General Conditions of Business for Cold Stores (ABK)

(Version 2023, February 6th)

The Verband Deutscher Kühlhäuser und Kühllogistikunternehmen e.V. (German Cold Store and Logistics Association) recommends its members to use the following General Conditions of Business for Cold Stores (ABK) on a non-binding basis in their business dealings. It is left to their discretion to follow the recommendations or use other business conditions.

1. Scope of Application

1.1. The cold storage company agrees to carry out the air-conditioned storage of goods and the leasing of air-conditioned storage space, including all additional work in accordance with the ABK, and also such additional work if solely contracted for.

1.2. Additional orders are, in particular, those

1.2.1. for the on-loading and off-loading of goods, including direct reloading.

1.2.2. for checking, counting and sorting, for ascertaining weight and temperature, for taking samples and specimes, and for establishing production and "best-before" dates.

1.2.3. for customs clearance on importation and exportation, including preparation of the required documents, and also initiating and completing customs procedures.

1.2.4. for packaging, repackaging, labelling, neutralizing, manufactoring and batching.

1.2.5. for deep-freezing and refreezing, defrosting, boning meat, portioning, stripping stems, twigs, stalks and similar orders.

1.3. The ABK shall apply in the same way when the cold storage company agrees to take over the storage of goods and the leasing of storage space in individual cases without air conditioning.

1.4. The ABK shall not apply in dealings with consumers.

1.5. In cases when the cold storage company agrees to carry out the dispatch or conveyance of goods and to orders placed in that connection, the "Allgemeine Deutsche Spediteurbedingungen" (ADSp) (recommended conditions of business for forwarding agents) in their latest edition shall apply.

2. Order

2.1. All orders and instructions shall be placed and given in writing. Ambiguous details due to verbal communication shall be to the account of the customer.

2.2. The order shall expressly specify the required storage temperature and, if the temperature is approx. 0 degrees Celsius, also the air humidity.

2.3. The storage order shall detail the goods to be stored according to type, quantity and weight, and shall speedy any other properties that require special treatment. The same conditions shall apply in the event of room rental, where the cold storage company is charged with placing the goods in the leased room.

3. Goods to be Delivered and Put in Store

3.1. The customer shall deliver or put in place only goods that are in perfect condition and are suitable for air-conditioned storage. Goods that are unsuitable for air-conditioned storage, due to their condition or properties, and which in particular may have detrimental effects on the cold store or on other goods in storage, shall be excluded from storage and putting in place.

3.2. If the cold storage company should have reasonable doubts in this respect or should have reason to assume that the food doesn't comply with food safety requirements, it shall inform the customer thereof without delay. If no agreement is reached, the cold storage company may arrange for the condition of the goods to be examined by an independent, if possible, publicly appointed official and sworn expert. His findings shall be binding for all concerned. The costs of the expert opinion shall be borne by the party found to be at fault. Beyond that the cold storage company is entitledto inform the responsible public authorities.

3.3. Unless the cold store company is commissioned to perform the task, the customer must pack and mark the goods to be delivered or put in store in the suitable way required for storage and protection of the cold store as well as for the other goods in store in order to prevent loss and/or damage.

3.4. If hazardous commodities are to be stored, the customer must inform the cold storage company ahead of the delivery in writing about the exact kind of hazard and, if necessary, of the precautionary measures to be taken. The cold storage company is at liberty to reject the storage of the goods in question..

3.5. The dangerous goods may only be put to storage into a rented room by the costumer after prior express agreement of the cold storage company. Before that, he must inform the cold store about the exact kind and hazard, and, if necessary, the precautionary measures to be taken, in writing or any other legible form.

3.6. The customer must submit to the cold storage company all the documents and certificates required for storing and handling the goods, unless the costumer commissions the cold storage company to draw up and/or obtain the required papers.

4. Storage

4.1. Storage shall be carried out in suitable rooms, at the discretion of the cold storage company. The goods may also be stored on the premises of a sub-storekeeper. In such cases, the cold storage company shall inform the customer of the storage location and the name of the sub-storekeeper.

4.2. The customer is entitled to inspect the rooms prior to storage of his goods. If he does not do so, or if he does not immediately raise objections and raise complaints, the rooms shall be deemed as having been accepted, provided that selection and storage are carried out with due care and diligence of a prudent businessman.

4.3. When the cold storage company agrees to carry out on-loading or off-loading of vehicles, the duty of the cold storage company to exercise proper care shall commence and end with the picking up and setting down, respectively, of the goods on the vehicle., unless the cold storage company has already issued a receipt for the goods at an earlier time. The on- and off-loading of vehicles shall take place in the ordinary course of business according to available personnel and in the order in which it was notified by the respective costumers, unless a specific time had been agreed. The cold storage company is not obliged to exchange pallets.

