

MERKUR
General Conditions of Transport (MTC)

§ 1 General

1.1 These Conditions of Transport, detailed below, apply to all transport-, freight, warehousing, forwarding- und sub-contractor-orders given by Merkur Expo Logistics GmbH, Rheinstraße 2, 65760 Eschborn (named hereafter MERKUR) including all branches and offices to contractors in Germany and abroad, shipping companies, airfreight carriers or other transport, forwarding- and warehouse companies and subcontractors.

1.2 The contract is concluded by placing an order by MERKUR and acceptance or execution of the order by the contractor. These MTC become part of the contract by reference to it on the order. These MTCs apply exclusively; conflicting and deviant conditions of the contractor as in particular the ADSp (German Freight Forwarder's Terms and Conditions) and bill of lading conditions, will not be accepted unless MERKUR has consented explicitly thereto. These MTC also apply in cases MERKUR accept the service of the contractor in the knowledge of conditions, which are conflicting or deviant to the MTC, without making reservations.

1.3 The contractor is obliged to observe all applicable national or international law, statutes, regulations, ordinances and requirements of whatsoever nature also with respect to matters not especially covered by these MTCs. In particular, the contractor must maintain his operating license required for the execution of the transport and must provide evidence to MERKUR if requested. The contractor is obliged to abstain from any act of corruption, bribery and payment of what is called "facilitating payment". His employees and drivers must be regularly and verifiable informed about the ban on the consumption of alcohol and drugs. The contractor is obliged to carry out checks at irregular intervals and to prove these. No ancillary verbal agreements have been made. These MTCs apply to entrepreneurs as defined by § 14 German Civil Law (BGB). They also apply to all future business with the contractor. The application of the German Forwarder's Terms and Conditions, latest edition, (ADSp 2017 at the moment) is excluded as well as the BSK conditions or other standard conditions of the contractor.

§ 2 Orders

Orders given by MERKUR are deemed to have been accepted unless they have been immediately contradicted (see § 362 HGB (German Commercial Code)).

§ 3 Payment to the contractor

3.1 The transport price, stated in the order, is binding and agreed as fixed price unless the contractor contradicts its relevance explicitly and immediately in writing before the execution of the order. The price also includes all customarily connected ancillary services.

3.2 Is the price to be calculated on the basis of hours, weight or cubic meter the contractor is obliged to provide proof of the actual basis of his calculation of the price. In case of fees, charged by the hours, objective time sheets, which have been signed by the employee in charge of the services, have to be attached to the invoice.

Payments are due when the contractor has proved the proper fulfillment of the order. In case of transport orders proof of delivery and/or clean consignment notes respectively in case of contracts for services on an hourly basis countersigned time sheets and/or certificates of acceptance are necessary. Invoices can only be processed if they specify the order carried out and by quoting the reference- or job-number of the order. MERKUR pays within 30 days after proof of the proper order fulfillment has been submitted strictly net unless any other agreement has been made and confirmed in writing. MERKUR has the right to set off counter claims and to retain payments as far as legally admissible. MERKUR is debtor of the freight. § 421, subsection 2 HGB (German Commercial Code) does not apply.

§ 4 Delivery periods

The time allowed for delivery of the consignment, stated in the order, is binding and strictly to be adhered to by the contractor. In absence of an agreement, delivery has to be made within such a period as should reasonably be conceded to a diligent carrier having regard to the circumstances. If the delivery period defined in this MTC is not complied with, the contractor has to indemnify MERKUR from any third party claims, which are directed against MERKUR due to non-compliance with the delivery period. This obligation to indemnify corresponds in any respect with the amounts claimed from MERKUR and does include possible contractual penalties of the customer. The contractor is not entitled to rely on liability limitations arising from international regulations and/or local legislation unless they are mandatory applicable or MERKUR is also entitled to make use of these liability limitations.

