

# Conditions of transport for transport with containers (CTB)

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## A. GENERAL TERMS AND CONDITIONS

### SECTION 1 SCOPE OF SERVICE

- (1) On the basis of the following terms and conditions (CTB), ETK Euro Terminal Kehl GmbH (ETK) assumes the obligation to transport containers and similar receptacles with the due diligence of a prudent freight carrier.
- (2) The containers are transported by ship and/or by lorry and/or by train. ETK determines both the mode of transport and also the order and route the containers are transported.
- (3) ETK is entitled, without giving prior notification to the cargo participants (consignor and recipient), to transship the containers wholly or partially with other means of transport, to lighten or empty the containers, or transport them with other means of transport, and place them in warehouses or on land.
- (4) For transportation by ship, containers may be wholly or partially loaded on the ship's deck or in open ships.
- (5) Insofar as no agreement to the contrary has been made, the cargo participants are to load and empty the containers themselves or via third parties.

### SECTION 2 REQUIREMENTS FOR TRANSPORTATION

- (1) Transportation in accordance with the respective order placed assumes normal transport circumstances. In addition to the means of transport and terminals being operational, normal transport circumstances also include unchanged tariffs, unchanged terminal rates, and the same exchange rates.
- (2) Changes in the transport circumstances which first occur after an order has been accepted, and for which ETK is not responsible, entitle ETK either to rescind or to increase the agreed payment accordingly. Rescission must be declared immediately upon becoming aware of the change in transport circumstances.

Changes in the transport circumstances also include obstacles in delivery in terms of Section 419 (I) German Commercial Code (HGB). There is no obligation for ETK to obtain instructions.

- (3) In the event of force majeure, natural phenomenon and acts of God, strikes, lockouts, and other administrative orders which prevent the transportation being carried out normally, ETK is released from the obligation to execute the contract.

- (4) For inland marine transport, ETK's obligation to transport expires for transport below Cologne when there is a Cologne water depth gauge of 1.60m and below; for transport with places above Cologne, and places on the Moselle, Saar, on the Main, and on the Neckar, it expires with a Kaub water depth gauge of 0.80m and below.

### SECTION 3 FREIGHT PAYMENT, PROHIBITION ON SET-OFF AND ASSIGNMENT

- (1) ETK's invoices are due within two weeks of receipt without deduction.
- (2) In the event of a delay, interest of 8 percentage points above the base interest rate of the European Central Bank is charged.
- (3) Offsetting or retention against ETK's claims is excluded, insofar as counterclaims are not indisputable or established by law.
- (4) The cargo participants are not entitled, without ETK's written consent, to assign claims from the freight contract against ETK, its vicarious agents, or auxiliary personnel to third parties -, with the exception of transport insurers-.

### SECTION 4 OBLIGATIONS OF THE CARGO PARTICIPANTS

- (1) The consignor is to comply with the loading regulations applicable for its cargo or ordinary precautionary measures when stowing goods within the container. It also has to ensure that the containers are accepted by the unloading point/place of receipt in the order specified by ETK.

The consignor is responsible for the proper attachment of a closure seal on the respective containers and for the written confirmation of attachment on the consignment note, specifying the respective seal number. If the attachment of the seal or its documentation is not carried out in a proper and secure manner, the consignor cannot, in the event of the seal being broken, appeal to the fact that the container was opened in ETK's care.

- (2) On placing the order, in any event before starting loading the means of transport used, the consignor has to provide all of the details necessary for the transportation, in particular to precisely describe the container according to type and number, weight and content, and condition and quality in the customary manner. The same applies for the requirements and

conditions contained in the electronic port systems with regard to the electronic transfer of container-related data. All necessary accompanying papers are to be issued in accordance with the statutory provisions, the port, customs, health, or other regulations, and are to be handed over to ETK or its representatives on handover of the containers.

(3) Flammable, environmentally hazardous, combustible, poisonous, corrosive, radiating, radioactive, and other hazardous goods are to be labelled in accordance with the relevant provisions, particularly according to the hazard category. The consignor is obligated to make ETK aware, in writing, of the type of hazard and the precautionary measures to be taken on placement of the order for each individual part. On acceptance of the containers, the substance datasheets under the ADR/ADN (European Agreement concerning the International Carriage of Dangerous Goods by Road and on Inland Waterways), or other documents in accordance with the respective applicable provisions, are to be handed over to ETK or its representatives. The customary trade descriptions of such substances are not sufficient.