4.4. The cold storage company is obligated to protect the rights of the customer vis-à-vis the carrier on account of deficiencies or differences that are outwardly recognizable on basis of the delivery documents. If the cold storage company establishes such deficiencies or differences, it shall inform the customer thereof without delay.

4.5. In addition, the cold storage company is not obligated, without having received an explicit order to execute more inspections, e.g. quality analysis etc..

4.6. Without the cold storage company having received an appropriate order, it is the concern of the customer to check the qualitative condition of the goods during storage. If the customer carries out work on the stored goods or takes samples thereof, he shall subsequently hand over the goods again to the cold storage company according to number, weight and condition.

4.7. If during the time of storage the cold storage company should determine a change in the goods, giving rise to fears of deterioration, it shall inform the customer thereof without delay and request instructions how to proceed. If the customer does not issue any instructions at all or does not issue appropriate instructions, the cold storage company is entitled, but not obligated, to take the required action at its discretion and at the customer's expense. Beyond that the cold storage company is authorized to inform the responsible public authorities.

4.8. Delivery of the goods shall take place only according to written instructions issued by the authorised agent. The cold storage company can, provided a warehouse certificate has been issued, make delivery dependent upon the return of the receipted warehouse certificate. The presentation of a warehouse certificate bearing a return-delivery receipt shall have equal standing with a written instruction. Where, in connection with taking goods out of storage, "best before" dates and the like need to be taken into consideration, these must be expressly stated by the customer.

4.9. The person empowered to act shall be the depositor or the person to whom the depositor has assigned the right to recover possession from the cold storage company. The cold storage company can demand to be given written proof of assignment.

5. Room Rental

5.1. The cold storage company is comitted to hand over the leased room to the customer in a condition suitable for the contractual use for the period of its leasing. It is the concern of the customer to check the suitability of the room for the intended storage.

5.2. Putting the goods into storage and taking them out of storage shall be carried out by the customer. He shall also be responsible for the correct stacking and stowing of the goods in accordance with the regulations for air-conditioned storage, and for ensuring conformance with building legislation, in particular concerning the maximum loading of the floor area. In cases of doubt, the costumer shall request this information from the cold storage company.

5.3. It is the costumers responsibility also to comply with the hygiene regulations issued by the health and veterinary authorities. Inspection fees shall be borne by the customer as well as costs involved in such measures, including structural measures, which may be required by the authorities in regard to the goods to be stored.

5.4. The customer may utilize the room only to store goods for his own purposes. Any subletting is permitted only with the consent of the cold storage company.

5.5. The customer shall keep the room locked and, for emergencies, shall deposit a key in a sealed envelope with the cold storage company.

5.6. For urgent reasons the cold storage company is entitled to make alterations to the rented room or to allocate a different room to the customer. In this connection, consideration must be paid to the interests of the customer. The costs for re-storation of the goods shall be borne by the cold storage company, unless this is the responsibility of the customer.

5.7. The cold storage company is entitled to allow authorized persons access to the room to perform necessary tasks, after having given prior notification thereof to the customer. Such access shall take place in the presence of the customer. If, in an emergency, the customer cannot be notified beforehand, the event shall be documented and the customer advised thereof without delay.

5.8. If, in connection with room rental, the customer should charge the cold storage company with putting the goods into storage and taking them out of storage and with the performance of other work connected with the goods, in these instances the rulings as under Sections 4.3 to 4.8 of the ABK shall apply mutatis mutandis, it being understood that, by these actions, the goods do not pass into the care and custody of the cold storage company.

6. Access to the Cold Store

6.1. Unless there is direct access to the leased room, the customer and his authorized agent are permitted to enter the storage room only when accompanied by an authorized agent of the cold storage company. Both the customer and his authorized agent shall produce proof of identity when requested to do so. The customer and his authorized agent shall comply with the house rules of the cold store, and in particular the fire protection regulations (for example, ban on smoking) and all other regulations concerning the prevention of accidents, maintenance of safety and hygiene. The customer shall be responsible for all acts and omissions committed by his authorized agent. Any persons contravening the house rules of the cold store may be refused entry.

7. Notice of Deficiencies

7.1. When goods are taken out of storage, either from the store or from the leased room, without the cold storage company having been given written notification of outwardly recognizable deficiencies immediately, and of outwardly unrecognizable deficiencies promptly after their discovery, but not later than 8 days following the taking out of storage, the goods shall be deemed as having been properly taken out of storage.