§ 5 Execution of the orders

5.1 Road transports

The contractor is obliged to grant customer protection. The contractor may not directly or indirectly offer, initiate, accept or carry out freight forwarding and transport business to MERKUR customers, their consignees, trading agents etc. in connection with transportation contracts of MERKUR or other freight forwarding business, that have become known to the contractor as part of its activity for MERKUR or passing such orders to third parties. This prohibition is applicable within six (6) months after completion of the order. For each case of infringement, the contractor pays a lump sum compensation of € 5,000.00. MERKUR expressly reserves the right to assert any further damage. If the contractor is directly or indirectly contacted by the above companies / persons to perform forwarding / transport orders, the contractor will inform MERKUR immediately and the contractor and MERKUR will mutually agree on how to proceed.

5.1.2 The contractor is obliged to procure a cargo damage liability insurance with a coverage of at least € 1 Mio. which also includes coverage to the usual extent for so-called sensitive goods, that means particularly theft-endangered goods? Additionally it must be made clear that the drivers are not representatives and that breaches of security and parking rules on the part of the drivers are not regarded as organizational fault by the contractor.

5.1.3 Euro-pallets and skeleton crates or similar loading devices shall either be returned or exchanged unless they are clearly marked as one-way- euro-pallets/skeleton crates. The contractor is obliged to document properly the whereabouts and/or the exchange of the loading devices. The contractor must ensure that faultless pallets / loading equipment are taken over. The pallet exchange / exchange of loading devices is to be confirmed in the consignment note. Non-execution of the exchange leads to the obligation of the contractor to provide corresponding pallets/loading devices or to pay the customary market price.

5.1.4 The contractor is obliged to load and unload. If the loading and unloading is done by third parties or employees of MERKUR, these are vicarious agents of the contractor. The contractor is responsible for the operational and safety of the goods during carriage and the quantity of accepted goods during the transport. Therefore, the loading process shall be stopped in case of irregularities and instructions shall be obtained from MERKUR. The loading procedures must not continue without instructions from MERKUR. Control of the proper loading and securing of the load shall be done by the contractor respectively his drivers.

5.1.5 During acceptance of the goods the number of pieces must be checked and documented. . Should an acceptance by the number of the goods not be possible MERKUR has to be informed by return. A note of the driver in the CMR freight note that he could not check the number of pieces accepted does not release the contractor from the liability. The driver is obliged to inspect the cargo for possible faulty packaging and has to ask for instruction without delay in case of any irregularities. It must be entered into the CMR freight note in writing in case the packaging is defect, dirty, insufficient or open. MERKUR has to be informed about any irregularity without delay in order to obtain instructions.

5.1.6 The contractor shall carry out proper interface controls. In case of cargo, loaded on pallets, the individual packages have to be checked at random with regard to quantity and condition. The transit must be started immediately after loading and executed on the shortest route, unless a special route or specially agreed delivery time has been agreed upon. For all consignments, accepted from MERKUR, a strict co-loading and transshipment prohibition applies. In accordance with CMR 26.1 a special interest with regard to the timely provision of the truck and the timely delivery of the cargo is declared and agreed as stated above.

5.1.7 The operator employs only EU citizens or drivers who have a valid work permit. Work permits must be carried by non-EU citizens and must be presented to MERKUR on request. The contractor undertakes to indemnify MERKUR from all claims arising from the breach of this obligation. Valid ATP certificate and customs seal approval, transportation licenses and concessions must be provided and arranged for by the contractor. The contractor must verify whether all required and useful documents, permissions and licences necessary for the performance of the carriage including any required visas are available. The contractor's driver must have the delivery and the condition of the goods duly confirmed by the consignee upon delivery. Without original proof of delivery no payment will be made.

The contractor is obliged to comply with the driving times and rest periods of his drivers in accordance with the applicable national and international regulations and to check their compliance by regularly checking the statutory recording requirements.

