

## General Agreements and Loading Instructions (General Terms and Conditions) THERMOTRAFFIC GmbH (as of 03/2017)

The following points are an **essential part** of the transportation contracts concluded with the freight carrier. These shall apply unless mandatory national or international legal provisions provide otherwise.

These General Terms and Conditions are available at [www.thermotraffic.de](http://www.thermotraffic.de) (menu item: Downloads).

We explicitly contradict the inclusion and validity of any General Terms and Conditions of the freight carrier.

The freight contract shall be valid without countersignature.

### 1. VEHICLE / DRIVER

The freight carrier shall be obliged to provide a safe, clean, odor-free and, in case of temperature-controlled transports, a pre-cooled thermo truck which is in technically and optically flawless condition (no thermo tarpaulin).

The driver shall be equipped with safety shoes, safety vest, safety helmet, safety glasses and work gloves. The freight carrier shall be obliged to leave Thermottraffic a phone number one day before loading, on which the driver can be reached.

### 2. IFS STANDARDS

Upon acceptance of the transportation order, the freight carrier confirms to be certified to International Featured Standards Logistics (IFS) or to meet all requirements of section 4.3.2.3 of IFS Logistics Standards in its currently valid version, in particular:

- Cleanliness and operative readiness of transportation units and truck
- Temperature monitoring with temperature-controlled products
- A clear separation of different products
- Ensuring prevention of any contamination (also cross-contamination caused by incompatible products in the same transportation unit or storage capacity)
- Contamination by emissions, exhaust fumes, odors, foreign substances, packaging material etc. is to be avoided
- If compliance to the agreed services is not possible (e.g., punctuality of delivery), Thermottraffic shall be informed promptly.

- The freight carrier shall identify the on-board measuring and monitoring devices required to ensure compliance with product requirements (these include, among others, portable measuring instruments on board). These devices shall be recorded on a document and clearly identified.

- The freight carrier shall ensure that the measurement equipment and devices are checked, calibrated and/or verified and/or adjusted at defined intervals and against recognized standards/methods. The results shall be documented.

- There is an effective procedure for the withdrawal and/or recall of all products. This procedure includes a clear assignment of responsibilities.

-The procedure ensures an effective and prompt response according to the recall and withdrawal requirements of the product owners.

- To ensure its effectiveness and possible improvement, the procedure shall be tested at least annually. If a product recall or withdrawal has taken place within the last 12 months, this may be used to assess the procedure.

- Requirements regarding Food Defense: The goods have to be protected from unauthorized access during the transport (e.g. by securing the loading area with a lock). It has to be ensured that third parties cannot manipulate the setting of the transport temperature. Apart from official checks and customs agents, transport documents / accompanying documents or their content must neither be made accessible to third parties nor handed out.

### 3. TAKING OVER THE LOAD

The freight carrier shall be obliged to count the **pieces of goods** when taking over the load. Even if the truck is possibly sealed with leads later, he must check the number of pieces belonging to the load taken. If it is not possible to count the pieces of the load at the loading place, Thermottraffic must be informed about it immediately. Instruct your driver to pay particular attention to the condition of packaging. If the packaging is damaged, dirty, insufficient or if it has been opened, the driver has to write a corresponding note on the letter of consignment and let it countersign by the loading place, otherwise the complete and undamaged taking over of goods shall be deemed as proven.

The **TEMPERATURE RECORDER** is to be checked for operability and switched on before accessing the loading place. A printout of temperature records for the complete transportation period measured by the on-board cooling unit is to be submitted together with the transportation invoice.

The driver must randomly check the **LOADING TEMPERATURE** of the goods before the start of loading, during and after loading. If the measured loading temperature does not correspond to the loading temperature stated in Thermottraffic's instructions, the driver must reject taking over the load and inform Thermottraffic about it immediately. Loading without Thermottraffic's approval is forbidden, otherwise a take over of goods with sufficient pre-cooling shall be deemed as proven.

The loader must confirm the loading temperature measured by the driver in writing on the CMR letter of consignment. In general, the core temperature of deep frozen goods must be at least **minus 18.0 degrees Celsius** (ice-cream **minus 25.0 degrees Celsius**). When fresh goods, whether hanging or in plastic boxes (E-2 boxes, bins, etc.) or pharmaceuticals are loaded, no wood (e.g., empty wooden pallets) is allowed on the loading space.

