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Terms and Conditions of Service

CONTEX SHIPPING GmbH · CONTEX SHIPPING (USA) INC.
STANDARD TERMS AND CONDITIONS OF SERVICES

These terms and conditions of service constitute a legally binding contract between the “Company” and the “Customer.” In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services.

Scope and Structure

These Terms and Conditions apply to all services rendered by CONTEX Shipping GmbH, Hamburg, Germany (“CONTEX GmbH”) and by CONTEX Shipping (USA) Inc., Independence, Ohio, USA (“CONTEX USA”). Each company contracts in its own name only; the company named in the quotation, booking confirmation or invoice is the contracting party (“Company”).

The document has four parts:

1. Part A – General Terms, applying to both companies.
2. Part B – Additional Terms for CONTEX Shipping GmbH.
3. Part C – Additional Terms for CONTEX Shipping (USA) Inc.
4. Annex – Quotation Conditions, listing what a quotation does and does not include.

Where a quotation, booking confirmation or other document issued by the Company contains terms governing a specific service, those terms prevail for that service. In case of conflict, Part B or Part C prevails over Part A, and Part A prevails over the Annex.

Effective from: 26 August 2021

Part A – General Terms (CONTEX GmbH and CONTEX USA)

A1. Definitions.

“Customer” means the person for whom the Company renders services, including its principals, agents and representatives (shippers, consignees, importers, exporters, buyers, sellers, insurers and others with an interest in the shipment). The Customer shall give notice of these Terms to all such persons. “Documentation” means all information received from the Customer, in paper or electronic form. “Third parties” means carriers, truckers, forwarders, NVOCCs, customs brokers, warehousemen and all others to whom goods are entrusted for transportation, handling, storage or delivery.

A2. Quotations not binding.

Quotations as to fees, freight, duties, insurance premiums or other charges are for information only and may change without notice. A quotation binds the Company only if the Company confirms in writing the handling or transportation of the shipment at a specific rate and payment terms are agreed. All rates are net and exclusive of VAT, fuel surcharges, labor and any items

listed in the Annex. The Company may correct a quotation if weight, dimensions, quantity or other particulars change. Every quotation is subject to space and equipment availability.

A3. Reliance on information furnished.

The Company relies on the correctness of all Documentation and information furnished by the Customer when preparing customs entries, export declarations, security filings, bills of lading and other documents. The Customer shall review all documents prepared or filed on its behalf and advise the Company immediately of any error or omission. The Customer shall provide verified gross mass (VGM) obtained on calibrated, certified equipment for all cargo tendered to ocean carriers; the Company may rely on and countersign such weights as the Customer's agent. The Customer shall indemnify and hold the Company harmless from all claims, penalties and costs resulting from incorrect, incomplete or false information.

A4. Third parties and routes.

Unless the Customer gives express written instructions, the Company shall use reasonable care in selecting third parties and the means, route and procedure of handling, transportation, clearance and delivery. The Company does not warrant the performance of any third party and is not liable for any loss, damage or delay occurring while a shipment is in the custody or control of a third party; claims for such events shall be brought against that third party. The Company shall reasonably cooperate with the Customer in pursuing such claims, at the Customer's cost.

A5. Declared value and insurance.

Third parties may limit their liability for loss or damage. The Company will request excess valuation coverage only upon specific written instructions from the Customer, who shall pay the related charges. The Company is under no obligation to procure cargo insurance unless requested in writing and confirmed by the Company in writing; the Customer shall pay all premiums and costs.

A6. Payment and credit.

Unless the Company agrees in writing to extend credit, all charges are payable in advance; otherwise, payment is due immediately upon receipt of invoice. The granting of credit for one transaction is not a waiver of this provision. Confiscation or detention of goods by any authority does not relieve the Customer of its obligation to pay. In any dispute involving monies owed, the Company is entitled to all costs of collection, including reasonable attorneys' fees and interest at the statutory rate applicable to the Company.

A7. Governmental requirements and licenses.

The Customer is responsible for knowing and complying with all customs, marking, export-control, sanctions, food-safety and other regulatory requirements of the countries of origin, transit and destination. Unless agreed in writing, the Company is not responsible for determining licensing authority or obtaining any license or permit. The Company is not liable for fines or penalties assessed against a shipment because of the Customer's non-compliance.

A8. Indemnification.

The Customer shall indemnify, defend and hold the Company harmless from all claims, liability, fines, penalties, costs and reasonable attorneys' fees arising from the import, export or transportation of the Customer's goods or from any conduct of the Customer, including inaccurate entry, export or security data. If a claim is brought against the Company, the Company shall notify the Customer in writing at its address on file, and the Customer shall defend the Company at its own expense.

A9. Force majeure.

The Company is not liable for loss, damage, delay or non-performance resulting from circumstances beyond the control of the Company or its subcontractors, including acts of God, severe weather (ice, snow, flood, storm), war, terrorism, theft, strikes and lockouts, embargoes, civil commotion, acts of any government including denial or cancellation of licenses, accidents and construction zones, breakdown of means of transport, inherent vice of the goods, and acts or omissions of the Customer or any person with an interest in the shipment. The Company is not responsible for exceeding a delivery date due to such events.

