

# ADSp 2017

The following text is a translation of the German version of the ADSp 2017. In case of doubts, the German version of the ADSp 2017 shall prevail.



*The German Freight Forwarders' Standard Terms and Conditions 2017 (Allgemeine Deutsche Spediteurbedingungen 2017 – ADSp 2017) are recommended for use as of 1 January 2017 by the Federal Association of German Industry (BDI), the Federal Association of German Wholesale, Foreign Trade and Services (BGA), the Federal Association of Road Haulage, Logistics and Disposal (BGL), the Federal Association of Furniture Forwarders and Logistics (AMÖ), the Federal Association of Transport and Logistics in Industry and Trade (BWVL), the Association of the German Chambers of Industry and Commerce (DIHK), the Federal Association of German Freight Forwarders and Logistics Operators (DSLVL) and the German Retail Federation (HDE). This advice is non-binding and the contract parties are free to make agreements that deviate from the contents of this recommendation.*

## 1. Definitions<sup>1</sup>

### 1.4 Consignee

Legal person to whom the goods shall be delivered according to the Freight Forwarding Contract or valid instruction of the Principal or other persons authorised to dispose of.

### 1.11 Damage Case/Damage Event

Damage Case means, when, due to an external process, a claimant raises a claim on the basis of a Freight Forwarding Contract or in lieu of a freight forwarding claim; Damage Event means, when, due to an external process, several claimants raise claims on the basis of several Freight Forwarding Contracts.

### 1.6 Dangerous Goods

Dangerous Goods are goods that have the potential to endanger people, Vehicles or legal interests of third parties during the course of standard transportation, warehousing or other activities. In particular, hazardous goods are defined as goods that fall in the scope of application of statutes and regulations relating to hazardous goods, such as provisions covering dangerous materials, water or garbage.

### 1.1 Delivery

The term of Delivery includes also the delivery in the warehouse business.

### 1.13 Freight Forwarder

Legal person, which concludes a Freight Forwarding Contract with the Principal. Freight Forwarders are particularly carrier according to section 407, Freight Forwarder according to section 453, warehouse keeper according to section 467 and sea freight carrier according to sections 481, 527 HGB.

### 1.14 Freight Forwarding Contracts ("Verkehrsverträge")

The ADSp cover all Freight Forwarding Contracts undertaken by the Freight Forwarder as contractor for all activities, regardless of whether they are freight forwarding, carriage of goods (by sea), warehousing or other, typical services pertaining to the freight forwarding business, such as customs handling, tracking of goods or cargo handling.

These terms and conditions also apply to all typical logistical services included in freight forwarding, if these are in relation to the transport or warehousing of goods, in particular to activities such as the creation of loading units, consignments, labelling, weighing of goods and returns processing.

<sup>1</sup> For user-friendliness, Section 1 ADSp 2017 ("Definitions") is sorted in alphabetical order. The numbering is according to the German version.





Contracts about the presentation of manned motor Vehicles for use on instruction by the Principal shall also be deemed as Freight Forwarding Contracts ("Lohnführverträge").

#### 1.12 Interfaces

After acceptance and before Delivery of the goods by the Freight Forwarder, Interfaces are defined as any transition of the goods from one legal person to another any transshipment from one Vehicle to another, any (temporary) storage.

#### 1.7 Loading Means

Means for the aggregation of Packages and for the creation of loading units, such as pallets, container, swap trailers, bins.

#### 1.16 Material Contractual Obligations

Material Contractual Obligations are defined as those that initially enable the contractually agreed fulfilment of the Freight Forwarding Contract and on which the contracting partner is entitled to reasonably rely on.

#### 1.10 Packages

Single items or units formed by the Principal for the fulfilment of the order with or without Loading Means, which the Freight Forwarder must handle as one ensemble (freight item as defined by sections 409, 431, 504 German Commercial Code (HGB)).

#### 1.8 Place of Loading/Discharge

The postal address, if the parties have not agreed on a more precise location.

#### 1.19 Point of Time

Agreed Point of Time for the arrival of the Freight Forwarder at the Place of Loading or Place of Discharge.

#### 1.2 Principal

Legal person which concludes a Freight Forwarding Contract with the Freight Forwarder.

#### 1.15 Shipper

Legal Person, which hands over the goods for transportation according to the Freight Forwarding Contract or on a valid instruction.

#### 1.3 Theft-Sensitive Goods

Theft-Sensitive Goods are those exposed to an increased risk of robbery and theft, such as money, precious metals, jewellery, watches, precious minerals, art, antiques, check books, credit cards and/or other payment means, stocks and security papers, documents, spirits, tobacco, entertainment electronic goods, telecommunications goods, IT equipment and accessories as well as smart cards.