If we did not specify the loading temperature for fresh goods in the order instructions, it must be between **plus 2.0** and **plus 4.0 degrees Celsius**. For fresh meat, the **minimum** loading temperature is **0.0 degrees Celsius**, the **maximum** loading temperature is **plus 2.0 degrees Celsius**.

### 4. LOADING

The freight carrier shall be obliged to load and unload the goods.

Always try to load quickly. Goods are to be loaded in such a way that there is sufficient space for air circulation (top, bottom and sides). Do not block air entrance and exit of vaporizer, air ducts and flaps. When transporting fresh fruits and vegetables, always cover the upper layer. Fresh meat is to be loaded hanging and at a sufficient distance. If the floor is not profiled, pallets or grating must be put on the floor. There must be a minimum distance of at least 20 cm between the rear doors and the goods. The goods must be protected from slipping by transport locking bars or other load securing means (e.g., by upending pallets etc.). When loading pallets, you must ensure that they and the goods on them are sufficiently protected from slipping or falling down.

Before departure, the driver has to make sure that the vehicle is not overloaded and that the maximum permissible axle loads are not exceeded. If the vehicle is overloaded, the driver is not allowed to drive anywhere. If the loaded quantity does not correspond to the loading quantity as referred to in the order, you must seek instruction by Thermottraffic.

After loading, the driver must have the vehicle **SEALED WITH LEADS** by the loader (consignor). After customs clearance/veterinary inspection the vehicle has to be sealed with leads anew by customs officials, veterinarian or customs broker immediately. The new lead seal must be confirmed in writing on the letter of consignment ".....(amount of former lead seals & numbers)" and ".....(amount of new lead seals & numbers)".

In general, **TRANSHIPMENTS AND ADDITIONAL LOADS ARE FORBIDDEN** for all transports carried out on behalf of Thermottraffic.

### 5. LIABILITY

**In the context of national transportation, the freight carrier shall be liable to Thermottraffic in case of loss/damage by 40 special drawing rights of the International Monetary Fund (SDR) per kg gross weight of goods.**

**In the context of international transports, the mandatory provisions shall apply, in particular those of the CMR convention.**

### PLEASE NOTE!

**The freight carrier shall only be entrusted valuable goods and goods that are at high risk of theft, which have a tenfold value of the statutory liability according to § 431 I HGB (German Commercial Code)/Article 23 III CMR convention.**

### 6. LICENCES ETC.

The freight carrier assures to have all licences required for transportation according to § 3 and § 6 of the German Road Haulage Act (GüKG) (i.e., permission, EU license, third-country approval, ECMT permit, Swiss license, valid ATP certificate, ADR certificate/ADR card and ACKNOWLEDGEMENT OF BONDED GOODS) and, if legally required, to carry them with him during transportation. Furthermore, he has to check if all documents necessary for transportation are available. If this is not the case, he has to ask for the respective needed documents at Thermottraffic and provide the permissions.

The freight carrier undertakes to observe all social legislation of road freight transportation, in particular driving times and rest periods. Third-country freight carriers which carry out transports within the EU or the EAA undertake to only employ drivers that have the required work permit and driver attestation. Furthermore, they shall be obliged to ensure that each driver has and carries with him on each transport an official certificate including an officially certified German translation of the certificate according to § 7b, sec. 2, phrase 2 of the German Road Haulage Act (GüKG).

The freight carrier shall be obliged to hand over the documents to be carried along to Thermottraffic or the consignor for checking purposes upon request. The freight carrier shall be obliged to instruct the drivers accordingly. The employment of foreign freight carriers for national transportation (cabotage) is only allowed after Thermottraffic's explicit written approval. If the freight carrier cannot submit the requested proof in case of checks by Thermottraffic or by persons authorized by Thermottraffic, the vehicle will be considered as not provided and the freight carrier shall be liable for all damages which may result thereof. If Thermottraffic or persons authorized by Thermottraffic (e.g., customs brokers) is/are fined due to violations of the freight carrier, Thermottraffic shall be entitled to charge these fines to the freight carrier and to set them off against his receivables.

### 7. DEMURRAGE

Demurrage is only paid by Thermottraffic if Thermottraffic had been immediately informed about the delay by the freight carrier and if the delay is affirmed on a separate written confirmation including date, time, stamp and signature by the loading/unloading place or customs brokers or places where the delay had occurred. Provided the legal requirements are met, €35 are paid for each full hour within Europe and the EAA, maximum €250/day for refrigerated trucks. If it can be proven that a waiting time confirmation was denied, the freight forwarder can replace it by presenting the tachograph chart / print-out of the digital tachograph as well as a written and signed witness statement by the driver.

