- 4 As a matter of principle, collateral shall be returned after the conclusion of a three-year period of the existence of the most recent customs debt, which has been

caused through a customs clearance order based upon the contract formed between the parties. Said time period shall be extended by the date, on which a filing has been made seeking legal relief from duty notices relating to customs clearance orders carried out on the basis of said contract, through such time as those proceedings have been concluded with finality.

#### **§ 7 The principal's document production duties**

- 1 The principal shall be obligated to provide Otto Group with any documents necessary for clearing customs orders in any given case.
- 2 These documents shall include, but not be limited to:
  - a valid proof of origin and proof of preferential tariffs insofar as the principal wishes to claim particular preferential tariffs;
  - b import and export approvals;
  - c import and export licenses;
  - d back-up material showing the end-user;
  - e international import certificates;
  - f third-country export licenses;
  - g monitoring documents and goods certificates;
  - h commercial invoices and consignment notes.

#### **§ 8 The principal's notification requirements**

- 1 The principal shall be required to provide the following notifications in due time prior to the customs declaration:
  - a any and all information requisite for the customs declaration including, but not limited to, all information regarding quantities, unit numbers, contents, weights, and minimum import rules and regulations;
  - b both the **CN** code of the goods to be cleared and, for imports, the eleven digit commodity code; should, at any point in time during the customs clearance order, no **CN** code or no eleven-digit commodity code be available, then Otto Group shall have the right to conduct a stand-alone investigation – inasmuch, express reference is made to § 15(1) of these Terms and Conditions.
  - c utilizing import quotas restricted to certain times or quantities.
- 2 The principal assures that it shall (a) provide all information contemplated under § 7(1) of these Terms and Conditions in an accurate and complete manner, (b) respond to enquiries to the best of its knowledge and ability, and (c) advise of any particularities regarding the goods.

## § 9 The principal's duties to assist in the transit procedure

- 1 The principal shall bear all responsibility for duly presenting in due time the goods placed in the customs transit procedure.
- 2 The principal shall ensure the assumption of goods for transport only with the control printout of the electronic **NCTS** transit declaration (transit accompanying document) and the presentation thereof intact at the customs office of destination within the time period prescribed. The principal shall assure that the carrier/driver and all other subsequent carriers shall be given the following instructions:
  - a the transport shall have to be effected via the route and border-crossing points specified in the transit accompanying document. Any change in route or border-crossing points shall be permitted only with the express consent of the primary obligor Otto Group.
  - b at the customs office of destination or the authorized consignee's premises, to whom the assumed goods are delivered, the alternative proof issued by the customs office of departure is to be produced, stamped there, and returned to the primary obligor Otto Group.  
Address: Otto Group Logistics GmbH, Werner-Otto-Straße 1-7, 22179 Hamburg.
  - c in the event that the consignment is transferred during transport to a subsequent carrier, the carrier/driver shall be obligated to handover all necessary documents and to advise that subsequent carrier of his, her, or its duties pursuant to the transit procedure.
  - d goods standing under customs supervision may be transhipped to another means of transport or unloaded only under customs supervision. In the event that goods become damaged or the sealing is breached, the next customs office is to be advised thereof or the incident is to be reported to the next police station.
  - e Otto Group shall have to be informed without undue delay of any circumstance that deviates from the normal process of transport or prevents the presentation of the goods at the specified customs office of destination either via telefax (+49 (0) 40 5375 7191) or via e-mail to the appropriate person responsible for handling such matters.

Without prejudice to the obligations set forth under § 4 of these Terms and Conditions, the principal shall be liable to Otto Group for any damage as may result from the non-compliance with these notification requirements.

- 3 In the event that any goods are improperly presented during any **NCTS** transit procedure, whose order was placed by the principal with Otto Group, the principal shall assume all additional costs for processing the dunning and enquiry procedures. The principal shall be obligated to pay a lump-sum minimum processing fee (**NCTS** repair fee) for improperly presented goods in the respective net amount of

EUR 200.00 per NCTS procedure, plus the value-added tax prescribed by law. Additional expenses shall be charged separately based upon the time and efforts expended.

- 4 In the event a transit note guarantee is drawn down beyond the presentation deadline, 0.8% per day of the duties guaranteed by the primary obligor shall be assumed by the principal. Otto Group does not guarantee that a blanket transit note guarantee shall be permanently available for the carrying out of the NCTS transit procedure.
- 5 The principal shall bear the costs and tax disadvantages, as may be caused by any non-presentation or non-payment of duties, loss, theft or fraud during the transit procedure.