A10. Records.

Unless agreed in writing, the Company keeps only those records it is required to keep by law and does not act as record keeper for the Customer. Unless requested by the Customer and agreed by the Company in writing, the Company is not obliged to undertake any pre- or post-clearance action such as obtaining binding rulings, filing protests or monitoring liquidations.

A11. Compensation.

The Company's compensation is included in and in addition to the rates of carriers and other agencies selected by the Company and is exclusive of any brokerage, commissions or other revenue received from carriers, insurers and others. On ocean exports the Company will, upon request, provide a breakout of the components of all charges.

A12. Written form, severability, waiver.

These Terms may be modified only in writing signed by both parties. If any provision is held invalid, the remainder stays in full force. A waiver of any provision by conduct or otherwise is not a continuing waiver.

Part B – Additional Terms for CONTEX Shipping GmbH

B1. German Freight Forwarders' Standard Terms (ADSp).

CONTEX GmbH operates exclusively in accordance with the German Freight Forwarders' Standard Terms and Conditions 2017 (Allgemeine Deutsche Spediteurbedingungen 2017 – ADSp 2017), latest version, which are hereby incorporated. The ADSp 2017 limit the Company's liability for loss of or damage to goods, for delay and for other damage as set out in clauses 23 to 27 ADSp 2017. Mandatory provisions of international conventions (e.g. CMR, Hague-Visby Rules, Montreal Convention) and of the German Commercial Code (HGB) remain unaffected. The full text of the ADSp 2017 is available on request and at www.context-shipping.com.

B2. Precedence.

Where Part A or the Annex conflicts with the ADSp 2017 or mandatory law, the ADSp 2017 and mandatory law prevail.

B3. Cargo insurance.

In line with sec. 21 ADSp, CONTEX GmbH arranges cargo insurance only upon the Customer's written order. The Company may, at its discretion, decline to arrange insurance.

B4. Cancellation.

Cancellation costs are charged in accordance with section 415 HGB. If a transport or project is cancelled within 72 hours before the scheduled start, the Company may charge up to 70 % of the

agreed transport costs. This applies in particular to permit-bound vehicles that have already been dispatched or positioned empty.

B5. Payment.

Invoices are payable immediately upon receipt without deduction, unless otherwise agreed in writing. Set-off or retention against the Company's claims is permitted only with undisputed or legally established counterclaims (sec. 19 ADSp). Default interest is charged at the statutory rate under section 288 of the German Civil Code (BGB).

B6. Governing law and jurisdiction.

The contractual relationship is governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). Exclusive place of jurisdiction for all disputes with merchants, legal entities under public law or special funds under public law is Hamburg, Germany (sec. 30 ADSp). Mandatory provisions of the CMR, the Montreal Convention and sections 407 et seq. HGB remain unaffected.

Part C – Additional Terms for CONTEX Shipping (USA) Inc.

C1. Company as agent.

CONTEX USA acts as agent of the Customer for the purpose of performing duties in connection with the entry and release of goods, post-entry services, securing export licenses, filing export and security documentation and other dealings with government agencies, and for arranging transportation or other logistics services in any capacity other than as a carrier. Where CONTEX USA issues its own bill of lading as an NVOCC, the terms of that bill of lading govern the carriage.

C2. Limitation of actions.

Unless subject to a specific statute or international convention, all claims against the Company must be made in writing and received by the Company within 30 days of the event giving rise to the claim; failure to give timely notice is a complete defense to any suit. All suits must be filed and served on the Company (i) within 6 months from the date of loss for claims arising out of ocean or air transportation, (ii) within 75 days from the date of liquidation of the entry for claims arising out of the preparation or submission of an import entry, and (iii) within 6 months from the date of loss or damage for all other claims.

C3. Disclaimers; limitation of liability.

Except as expressly set forth herein, the Company makes no express or implied warranties in connection with its services. The Customer may obtain additional liability coverage up to the actual or declared value of the shipment by requesting it and agreeing to pay for it; the request must be confirmed by the Company in writing before services are rendered. In the absence of such coverage, the Company's liability is limited to the lesser of USD 50.00 per entry or shipment or the fees charged for the services; in case of partial loss, this amount is adjusted pro rata. In no event is the Company liable for consequential, indirect, incidental, statutory or punitive damages, even if put on notice of their possibility, or for the acts of third parties.

C4. Costs of collection.

In any dispute involving monies owed to the Company, the Company is entitled to all costs of collection, including reasonable attorneys' fees, and interest at 1.5 % per month or the highest rate allowed by law, whichever is less.

C5. General lien and right to sell.

The Company has a continuing lien on all property and related documents of the Customer coming into its actual or constructive possession, custody or control, which lien survives delivery, for all charges, expenses or advances owed with regard to the shipment on which the lien is claimed, any prior shipment, or both. Customs duties, transportation charges and related payments advanced by the Company are deemed paid in trust on behalf of the Customer as pass-through payments. The Company shall give the Customer written notice of its intent to exercise the lien and the exact amount due; the Customer shall notify all parties with an interest in the shipment. Unless within 30 days of such notice the Customer posts cash or a letter of credit at sight or, where the amount is disputed, an acceptable bond equal to 110 % of the amount due plus accrued storage, the Company may sell the shipment at public or private sale and refund any net proceeds to the Customer.