In general, demurrage is not paid for Saturdays, Sundays and all public holidays. Please, also refer to the individual provisions in the transportation order.

### 8. OBSTACLES REGARDING TRANSPORTATION/SAFETY

If the freight carrier gets instruction from the consignor, customs broker, consignee etc., which are contradictory to those of Thermottraffic, Thermottraffic must immediately be informed about it, i.e., **BEFORE CARRYING OUT THE INSTRUCTIONS**. The same applies in case of problems like, for example, inappropriate loading temperature, problems regarding loading, delay, demurrage, weight differences, shortfall and pallet exchange.

You must only use vehicles which are equipped with GPS, immobilizer, interruption of fuel supply, alarm system and lead sealing facility. The driver is to be instructed to switch on the immobilizer, the interruption of fuel supply and the alarm system and to lock the vehicle if he leaves it – he has to observe these instructions always, even if he leaves the vehicle only for a short time. The driver must not leave vehicle and freight documents in the parked vehicle. The freight carrier must immediately inform Thermottraffic about each unscheduled stop (e.g., breakdown, strike, accident, blocking etc.) by phone, e-mail or SMS. The driver must be instructed to control all locks and label locks and lead seals on the vehicle each time he takes a break or before departure. Both towing vehicles and isolated semitrailers, containers, swap bodies and trailers must only be parked in guarded parking areas. The parking areas have to be fenced in. Entrance and exit control and a 24-hour security service must be provided. The freight carrier's yard is considered a guarded parking area if the above mentioned requirements are fulfilled. It is not allowed to give non-company related passengers a ride without explicit approval by Thermottraffic.

### 9. HAZARDOUS GOODS

When accepting orders to transport **HAZARDOUS GOODS**, the freight carrier undertakes to ensure that the vehicle is completely equipped according to the ADR provisions and that the driver has and carries along the required training certificate. Furthermore, the freight carrier has to make sure that the driver strictly adheres to the ADR provisions, in particular with regard to speed, driving hours and the use of special routes. The driver has to make sure to receive all required accompanying documents and accident procedure sheets from the loading place. If this is not the case, Thermottraffic must immediately be informed about it, i.e., before departure.

### 10. COMPLIANCE WITH THE GERMAN MINIMUM WAGE ACT (MiLoG)

The freight carrier undertakes, in the context of the provision of services according to this contract, to pay the respective mandatory minimum wage according to the German minimum wage act (MiLoG) or according to the relevant regulations in other countries.

The freight carrier undertakes to indemnify Thermotrafic from all liability towards the respective entitled employees with respect to the payment of minimum wage according to MiLoG or according to the relevant regulations in other countries. The indemnity obligation also applies towards employees of subcontractors employed by the freight carrier and towards the personnel leasing companies assigned by subcontractors.

If Thermotrafic approves the assignment of subcontractors, the freight carrier undertakes to impose the conditions included in this undertaking also on the subcontractors as well as on personnel leasing companies assigned by the subcontractors. In the event of an infringement of one of the above mentioned commitments by the freight carrier, Thermotrafic shall be entitled to terminate the respective order without notice. Besides that, Thermotrafic shall have a right of retention regarding due payments towards the freight carrier.

Furthermore, in such a case, the freight carrier shall pay a **contractual penalty amounting to €7,500** per infringement.

Above that, the freight carrier undertakes to indemnify Thermotrafic from all claims of compensation which will be raised by courts, authorities or other third parties, notably social insurance agencies, due to the breach of applicable minimum wage requirement, including fines etc., upon first request.

#### 11. PASSING ON AN ORDER

Passing on an order to subcontractors shall only be allowed upon prior written consent by Thermotrafic. Assigned subcontractors are to be fully informed in written form about these general agreements and must undertake to adhere to them. The freight carrier has to document this immediately to Thermotrafic.

#### 12. CUSTOMER PROTECTION AGREEMENT

For the duration of the business relation Seite 2 von 2ship, during which the freight carrier executes orders for Thermotrafic as well as for a duration of 12 months upon termination of this business relationship, the freight carrier shall guarantee Thermotrafic **customer protection** according to the following regulations:

Freight carriers are not allowed to initiate, facilitate, make or execute forwarding, freight or warehousing business for customers of Thermotrafic (consignor), nor for consignees or their trading agents (commercial broker / trading intermediaries) with whom they will have contact in the context of their activities – neither indirectly, nor directly.