7.2. Should the customer or his authorized agent establish a violation of contract by authorized agents of the cold storage company, or should he obtain knowledge of such a violation, he shall without delay, at the latest within 8 days following the establishment or knowledge of violation, give notice thereof in writing to the cold storage company. The conduct is

deemed as approved if, within one month after receiving knowledge thereof, the customer fails to lodge a complaint in writing to the cold storage company as being in violation of the contract. The same shall apply mutatis mutandis if the customer or his authorized agent establishes or obtains knowledge of deficiencies in the goods during the period of storage.

8. Declaration of Value

8.1. The customer shall, at the beginning of putting into storage or putting in place, and thereafter to the 1st of each month, notify the cold storage company in writing of the value of the stored goods.

8.2. Should he fail to do so, the cold storage company shall estimate the value and advise the customer thereof. The customer is entitled to remedy the omission by subsequent presentation of a declaration.

9. Insurance of Goods

9.1. In respect of the goods, both those put into storage and placed in the room, the cold storage company shall take out a goods insurance for the account of whom it may concern, if the customer does not prohibit such explicitly and in writing.

9.2. The insurance shall cover the value declared or estimated pursuant to Section 8. Given subsequent declaration of the value, the insurance policy shall be modified with the beginning of the month following subsequent declaration.

9.3. The insurance policy shall be based on the "Allgemeine Bedingungen für die Versicherung von Kühlgütern-A-" (Conditions for the Insurance of temperature controlled Goods -A-) in the version enclosed with the ABK.

9.4. To the extent that the goods insurance covers occasions of damage and loss, the cold storage company shall be exempted from liability. This shall also apply if the indemnification payment falls short of the damage because the customer made a false declaration of value or no declaration al all. Errors in estimation shall be to the account of the customer. The liability according to Section 12 remains unaffected.

10. Customer's Liability

10.1. The customer shall be accountable to the cold storage company in that he and his authorized agents shall fulfil the obligations assumed pursuant to the ABK with the due care and diligence of a prudent businessman. The customer shall be held liable for damage due to culpable infringement of these obligations.

10.2. Even if the customer is not at fault, he must indemnify the cold storage company for loss and/or damage and expenditure emanating from the violation of the duties agreed in Sections 2.3 and 3.1 to 3.4. The liability is limited to the equivalent of 8.33 units of account in accordance with § 431 Par. 4 of HGB (German Commercial Code) each kilogram of the raw weight of the consignment.

10.3. Nothing herin shall affect the provisions of § 254 of the German Civil Code (BGB).

11. Liability of the Cold Storage Company

11.1. The cold storage company shall be liable for all occasions of damage only based on proof of fault, to the extent not covered by the goods insurance (Section 9 of the ABK). The cold storage company is required to discharge itself from responsibility as the storeholder but not as the lessor.

11.2. In the case of loss or damage of the goods (damage to goods) the liability of the cold storage company is in principle limited to the common market value or undervalue of the goods that have been lost or have suffered damage.

11.3. In the case of damage to one part of the goods, which has a standalone value, or to one of serveral goods belonging together, a loss in value of the rest of the goods shall not be taken into consideration.

11.4. The cold storage company shall also be liable for clear pecuniary loss.

11.5. In each case the liability of the cold storage company shall be limited to the value of the goods declared or estimated in conformity with Section 8 or, in the absence of an estimate, to the market value of the goods. A subsequent declaration shall only be authoritative if tendered prior to the discovery of the damage.

11.6. The cold storage company shall not be held liable for the following damage:

11.6.1. Damage due to "Force Majeure", in particular natural disasters, governmental intervention, collapse of power supplies and other circumstances which the cold storage company with the due care and diligence of a prudent businessman is unable to avert; this also applies to strikes.

11.6.2. Damage due to natural wastage or natural deterioration of the goods, in as much as same is not based on deficiencies of storage or the leased room and not on other causes within the control of the cold storage company.

11.6.3. Damage to a cause lying within the customer's sphere of responsibility; this is in particular the case when the damage is due to faulty information supplied by the customer concerning the goods, incorrect directions concerning storage temperatures/storage conditions to be maintained, non-placed inspection and control orders, or deficiencies in packaging. Nothing herein stated shall affect the joint liability of the cold storage company in conformity with § 254 BGB (German Civil Code).

11.6.4. Damage due to unavoidable temperature variations, for example when putting into storage, restoring or taking out of storage or when defrosting the air cooling equipment.

11.6.5. If the cold storage company can prove that a case of damage rests with the utmost probability on one or several of the above-mentioned circumstances, it is presumed until proof is furnished to the contrary that it does rest thereon.

12. Full Liability

12.1. The cold storage company cannot invoke the article concerning liability limitations and excernptions from liability contained in the ABK when a damage or loss is due to gross negligence (wrongful intent and gross fault).