5.1.8 Safeguarding measures corresponding to the value of the goods and in case of dangerous goods corresponding with the risk potential must be taken. The value of the goods is to be obtained by the contractor from MERKUR when accepting the order. If the value of the consignment has not been obtained or if it is above € 50,000, the vehicles must not be left unattended and must be occupied by two drivers or at least by two persons. The course of the journey must be planned in such a way that rest periods are carried out on guarded and secured parking places. For emergencies, an emergency number or emergency attendance is to be set up, who is trained accordingly and can initiate necessary measures to protect or possibly recover goods.

5.1.9 Maintenance services must be carried out verifiable on a regular basis on the vehicles which must be kept safe to operate. Preventive maintenance measures shall prevent breakdowns and delays.

5.1.10 Loading and unloading times are included in the freight rate and will not be paid separately. Demurrage will be paid only if agreed and if the contractor has suffered a proven loss or has missed the next order due to the demurrage. As proof only a separate downtime confirmation with date, time, stamp and signature from the loading and unloading point or customs agent or similar places are accepted. Provided the downtime is due to MERKUR or the sender and / or the consignee and the vehicle was at the agreed time at the loading or unloading point, In this case only MERKUR remunerates in Western European transport area a maximum of € 180 per full day for curtain -sided- trucks. The regulation for the Eastern European transport sector as well as for box vehicles is to be agreed individually at the time of placing the order. If loading and unloading is done by the driver the contractor is liable for possible loss or damage. The driver is to be regarded as the contractor's agent and servant.

5.1.11 Dangerous goods.

5.1.11.1 In the case of dangerous goods, the contractor undertakes to ensure that the vehicle is fully equipped in accordance with the Hazardous Goods Ordinance Road and ADR regulations and that the driver is in possession of the required training certificate and carries it with him. All national and international regulations and laws must be complied with. These include e.g. dangerous goods and road traffic regulations, statutory driving and rest periods, social regulations and levies, weight restrictions and ordinances. The vehicles, ancillary devices and equipment used must be in a technically sound and visually good condition in accordance with the legal and regulatory requirements and the requirements for the goods to be loaded at the time of placing the order. Special requirements of MERKUR must be met. In the event of deviations from the order placed by MERKUR, MERKUR must be informed immediately before carrying out the transport.

5.1.11.2 The contractor ensures that only drivers with a valid ADR certificate and sufficient driving experience are deployed. The drivers are regularly trained (annual ADR training, defensive driving training, Cefic BBS program, load securing). Likewise, the employees involved in the transport (warehouse, cargo handling, office) are trained according to the tasks.

The contractor has appointed a dangerous goods officer who has been trained in accordance with the applicable regulations. This can be proved to MERKUR and the person can be named on request.

5.1.11.3 Before the start of the transport, the vehicle crews themselves must obtain information about the loaded dangerous goods (class and quantities) from the transport document and must refer to written instructions with regard to the measures to be taken in the event of an accident or emergency.

5.1.11.4 Both the vehicle and the driver must be provided with the legally required protective equipment. Before the start of the transport, the driver has to carry out a vehicle inspection and to document it. The personal protective equipment shall be checked for proper condition and completeness. The necessary accompanying documents will be checked for completeness and accuracy as well as the conformity of the packages.

5.1.11.5 Only transport units approved for dangerous goods transport are used. Irregularities must always be reported in writing to MERKUR. In urgent cases the responsible person shall be contacted by mobile phone.

5.1.11.6 If the contractor has to transport hazardous goods with a high risk potential, he must draw up a security plan in accordance with ADR Chapter 1.10. This must include the following minimum requirement: -The vehicle must always be locked (even when sleeping in the cab). - If available, the alarm system/engine immobilizer is to be activated when parking the vehicles. -Drivers must report regularly at scheduled times. If irregularities are noticed (for example damaged seals), the drivers must inform MERKUR immediately. - The contractor will oblige his drivers in cases of particular dangerous goods to refrain from talking to third parties about information they gained during their activities on the routes and product characteristics.