(4) The consignor guarantees the accuracy of the description of the goods in accordance with the above provisions. It is liable for all direct and indirect losses, damage, and other disadvantages resulting from inaccuracies, and for all costs arising because of this.

(5) The consignor is obligated to indemnify ETK against all liability for compensation which is caused by faulty stowing of the containers or from faulty stowing within the containers, if it, one of its commissioned contractors, or other auxiliary persons carry out the stowing and loading. The same applies for losses, damage, disadvantages, and costs which arise from defective and unsuitable containers provided.

## SECTION 5 MEASURES FOR SPECIAL RISKS

(1) If the consignor breaches its obligations under Section 4, even without this being its fault, the goods can at any time be unloaded, destroyed, or rendered harmless, as the circumstances require, without compensation needing to be paid. The claim to the stipulated freight continues to exist. The consignor is liable for costs incurred.

(2) Goods which constitute a real danger to human life, property, or the environment can, as the circumstances require, be unloaded, destroyed, or rendered harmless. The consignor and recipient are jointly and severally liable for the costs.

(3) If dangerous or environmentally harmful goods and waste can neither be transported further nor

removed or delivered due to administrative requirements or a refusal from the recipient, the consignor and recipient are jointly and severally liable for all costs and expenditure incurred as a result, particularly costs for any necessary landfill, destruction, or the return shipment to the port of departure or another nearer site where the goods and waste can be removed and delivered.

(4) Otherwise, the consignor's liability is determined by the applicable legal provisions.

## SECTION 6 RIGHT OF LIEN

Due to all of the claims established under the freight contract, ETK has a right of lien to the cargo and the accompanying papers under Section 440 HGB.

Instead of the one-month period specified in Section 1234 (2) German Civil Code (BGB), a period of one week applies in all circumstances.

ETK can charge sales commission from the gross proceeds at the rates usual for the location for the sale of the lien or a self-help sale.

## SECTION 7 INSURANCE

Without an express written order, ETK is not obligated to insure the loaded and/or empty containers it has accepted against hazards and risks. The order to provide coverage with transport insurance is to identify the insured value for containers and goods and the hazards to be covered. The cargo participants are responsible for incorrect information. ETK only deals with any insurance policies applied for as a broker at the cost and risk of the contractor, excluding any of its own liability.

## SECTION 8 JURISDICTION/APPLICABLE LAW

(1) The place of performance and jurisdiction for all disputes is Kehl. ETK is nonetheless free to sue the consignor and/or recipient in a court competent for them.

(2) The contract is subject to the law chosen by the parties. If the parties have not specified any governing law, German law applies, including the applicable international conventions.

## B. SPECIAL TERMS AND CONDITIONS

### SECTION 9 LEGAL BASES

The following terms and conditions apply for the transportations accepted by ETK for loaded and empty containers and similar receptacles, and all activities in connection with such transportations:

(1) For inland waterway transportations, the International Loading and Transport Conditions (IVTB, latest version), supplemented by the CMNI for international transportations, and by the applicable national law for national transportations.

The IVTB are accessible on our Internet website (<http://www.euroterminal-kehl.com/dokumente>) and are sent on request.

(2) For overland transportations by rail and road, the provisions of the international conventions applicable for the respective transportation route (CMR or CIV) or the national law apply. Insofar as the provisions of the international conventions or the national law do not contain any regulations, the General Terms and Conditions under A and the Special Terms and Conditions under B additionally apply.

(3) For shipping activities, the "German Freight Forwarders' Standard Terms and Conditions (ADSp 2017)".

Note: The ADSp 2017 differ in Clause 23 from the law with regard to the maximum liability amount for cargo damages (Section 431 HGB), as they limit the liability for multi-modal transportations, including carriage by sea and for an unknown site of damage to 2 SDR/kg, and otherwise the standard liability of 8.33 SDR/kg, additionally to 1.25 million euros per case of damage, and 2.5 million euros per loss event, but at least 2 SDR/kg.

The ADSp are accessible on our Internet website (<http://www.euroterminal-kehl.com/dokumente>) and are sent on request.

(4) For transportation by sea, the terms and conditions of the contract concluded with the consignor take precedence. Insofar as no conditions under freight and/or liability law are agreed, or the conditions violate mandatory law, the provisions of German maritime law apply under Section 476 et seq. HBG, providing that ETK is not responsible for a fault of the staff and the crew, if the damage arises through a fault in the management or other operation of the ship, but however not for the implementation of measures predominantly taken in the interests of the consignment, or by fire or explosion on board the ship.