#### **§ 10 The principal's other duties to render assistance**

- 1 Upon request, the principal shall have at all times to provide the authorities with any and all documents and/or to grant the authorities access to the desired documents/data, if any claim is made by German authorities against Otto Group in connection with its engagement for the principal.
- 2 The principal shall be liable for any damage that may arise from any breach of this duty to render assistance and, without undue delay, shall fully indemnify Otto Group *inter se* from any claims of the parties involved or of third parties, as the case may be, from these obligations and any costs for taking legal action.

#### **§ 11 The principal's liability**

- 1 The principal shall assume full liability vis-à-vis Otto Group for the timely production of necessary documents as well as for the completeness and accuracy of all information required for the orders to be carried out by Otto Group. The principal shall bear all costs and tax disadvantages caused by any inaccurate, incomplete, or delayed information and/or by the non-production of necessary documents. The principal shall indemnify Otto Group *inter se* from all third-party claims, including those of the customs or finance authorities in connection with the engagement for the principal.
- 2 The principal and the importer shall be liable to Otto Group as joint and several debtors (§§ 421 *et seqq.* BGB) for all costs and tax disadvantages incurred by Otto Group in connection with carrying out the order insofar as the principal is not the importer of the goods himself, herself, or itself.
- 3 The principal hereby assigns to Otto Group all claims for compensatory damages and out-of-pocket expense reimbursement against the importer, as are based on the fact that the importer has transmitted the necessary information and documents in an inaccurate, incomplete, or late manner.

## **§ 12 Right of retention**

- 1 Until such time as the stipulated fee, the duties, and the out-of-pocket expense reimbursement claim contemplated under § 5 of these Terms and Conditions has been paid in full, Otto Group shall be entitled to a right of retention in view of any and all documents Otto Group has received from the principal or third parties in connection with the customs clearance procedure. Said right shall apply even after the principal-contractor relationship has come to an end.
- 2 Otto Group may exercise a retention right regarding receivables claims from other contracts formed with the principal only to the extent that they are not in contention or if the principal's asset situation jeopardizes Otto Group's receivables claim.

## **§ 13 Pledging**

- 1 Otto Group and the principal are in agreement that Otto Group shall acquire a right to pledge consignments to be cleared through customs, in which Otto Group obtains or has yet to obtain possession in the course of business.
- 2 The right to pledge shall serve to secure all existing, future, and contingent claims to which Otto Group is entitled given the respective business connection it has with the principal.

## **§ 14 Right of refusal for cause**

- 1 Otto Group reserves the right to dismiss any customs clearance order for cause.
- 2 Cause shall include, but not be limited to:
  - a the principal being in payment default;
  - b documents missing for due and proper customs declaration;
  - c goods being described inadequately.

## **§ 15 Otto Group's review duties**

- 1 Otto Group shall assume not guarantee for the accuracy of **CN** codes ascertained on the basis of information not provided by the principal (§ 8(1)(b) of these Terms and Conditions). The principal shall be advised that a binding tariff information (a so-called **BTI**) can be filed for with the competent customs authorities.
- 2 Otto Group shall not be obligated (a) to review whether goods can be cleared through customs at a better rate and what the prerequisites therefor may be or (b) to advise the principal thereof. The duty to become informed of any customs exemptions and documents to be produced in connection therewith shall be incumbent upon the principal alone as the importer of the goods, unless a separate written covenant has been made.

- 3 Otto Group shall be obligated neither to conduct a review regarding any infringement of intellectual property rights nor to review whether any prohibitions and restrictions apply (import, export, passage in transit prohibitions) or whether any foreign trade restrictions apply (including, but not limited to, those contemplated under the EC Dual Use Regulation and under the **AWG/AWV** (*Außenwirtschaftsgesetz = Foreign Trade and Payments Act / Außenwirtschaftsverordnung = Foreign Trade and payments regulation*)).  
Any such reviews shall be effected by the principal in his, her, or its sole responsibility. Otto Group is to be advised in writing of the findings of any such reviews.
- 4 Should Otto Group have reason to presume that an order is in breach of legislative prohibitions or public policy, then Otto Group shall not be obligated to carry out the order. Even in the event of *force majeure*, the principal shall have no claim to the order being carried out by Otto Group. In the cases specified, Otto Group shall have the right to withdraw from the contract without notice with all liability being precluded. Such shall be without prejudice to § 20.

#### **§ 16 Subcontractors**

- 1 Otto Group shall have the right to use customs and logistics companies as its auxiliary agents.
- 2 The principal agrees that those auxiliary agents selected by Otto Group for the principal may effect customs clearances or render individual performances as part of any given order.