5.1.11.7 The legal inspections for the means of transport / equipment must be adhered to. Between the statutory maintenance activities, preventive inspections of the vehicles and equipment should be carried out and recorded at regular intervals. The vehicles, used by the contractor, must be regularly serviced in accordance with SQAS requirements. If the contractor carries out maintenance work on his vehicles himself, a procedural guideline for the calibration of testing equipment (e.g. tire pressure equipment, etc.) is available.

5.1.11.8 Special route requirements must be observed. Parking is only allowed in authorized places. Parking in residential areas is strictly prohibited.

5.1.11.9 The transfer of transport orders (dangerous goods) to subcontractors is only permitted with MERKUR's consent. It must be observed in any case that the present requirement are also to be adhered to by the subcontractors.

5.1.11.10 The working and driving periods must be observed by the driver. The tachograph discs or digital tachographs must be regularly checked or evaluated by the contractor.

5.1.11.11 The contractor must provide operational staff as well as the drivers with all the knowledge and documents required for safe and qualified job performance, e.g.

- A driver's manual which content specifies at least the aspects of the requirements for dangerous goods transports
- Requirements of the chemical industry
- Inspection prior to transports and after loading on the basis of a check list
- Training for the use of personal protective equipment
- Training in defensive driving
- Instruction for load securing as well as separation and compatibility of products
- Cleanliness of equipment
- Instruction for the use of mobile phones and safety belts
- Parking of vehicles, national regulations on roadways and tunnels
- Shipper obligations (e.g. loading of dangerous goods for ocean transport, truck and equipment check before loading etc.)
- Loading securing
- Customs formalities

5.1.12 IN DEVIATION TO § 431 HGB (German Commercial Code) A LIABILITY IN ACCORDANCE WITH § 449 HGB IN THE AMOUNT OF 40 SPECIAL DRAWING RIGHTS PER KG RAW WEIGHT OF THE DAMAGED CONSIGNMENT IS AGREED. If the transport refers to a national pre- or on-carriage of an international road transport, then the regulations of the CMR are also agreed for the purely national part of the transport. This applies even if the contractor is not provided with a CMR consignment note together with the goods. The contractor is obliged to pass the customs- and freight records to subsequent sub-contractors within the supply chain and shall execute verifiably possible economically significant customs procedures and provide the corresponding confirmation, also for VAT purposes, to MERKUR.

5.2 Warehousing

5.2.1 The storekeeper/contractor is obliged to offer and provide a clean and dry warehouse which is in any respect suitable for a proper warehousing of the goods accepted. The cargo has to be stored separately from goods of other warehouse customers. Any cargo movement, placing on and releasing from stock, has to be documented properly for reconciliation.

5.2.2 The warehouse must be secured that no outside persons are able to enter it. Employees have to be controlled and checked personally also for possible stolen goods. These controls have to be well documented. Keys are allowed to be handed out to operational staff only. Each closing and opening of the warehouse must be documented by person and time.

5.2.3 On closing the warehouse, an alarm device, linked to the next police station, has to be armed. Inventory controls have to be documented properly. Any loss and/or damage has to be reported to MERKUR without delay. Cargo shall only be handed out to persons who can present original delivery notes or other original releasing documents of MERKUR and therefore show their authorization to collect the cargo.

5.2.4 The contractor's/storekeeper's liability is governed by § 475 HGB (German Commercial Code) and must not be limited.

5.3 Ocean transports

5.3.1 The shipowner/contractor is obliged to load and ship the goods other than containers under deck.

5.3.2 The owner is liable for loss and damage to the consignment from acceptance of the goods until delivery. The "tackle to tackle clause" (does not apply).