This prohibition shall apply regardless of whether the freight carrier actively violates the above mentioned prohibition or whether the freight carrier is asked to do so by a third person.

As soon as the freight carrier gets to know of such a violation of this prohibition, he must immediately inform Thermotrafic about the violation and the respective circumstances.

The freight carrier shall be liable for damages towards Thermotrafic for each intentional violation of the customer protection agreement. The amount of damage shall be fixed at a **lump sum of €1,000**; however, **at least 10%** of the freight of the respective transport concerned.

Thermotrafic and the freight carrier are entitled to proof a higher or lower damage.

In addition to that, Thermotrafic shall be paid a lump sum compensation amounting to €5,150 for each customer Thermotrafic has lost due to the intentional violation of the customer protection agreement. This amount is supposed to compensate the damage caused to Thermotrafic having to newly establish the business relationship with its customer. In this case as well, the freight carrier has the right to prove that the damage caused to Thermotrafic was lower. Thermotrafic, on the other hand, also has the right to prove that the damage was higher.

#### 13. EXCHANGE OF CARGO-HANDLING DEVICES

Cargo-handling devices are to be exchanged according to the specifications in the transportation contract.

The freight carrier has to make sure that he hands over the number of exchangeable cargo-handling devices agreed upon at the loading place and that he receives a receipt concerning both the number and the type of cargo-handling devices handed over.

If no pallets are exchanged at the loading place, the non-exchange has to be recorded in writing.

It is only allowed to take over cargo-handling devices in serviceable condition (medium type and quality according to § 243 of the German Civil Code). The number and type of loaded cargo-handling devices taken over as well as all reservations about their quality must be recorded in writing.

With respect to flat euro pallets, this corresponds at least to quality level B (quality categorization according to EPAL / GS 1 Germany, as of 2015).

At the unloading place, the offered cargo-handling devices are to be checked for their visible exchangeability. The number and type of cargo-handling devices taken over must be confirmed in writing. Reservations on their quality as well as non-exchange at the unloading place must be recorded in written form.

All declarations must be stamped and signed by the issuer (consignor/consignee).

If no cargo-handling devices are handed over at the loading or the unloading place, Thermotrafic must be informed about it accordingly.

Original proof of cargo-handling devices exchange on the consignment notes and pallet notes (also PVC/CHPEP pallet note) have to be immediately – no later than 10 days after delivery – returned to Thermotrafic including the confirmed consignment and delivery notes.

If there is a balance in favor of Thermotrafic, the freight carrier shall be obliged to settle it within 14 days upon request by delivery of the required cargo-handling devices. Upon expiry of the deadline, Thermotrafic shall be entitled to compensation. The amount of compensation shall be per: Euro pallet €12.80 / H1-Pallet €56.00 / Düsseldorf pallet €8.50 / E-2-Crate €5.00 net per unit and €30 net for CHEP pallets or pallets provided by other rental companies. There shall exist the right to proof a higher or lower damage.

#### 14. FREIGHT/DUE DATE

Payment has to take place within 30 days after reception of invoice including all documents listed in the order, notably the consignment note signed by both the consignor and the consignee as well as the printout of temperature record for the complete transportation period, the pallet exchange confirmation etc., in the original.

Toll fees are part of the agreed freight price.

With intra-Community transports which are carried out by freight carriers from another EU country, all invoices for Thermotrafic must contain the VAT identification number of the respective freight carrier as well as Thermotrafic's VAT identification number. Otherwise, the VAT proportion will be deducted by Thermotrafic and will be paid to the relevant tax authority.

The freight carrier agrees that invoices issued by Thermotrafic may be set off against his transportation invoices. This particularly applies for claims regarding damages arising from the execution of order and subsequent damages resulting thereof as well as for claims in accordance with MiLoG and for claims due to non-exchanged cargo-handling devices.

In such cases, Thermotrafic shall also be entitled to assert a right of retention.

Any transfer of claims existing towards Thermotrafic from this order to a third party is only allowed upon prior written consent.

#### 15. INSURANCE COVERAGE

The freight carrier shall be obliged to cover his transportation-related liability under this contract at least within the statutory or agreed liability limits.