#### 1.18 Time Frame

Agreed Time Frame for the arrival of the Freight Forwarder at the Place of Loading or Place of Discharge.

#### 1.9 Time of Performance

The time (date, time of day) up to a particular performance must be taken place, for example a Time Frame or Point of Time.

#### 1.17 Valuable Goods

Good, at the time and place of taking over, with an actual value of at least 100 Euro/kg.

#### 1.5 Vehicle

Means of transport for the transportation of goods on traffic routes.

## 2. Scope of application

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**2.1** The ADSp cover all Freight Forwarding Contracts undertaken by the Freight Forwarder as contractor.

**2.2** Statutory provisions which cannot be modified by pre-formulated standard terms and conditions take precedence over the ADSp.

**2.3** The ADSp do not apply to businesses that are exclusively dedicated to:

**2.3.1** packaging,

**2.3.2** transportation and warehousing of towed or salvaged goods,

**2.3.3** transportation and warehousing of removal goods according to section 451 HGB,

**2.3.4** storage and digitalisation of files; files are all types of embodied and digitalised business papers, documents, data storage mediums and similar objects for information collection,

**2.3.5** abnormal and heavy-load transports, which require a transportation regulation permission or exception, crane services and associated assembly work,

**2.4** The ADSp do not apply to Freight Forwarding Contracts with consumers as defined in Section 13 German Civil Code (BGB).

## 3. Obligation of the Principal regarding placing of orders, information requirements, special goods

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**3.1** The Principal shall inform the Freight Forwarder about all relevant parameters affecting the carrying out of the order.

These include

**3.1.1** addresses, type and quality of the goods, the gross weight (including packaging and Loading Means) or otherwise specified quantities, marks, numbering, quantities and type of Packages, specific characteristics of the goods (such as live animals and plants, perishability), the value of the goods (for example for customs purposes or the insurance of goods





- 3.1.2 all public-legal duties and safety regulations, such as duties relating to customs, foreign trade regulations (particularly those relating to goods and people as well as specific country embargos) and legal safety obligations.
- 3.1.3 in case of carriage of goods by sea, all relevant data in the compulsory form relating to safety statutes (e. g. International Convention for the Safety of Life at Sea (SOLAS).
- 3.1.4 intellectual property rights of third parties, such as trademark and license limitations which are connected to the possession of the goods, including legal or regulatory hindrances capable of prejudicing the processing of the order.
- 3.1.5 specific technical requirements for the means of transport and particular cargo securing means to be supplied by the Freight Forwarder.
- 3.2 In case of Dangerous Goods, the Principal must inform the Freight Forwarder in due time and in text form about the quantity and specific nature of the hazard including - if required - the necessary safety measures. If Dangerous Goods fall into scope of the law on the transport of dangerous goods (Gesetz über die Beförderung gefährlicher Güter (GGBefG) or if other transported and stored goods fall into scope of other Dangerous Goods or garbage related statutes or regulations, the Principal must provide the relevant information, in particular the classification according to the relevant Dangerous Goods laws, and, at the latest, during the handover of the goods, supply the required documentation.
- 3.3 In case of valuable or Theft-Sensitive Goods, the Principal must inform the Freight Forwarder in text form regarding the type and value of the goods and the current risks involved to enable the Freight Forwarder to assess the acceptance of the order or take appropriate measures for the safe and damage-free completion of said order. In case of acceptance of the order, the Freight Forwarder is obliged to undertake appropriate safety measures for protecting the goods.
- 3.4 The Principal is responsible for supplying the Freight Forwarder with all information, certificates and other documentation required, such as customs classification, for the correct processing of customs or other statutorily required handling of the goods, including, but not limited to, security checks for air freight shipments.
- 4.2 The Freight Forwarder takes care that the Vehicles, loading safety means and, if their presentation is agreed, Loading Means are in a technically perfect condition, comply with statutory provisions and the requirements of the Freight Forwarding Contract. Vehicles and Loading Means shall be equipped with the typical appliances, equipment or methods for the protection of the goods, in particular loading safety means. Vehicles shall have low emissions and noise as well as low energy consumption.
- 4.3 The Freight Forwarder shall deploy reliable, appropriate and, for the particular task in question, suitable and duly employed, qualified and trained drivers and, if required, with a driver certification.
- 4.4 On foreign premises, the Freight Forwarder shall comply with the house rules, plant or construction site regulations in force, if they were announced to the Freight Forwarder. Section 419 HGB remains unaffected.
- 4.5 The Freight Forwarder is entitled to make customs clearance dependent on issuance of a written power of attorney that assigns direct representation.
- 4.6 If the Freight Forwarder is assigned with the cross-border transportation of the goods or the import or export customs clearance, the Freight Forwarder is, in case of doubt, also entitled to act in regards to the customs or other statutorily required handling of the goods, if the transport of the goods to the agreed destination would be impossible without such action.  
The Freight Forwarder is hereby entitled
- 4.6.1 to open Packages whenever such action is necessary to comply with statutorily required controls (for example, Freight Forwarder as regulated agent), and, subsequently, to undertake all measures necessary to complete the order, such as repackaging the goods.
- 4.6.2 to advance payments required by customs.
- 4.7 In case of damage to or delay of the goods and upon request by the Principal or Consignee, the Freight Forwarder must procure immediately all required and known information for securing their compensation claims.
- 4.8 In the absence of a separate agreement in the order supplied to the Freight Forwarder, the service does not include:
  - 4.8.1 the supply or replacement of pallets or other Loading Means,
  - 4.8.2 the loading and unloading of goods, unless otherwise indicated by circumstances or common practice.
  - 4.8.3 a transshipment ban (Section 486 HGB does not apply),