5.3.3 MERKUR acts as agent to the shipper and not as party to the contract of affreightment... Orders are placed in accordance with § 454, subsection 3, HGB (German Commercial Code) on behalf of the consignor/shipper. MERKUR is neither liable nor obliged for payment of (container) demurrage charges and other costs at port of destination due to delayed acceptance or non-acceptance of the goods by the consignee. The agreed freight rates comprise the sea freight and – if agreed – THC at the port of departure. This also applies in case of "freight prepaid" terms.

5.3.4 The crew, the stevedores and the captain are servants and agents of the contracted sea carrier. Any faults or wrongdoings of these persons will be regarded as if the contracted sea carrier respectively its officers and directors have done it. The sea carrier is obliged to include a "Himalaya clause" into his bill of lading.

5.3.5 MERKUR has the right to set off claims for damages with claims for freight – also in the interest of third parties – respectively to pursue these claims in the name and on account of MERKUR for the interest of the damaged party.

5.3.6 The carrier's lien on the consignment can only be exercised for the freight of the actual voyage on property owned by the shipper...

5.3.7 Deviant agreements in accordance with § 512 HGB (German Commercial Code) respectively similar provisions in the terms of the bill of lading or of a foreign law are rejected and are invalid.

5.3.8 The contracted sea-carrier is liable and has to indemnify MERKUR for economic losses, penalties and damages which may be asserted against MERKUR by third parties due to delays. Delays are to be assumed in cases scheduled arrival times have not been met respectively the usual transport time, which is reasonably to be granted to a diligent owner in the circumstances, has been exceeded. Damage liability limitations cannot be invoked by the sea-carrier...

5.3.9 Any law and jurisdiction and/or arbitration clause contained in the freight contract respectively in the bill of lading is being objected. German law applies and the court of Frankfurt have exclusive jurisdiction.

5.4 Air transports

5.4.1 The Warsaw Convention latest issue – without supplementary protocols – has been agreed for all air transports even if the airport of departure and/or arrival is not in the contractual state of the Warsaw Convention. The Montreal Convention has been waived.

5.4.2 Inter-airport cargo trucking is forbidden unless it has expressly been agreed in writing prior to an actual transport.

5.4.3 Stated values will be regarded as declared values even then when they have not been entered into the airway bill. §§ 428, 435 HGB (German Commercial Code) apply also for air transports.

5.4.4 The airfreight carrier is obliged to accept and control on unit basis and to carry out interface controls within his sphere of influence.

5.5 Multimodal transports

The rules of §§ 452 ff HGB (German Commercial Code) are to be applied including the extension of liability as per section 5.1.12 above. If the place of damage is known, the law applicable to a contract between MERKUR and the contractor for transports on this route in accordance with these conditions, or alternatively under German transport law, shall apply. Handling, loading and unloading of containers, intermediate storages in transits are to be assumed as part of overland transports even if carried out in preparation for the carriage by sea.

5.6 Sub-contractors

Agreements with contractors, who have (also) been employed by MERKUR to carry out services other than logistics services, are subject to the law on contracts for work and services of the German Civil Code (BGB) – Werkvertrag. Each contractor is obliged to cover his activities by an adequate and sufficient professional liability insurance with an indemnity limit of at least € 1 Mio., which also provides coverage for claims arising from handling, care and professional activities up to € 100,00. These requirements do not lead to a limit of liability. The remuneration of these contractors become due after they have submitted time sheets, signed by a responsible MERKUR employee, respectively a proof of delivery. Claims for remuneration become time-expired one year after maturity. Payment period is 30 days. The liability is governed by the applicable German Civil Law (BGB). No limit of liability applies.

§ 6 Liens

The contractor's right of lien is restricted to claims directly connected to the services and this refers only to goods which are in the ownership of the debtor. Right of retention of payments are excluded.

§ 7 Place of jurisdiction / applicable Law

The courts of Frankfurt have exclusively jurisdiction unless mandatory applicable international conventions stipulate otherwise. Frankfurt is an additional place of jurisdiction in these cases. German law is to be applied. Arbitration clauses are expressly excluded...