#### 16. NONDISCLOSURE AGREEMENT / DATA PROTECTION

The contracting parties shall mutually undertake not to pass on any confidential information or make it otherwise accessible to third parties of which they obtain knowledge in the course or the context of contract execution. Confidential information within the meaning of this agreement shall be all mutually exchanged information as well as documents and material directly or indirectly provided in the context of order execution. This obligation shall remain in force without restrictions even after termination of this contractual relationship. Furthermore, the freight carrier shall guarantee strict compliance with the relevant data protection regulations, notably according to the German Federal Data Protection Act (BDSG), and shall indemnify Thermotrafic from all third-party claims which result from the non-compliance of these regulations.

#### 17. SPECIFIC PROVISIONS REGARDING TRANSPORTS TO GREAT BRITAIN

**When carrying out transports to Great Britain and Ireland and on transit routes through the north of France and Belgium, the freight carrier shall be obliged to observe the following specific safety precautions.**

**These are considered as essential contractual obligations.**

- 1. The freight carrier undertakes to visually check, immediately after loading and before locking the loading space, that there are no persons on the truck loading space.**
- 2. After loading, the freight carrier will secure the loading space against unauthorized entry by means of a fully functional padlock/"Spanish lock" or by means of a higher-value locking mechanism and seal it with leads (if required). In general, it is mandatory to attach a label lock/a lead seal on each door. The number of label locks/lead seals must be entered in the consignment note. Above that, the freight carrier shall be obliged to have the legitimized consignee confirm the identity of the label lock as well as the integrity of label locks/lead seals in the consignment note.**
- 3. With respect to transports to Great Britain you must comply with the provisions of the "Code of Practice" as protection against the carriage of illegal immigrants according to § 33 of the British immigration law. To comply with the provisions, the driver shall completely carry out all controls mentioned above and below and document these controls continuously during the transit. Relevant checklists are available for the freight carrier or will be provided by Thermotrafic upon request.**
- 4. The freight carrier will make sure before each departure and after each stop that no person hides under the vehicle, for example, on the axles or in the pallet boxes. Furthermore, the freight carrier makes sure that the integrity of the locking measures mentioned under 17.2 will be checked after each stop. In case of suspected manipulation, the freight carrier shall be obliged to inform Thermotrafic about it immediately and ask for instructions.**
- 5. The freight carrier undertakes to stop only when mandatory and unavoidable (e.g., driving times and rest periods, refueling). If a stop is necessary in this sense, the vehicle must not be parked unattended. The freight carrier has to stop on a safe and guarded parking area. If such an area can not be accessed due to emergency reasons, the freight carrier must only stop on parking areas with a filling and service station which are brightly illuminated. Trucks must be parked in such a way that the doors giving access to the loading space cannot be opened. (For example, park the truck next to a wall or, upon agreement with other freight carriers, "door next to door" with their trucks).**
- 6. As a matter of principle, no stop is allowed within a 155 km radius around Calais/France. If a stop is compulsory, you must only access a secured and guarded parking area.**
- 7. When departing from France to Great Britain, it is mandatory to have carried out a so-called "heartbeat control" on trucks with fixed superstructures (refrigerated trailer etc.) and an x-ray and CO<sup>2</sup> check on tilt trucks. The controls must be documented.**
- 8. In cases of suspected persons on the loading space, the freight carrier shall be obliged to have a further inspection immediately be carried out by authorities. The execution of measures must be confirmed in writing by the local authorities. After all measures have been completed, safety precautions are to be repeated according to the above mentioned points.**
- 9. The freight carrier undertakes to attach no signs on the vehicle (e.g., advertising labels of ferry companies or English service stations) that imply transports to Great Britain.**
- 10. The freight carrier is not allowed to make any statements about the loading, route and destination etc. towards third persons (e.g., at service stations).**
- 11. The freight carrier shall be obliged to inform his drivers about the above mentioned safety precautions and to ensure strict compliance with them. This also includes random inspections which are to be documented and submitted to Thermotrafic upon first request.**
- 12. The freight carrier indemnifies Thermotrafic from all third-party claims upon first request which are raised against Thermotrafic due to a violation of these provisions by the freight carrier or his vicarious agents. The indemnity shall also apply for all sanctions, fines or other measures asserted against Thermotrafic by courts, authorities or other organizations including the costs for legal defense.**

#### 18. PLACE OF JURISDICTION / APPLICABLE LAW

The place of jurisdiction for all legal disputes arising out of this order or relating to it shall be the location of Thermotrafic's registered office for all parties involved unless mandatory legal provisions state otherwise.

This contract is subject to German legislation unless international provisions are opposed to it. (As of March 01, 2017)