#### **§ 17 Data storage**

- 1 For the purpose of any contractually stipulated engagements, Otto Group shall have the right to store and to use data. The principal expressly agrees that the data may be used and stored for the aforementioned purpose.
- 2 Otto Group shall engage in reasonable efforts to ensure that the data are not accessible to unauthorized third parties and, in so doing, shall engage in reasonable efforts to take the measures needed to ensure that the data shall not be disclosed and that the requirements of applicable data protection law shall be complied with. Such shall also include the authorization to verify data provided by customers so as to counter-act possible actions in breach of contract or applicable law. This shall especially apply in the event that there is any suspicion of manipulation as part of any customs declarations or the totality of the customs clearance process.
- 3 Otto Group shall not assure that data are absolutely secure against third-party attacks.

## **§ 18 Assignment**

- 1 Any assignment by the principal of claims arising from the contractual relationship shall require the consent of Otto Group.
- 2 Such shall be without prejudice to § 354a(1) HGB (*Handelsgesetzbuch = Commercial code*).

## **§ 19 Insurance**

- 1 Otto Group has taken out a liability insurance policy for the contractually stipulated engagement having the following amounts:

maximum per case of damage	EUR 250,000
maximum per damage event	EUR 5,000,000

## **§ 20 Otto Group's liability**

- 1 Otto Group shall be liable in accordance with applicable law insofar as the principle asserts claims for compensatory damages based upon willful intent (*Vorsatz*) or gross negligence, including the willful intent or gross negligence of its legal representatives or auxiliary agents. To the extent that Otto Group is not accused of a willfully intentional breach of contract, its liability for claims for compensatory damages shall be limited to the foreseeable damage as may typically occur.
- 2 Otto Group shall be liable in accordance with applicable law insofar as Otto Group has breached cardinal contractual duties; in such event, however, its liability for claims for compensatory damages shall be limited to the foreseeable damage as may typically occur. This limitation in liability is generally commensurate with the insurance amount set forth in § 19(1) of the contract, as that amount is reasonable for the damage risk typical of this kind of contract. Cardinal contractual duties are those whose performance is required in order to achieve the objective of these Terms and Conditions.
- 3 Such shall be without prejudice to the culpable injury to life, limb, or health.
- 4 Unless otherwise prescribed above, any further liability for compensatory damages than that prescribed in § 20 of these Terms and Conditions – without any consideration for the legal nature of the claim asserted – shall be precluded. This shall especially apply to claims for compensatory damages due to breaches of duty or tortious claims seeking compensation for material damage as contemplated under § 823 BGB.
- 5 To the extent that liability for compensatory damages is precluded or limited vis-à-vis Otto Group, such shall also apply in view of personal liability of employees (*Angestellten*), contract workers (*Arbeitnehmer*), outside consultants (*Mitarbeiter*), representatives, and auxiliary agents for compensatory damages.

## **§ 21 Limitation period**

- 1 The limitation period for claims directed against Otto Group, which are not based upon (a) culpable conduct of a willfully intentional or grossly negligent nature; (b) an injury to life, limb, or health; or (c) a breach of cardinal contractual duties, shall be one (1) year.
- 2 The commencement of limitation period shall be oriented towards applicable law.

## **§ 22 Terminating the contractor-principal relationship**

- 1 The contract formed on the basis of the customs power of attorney (order) shall be effective as of the contract formation date. The contract shall be entered into for an indefinite term. The contract can be terminated in consideration of a termination notice period of three (3) months as of months end. The contract shall remain in effect for the processing of orders awarded through the contract end date, but not completely processed through the contract end date, until such time as those orders have been processed.
- 2 Any termination based upon the contract formed on the basis of the customs power of attorney shall have to be effected per registered letter.
- 3 The power of attorney shall extinguish upon the contract ending. That customs power of attorney shall, however, continue to be in effect for those orders that have not been completely processed through the contract end date. After the last order has come to an end, Otto Group shall, upon request of the principal, return the original of the power of attorney. Otto Group may retain a copy thereof for evidentiary purposes vis-à-vis the authorities.

## **§ 23 Amendments**

- 1 Otto Group can amend the present Standard Terms and Conditions of Business at any time. Otto Group shall give notice of each such amendment under separate cover. Amendments and restatements shall require the written-form (*Schriftform*).
- 2 The principal shall be able to terminate the contract immediately and without notice in the event of each amendment to the Standard Terms and Conditions of Business.
- 3 Should the principal not contradict the amendment notice within a one-week period of receipt of said notice or should the principal confirm said notice by placing an order, the amended terms and conditions shall apply.

## **Final provisions**

- 1 The parties to the contract stipulate that the venue for all legal disputes resulting from the Terms and Conditions shall be Hamburg, Germany.

- 2 These Terms and Conditions shall be governed by the law of the Federal Republic of Germany to the exclusion of **UN** purchasing law.
- 3 Should individual provisions of these Terms and Conditions be or become, in whole or in part, legally ineffective or null and void, then such shall be without prejudice to the validity of the other provisions hereof.