C6. C.O.D. shipments.

The Company shall use reasonable care regarding written instructions on cash-on-delivery shipments, bank drafts, cashier's or certified checks, letters of credit and similar payment documents, but has no liability if the bank or consignee refuses to pay for the shipment.

C7. Customs records and bills of lading.

The Customer acknowledges that under 19 U.S.C. §§ 1508 and 1509 it is solely liable for maintaining all records required under U.S. customs and other laws. Where the Company prepares or issues a bill of lading, it is under no obligation to specify the number of pieces or packages unless requested in writing, and shall rely on the cargo weight supplied by the Customer. The Customer is responsible for compliance with the marking and other requirements of U.S. Customs and Border Protection, the U.S. Food and Drug Administration and all other federal, state and local agencies.

C8. Indemnity against liability arising from import.

The Customer shall indemnify and hold the Company harmless from any claims or liability arising from the importation of merchandise that violates any federal, state or other law, and from any related liability, loss, costs and attorneys' fees, whether claimed by a government agency or a private party. Upon written notice of such a claim, the Customer shall at its own expense defend the action and take all steps necessary to prevent a judgment or order against CONTEX Shipping (USA) Inc.

C9. Governing law; jurisdiction and venue.

These Terms and the relationship of the parties are governed by the laws of the State of Ohio without regard to its conflict-of-law principles. Customer and Company irrevocably consent to the jurisdiction of the United States District Court and the State courts of Ohio, agree that any action relating to the Company's services shall be brought only in said courts, consent to the exercise of in personam jurisdiction by said courts, and agree that any action to enforce a judgment may be instituted in any jurisdiction.

Annex – Quotation Conditions

Unless expressly included in the quotation, the following items are not included in quoted rates and will be charged separately as per outlay or at the Company's applicable tariff. Items marked **(GmbH)** apply to quotations issued by CONTEX Shipping GmbH only; all other items apply to both companies.

1. Charges, duties and taxes

- Duties, taxes and customs formalities, including customs inspections, fiscal customs representation and advance commission
- Statutory VAT (GmbH)
- Import and export clearance, unless otherwise agreed
- Issuing of commercial invoices and packing lists; change of records; courier charges
- Terminal handling charges at POL and POD according to the stipulated Incoterms® 2020; port and wharfage, unless otherwise agreed
- Storage, demurrage and detention at POL and POD; storage resulting from delayed import clearance
- Rail network fees (e.g. DB, TWE) (GmbH)
- Transport insurance (see Part A, A5)

2. Rate basis and validity

- Rates are net, plus VAT where applicable, fuel surcharges and labor, valid as per the terms of the quotation
- Subject to final fuel/bunker prices as per the [Bunker Index](#) and to currency fluctuations
- Subject to space and equipment availability; partners, subcontractors and equipment at the Company's choice
- The Company may correct its offer if weight, dimensions or quantities change; only the pieces listed on the packing list are taken into account
- Combined cargo presumes ice-free conditions and sufficient water level; extra cost and demurrage as per applicable law

3. Loading, packing and cargo condition

- Loading and unloading at consignor and consignee; 2 hours free loading/unloading, unless otherwise agreed
- Waiting times, downtimes and additional transport nights are charged to the Customer
- Transport is executed unpacked, unless otherwise agreed; seaworthy packing and markings of the goods are the Customer's responsibility
- Lashing and securing with standard lashing equipment; dunnage, scantling, stanchions, substructures, additional welding, tarp covering, loading equipment, assembly and disassembly work
- Subject to sufficient lifting and lashing points and adequate drawings
- Sniffing and magnetic inspection; cost of clearance of debris as per outlay
- Extra costs due to additional personnel; Sunday, holiday and night work charged separately

4. Site and access

- The Customer is responsible for ground conditions and must grant unrestricted vehicle access
- No liability for pressure damage to road surfaces or structures caused by the Company's vehicles

5. Heavy and oversized transports (GmbH)

- Transports only with granted permits; permit costs up to EUR 200.00 under §§ 26 and 46 StVO included, further costs as per outlay

- Traffic law ordinances and re-routing measures (removal and reinstallation of signs and traffic lights, bridge calculations, etc.)
- Extra costs for escort vehicles (BF2/BF3/BF4), police and auxiliary escorts, route surveys and local inspections
- Co-driver under §§ 29 and 46 StVO (empty run / loaded run)
- MOT certificates (TÜV) and axle alignment

6. Payment and cancellation

- Terms of payment: immediately after receipt of invoice, unless otherwise agreed
- Cancellation: see Part B, B4 (GmbH) or the terms of the quotation (USA)

7. Delivery dates

- No responsibility for exceeding a delivery date due to force majeure (see Part A, A9), e.g. ice, snow, accidents and construction zones