13. Damage by Fire

13.1. In the case of damage by fire the cold storage company shall be liable only for its own gross negligence and that of its executive personnel as well as for the violation of cardinal and contract-related duties also by ordinary servants.

14. Terms of Payment and Exclusion of Set-Off

14.1. Storage charges, storage rental fees and other considerations shall be paid in advance.

14.2. Customs charges shall be reimbursed to the cold storage company such that the cold storage company shall have the amount at its disposal at the latest on the 10th day of the month following payment.

14.3. Default in payment shall occur, without requiring any request for payment, at the latest 14 days after receipt of the invoice.

14.4. Set-off or retention against claims of the cold storage company is only permissible with due and payable counterclaims of the customer, to which there are no objections or which were found by the court to be final and conclusive.

15. Lien and Right of Retention

15.1. The cold storage company has, on account of all debts due and owing which it is entitled to receive from the customer from orders, a lien and a right of retention to all goods and values in its possession or brought on to its premises, that is or has at least temporary been the customers estate during storage or putting in place. Towards third parties belongings the lien and right of retention only counts for those accounts receivables, that refer directly to the particular goods and values.

15.2. Nothing herein shall affect any farther reaching statutory lien and rights of retention of the cold storage company.

15.3. In all cases a period of two weeks shall be applied in place of the period specified in § 1234 BGB (German Civil Code).

15.4. In respect of any foreclosure sale and resale on buyer's default to take delivery the cold storage company may charge a sales commission on the gross profit on sales in the amount of the rate customary in the locality, but not less than 5%.

16. Notice to Terminate

16.1. The storage and room rental contracts can, unless a fixed time of storage or rental time has been agreed, be terminated with a period of one month's notice being given in writing.

16.2. Nothing above shall affect the right of either party to terminate the contract without notice for an important reason. An important reason is understood to be in particular.

16.2.1. If the customer is in default with his current financial obligations by more than 2 months or is experiencing substantial deterioration of his financial position. This applies in particular when he suspends payments or has given a declaration in lieu of an oath, or when application has been made to institute composition or bankruptcy proceedings concerning his property.

16.2.2. If during storage or putting in place the goods become unsuitable for air-conditioned storage within the meaning of Section 3.3 ABK, or their unsuitability becomes known to the cold storage company.

16.2.3. If the tenant has deposited dangerous goods without the permission of the cold store or the party putting goods into store has not complied with its obligation to notify in accordance with Section 3.3.

16.3. Notice to terminate shall become effective when it has been sent by the one contractual party to the last known address of the other contractual party and has arrived there by normal postal delivery service.

16.4. If the customer does not take delivery of the goods despite termination of the contract, or he does not vacate the leased room, he shall obligated to adhere to the obligations undertaken pursuant to this contract, in particular to payment of the agreed consideration.

17. Customer´s Default in Accepting Delivery of Goods

17.1. If the cold storage company has held the customer in default in taking delivery of the goods or vacating the room, it may take possession of the goods and put the goods in store elsewhere at the customer's expense.

17.2. In the case of Section 16.2.2 and 16.2.3 ABK, the cold storage company may, if the customer does not comply with the request to take the goods out of storage immediately and a risk attaches to taking the goods out of storage with deferment, take the goods out of storage without fixing a final deadline, and at the expense of the customer, and, provided the circumstances are justified, may sell the goods in the course of selfredress in the open market. Of this the customer shall be informed promptly, if possible beforehand, but at all events subsequently. In case of unsaleability of the goods, the customer shall here and now agree to the goods being destroyed.

17.3. The costs for the destruction and disposal of the goods shall be borne by the customer, unless they are caused by the cold storage company.

18. Written Form

18.1. All agreements made between the parties hereto, that are not regulated by the ABK or house rules of the cold store, shall be set down in writing.

19. Risk of Forgery

19.1. If in the case of instructions, orders or other subsequent agreements made with the customer, the cold storage company can reasonably expect to believe the authenticity of the signature and a power of attorney without gross negligence, it is not obligated to carry out further verifications. My risk of forgery shall be borne by the customer.

20. Limitation of Actions

20.1. Any and all claims made against the cold storage company, regardless of on what grounds, shall become time-barred in accordance with § 475a and § 439b of HGB (German Commercial Code). In case of Total Loss, the period et limitation shall commence on expiry of the date on which the entitled party became aware of the claim.

21. Litigation and Jurisdiction

21.1. This contract is governed by and construed in accordance with German law.

21.2. The exclusive place of jurisdiction for all legal disputes with businessmen, legal persons of public law and special assets under public law shall be the court of competent jurisdiction to which the branch of the cold store is subject.

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