## SECTION 10 SUB-CONTRACTORS

ETK is authorised to commission other contractors in whole or in part with the transport obligations it has accepted. The terms and conditions of the sub-contractors are then included in the contract concluded by ETK with the consignor, when they are disclosed on conclusion of the contract.

## SECTION 11 ETK'S LIABILITY

(1) ETK's liability, as well as exclusions and limitations of liability, are determined by the terms and conditions applicable for the areas of activity listed in Section 9 No. 1 - No. 4, or the legal provisions.

(2) Exclusions and limitations of liability do not apply in the event of injury to life, limb, health, and with gross negligence.

(3) For activities outside of the areas of activity listed in Section 9 No. 1 - No. 4, ETK's liability is limited to intent and gross negligence.

(4) ETK shall be liable for demurrage or detention unless ETK proves that demurrage or detention was caused by circumstances which ETK, as a diligent carrier, could not have prevented.

An existing liability is limited to 15,00 € per day per container.

## SECTION 12 EXTENT OF THE LIABILITY, COMPENSATION OF VALUE, AND MAXIMUM LIABILITY AMOUNTS

(1) ETK's compensation in the event of loss or damage to the cargo and for damages caused by delay is determined, with regard to the extent of the liability, compensation of value, and maximum liability amounts, by the terms and conditions applicable to the respective area of activity under Section 9 (1) to (4), or the legal provisions.

(2) For goods which are exposed to wastage due to their natural condition, ETK is only liable, without consideration for the duration of carriage, for the part of the wastage which exceeds the normal wastage (by area, content, or weight), as was agreed in the freight contract or, in the absence of an agreement, which is specified in those provisions applicable at the place of delivery or custom for the relevant trade.

(3) Subject to contrary trade practice, there is no liability for shortage or deficiency in weight or size which does not exceed 2% of the total weight or size of the cargo concerned.

(4) If loose goods of the same type are loaded together in the same container, the individual cargo

owners, consignors, or recipients have to share any potential deficiency in weight, damage, and excess weight or size proportionally between them.

#### SECTION 13 LOSS OF THE RIGHT TO LIMIT LIABILITY

The loss of the right to exclude or limit liability is determined by the respective mandatory provisions of international conventions applicable for the transportation or the applicable national law.

#### SECTION 14 CONTRIBUTORY CAUSES

If, in addition to fault on the part of ETK or its auxiliary personnel, another cause contributed to the loss, damage, or delayed delivery of the goods, ETK is only liable insofar as the damage is attributable to its own fault.

#### SECTION 15 CONTRACTUAL AND NON-CONTRACTUAL CLAIMS

- (1) The provisions on excluding, limiting, and restricting ETK's liability extend to all contractual and non-contractual claims, regardless of the legal basis.
- (2) All exclusions and limitations of liability provided in these terms and conditions and applicable legal provisions in favour of ETK apply equally for its people and all other auxiliary persons.

#### SECTION 16 ASSERTION OF DAMAGES, EXPIRY OF COMPENSATION CLAIMS

- (1) If a loss of or damage to the cargo is outwardly visible, and the recipient or the consignor does not notify ETK or the person who delivers the cargo, at the latest on delivery, it is assumed that the cargo has been delivered in the contractual condition. The notification must identify the damage sufficiently clearly.
- (2) The assumption under (1) also applies when the loss of the damage was not outwardly visible, and it has not been notified within 7 consecutive calendar days of delivery.
- (3) Claims due to the delivery deadline being exceeded expire when the recipient does not notify ETK or the person who delivers the cargo of the delivery deadline being exceeded within 21 days of delivery.
- (4) Notice of damage after delivery is to be given in text format. Timely dispatch is sufficient to comply with the time limit under (2) and (3).

#### SECTION 17 CLAIMS OF THIRD PARTIES

If claims resulting from the freight agreement are made against ETK by third parties, the consignor is obligated to indemnify ETK against these claims in full or in part

insofar as ETK is not liable, or is only liable to a limited extent, under these terms and conditions. The same applies if claims are made by third parties against an employee of ETK or against another person who serves ETK in fulfilling the order placed with it.

#### SECTION 18 LANGUAGES

These Conditions of Transport are available in German, Dutch, French, and English. In the event of doubt regarding the interpretation, the German version is decisive.