#### 4. Rights and duties of the Freight Forwarder

- 4.1 The Freight Forwarder shall act in the interest of the Principal, check the placed order for obvious faults and immediately inform the Principal, if required, about all dangers known by the Freight Forwarder for the fulfilment of the order.



**4.8.4** the allocation of a shipment tracking system, unless it is in line for this sector of industry. Clause 14 ADSp remains unaffected.

**4.8.5** returns, detours and hidden additional cargo.

If in deviation to the actual order, one or more Packages are handed over and accepted for transportation by the Freight Forwarder, then the Freight Forwarder and the Principal concludes a new Freight Forwarding Contract about these goods. In case of returns or hidden additional cargo and in absence of a separate agreement, the terms and conditions of the original Freight Forwarding Contract will apply. Clause 5.2 ADSp remains unaffected.

**4.9** Further service and information obligations, for example quality management measures and their auditing, monitoring and evaluation systems as well as key performance indicators needs to be expressly agreed.

## **5. Contact person, electronic communication and documents**

**5.1** Upon request of a contracting party, each side will nominate one or more contact persons to receive information, explanations and enquiries regarding the fulfilment of the contract and exchange names and addresses. This information needs to be updated in case of changes. If either contracting party fails to provide details for a contact person, then the relevant signatory to the contract shall be the designated contact person.

Information obligations, which exceeds the obligation in statutory provisions, for example measures of the Freight Forwarder in case of disruptions, in particular, an imminent delay during takeover or Delivery, obstacles to carriage and Delivery, damages to the goods or other disruptions (emergency concept) needs to be agreed separately.

**5.2** In the absence of an expressly agreement, contractual statements by warehousing or transport personnel require approval from the respective party to be considered valid.

**5.3** The Principal takes care of the required declarations to be supplied by the Principal's Shipper or Consignee during the fulfilment of the contract at the Place of Loading and Place of Delivery, and of real actions, such as Delivery and receipt of the goods.

**5.4** If agreed between the Principal and the Freight Forwarder, the parties will transmit and receive the shipping details, including the creation of the invoice, by electronic means

(electronic data interchange / remote transmission). The transmitting party carries the responsibility for the loss, completeness and validity of any sent data.

**5.5** In case of an agreement according to clause 5.4 ADSp, the parties ensure that their IT system is ready for operation and that data can be processed appropriately, including the usual safety and control measures, to protect the electronic data exchange and prevent unauthorized access, modification, loss or destruction by third parties. All parties are obliged to give timely notification of any changes to their IT systems that could affect the electronic data interchange.

**5.6** Electronic or digital documents, in particular proof of deliveries, shall be considered equal to written documents.

Furthermore, each party is entitled to archive written documentation in exclusively electronic or digital format and to eliminate originals, the latter always in consideration of the legal regulations regarding the same.

## **6. Packaging and labelling duties of the Principal**

**6.1** The Principal shall pack the goods, and if required, clearly and permanently label all Packages with their required identifications, such as addresses, marks, numbers and symbols relating to the handling and characteristics of the goods. Old identification marks must be removed or garbled. The same applies for Packages.

**6.2** Furthermore, the Principal is responsible for:

**6.2.1** identifying all items belonging to the same shipment, to ensure easy recognition,

**6.2.2** ensuring that Packages, if required, cannot be accessed without leaving external traces.

## **7. Securing cargo and supervisory duties of the Freight Forwarder**

**7.1** In all cases where loading and discharge occurs at more than one location, the Freight Forwarder takes care for the security of cargo until the last Place of Discharge and at all times, but not before the completion of loading in a transport safety manner.

**7.2** The Freight Forwarder shall conduct controls at all Interfaces. The Freight Forwarder shall check completeness and identity of the goods, their apparent good order and condition as well as all seals and locks and record any irregularities in the accompanying documents or via separate notification.