

## IPP GmbH

### General Terms and Conditions for the Temporary Grant of Use of Load Carriers for Payment

Status as of: March 2024

#### 1. Scope of Application

- 1.1 These General Terms and Conditions (GTC) shall apply to all contracts for the temporary grant of use of load carriers for payment (e.g. quarter pallets, half pallets, Euro pallets, industrial pallets hereinafter referred to as "Load Carriers") from IPP GmbH ("IPP") to third parties ("Customer"). These GTC shall only apply to entrepreneurs (as defined in § 14 of the German Civil Code), legal entities of public law or special funds under public law within the definition of § 310 para. 1 of the German Civil Code.
- 1.2 These GTC shall apply exclusively. Any terms or conditions of the Customer which deviate, contradict or supplement the terms or conditions herein shall only become part of the contract to the extent that IPP has expressly agreed to them. These approval requirements shall also apply when IPP provides good and/or services to the Customer without reservation in the knowledge of deviating, contrary or supplemental customer conditions.
- 1.3 On a case-by-case basis, individual agreements made with the Customer (including collateral agreements, warranties, supplements and amendments to the GTC) shall have precedence over the GTC. These agreements must be in writing and shall serve as evidentiary proof.
- 1.4 Any and all legally relevant declarations and/or notifications made by the Customer to IPP which are required under the terms of the GTC (e.g. setting deadlines, notifications of defects, withdrawal or reduction), shall be in writing or text (e.g. letter, e-mail, fax) in order to be valid.  
  
Legal formalities and other matters of proof, particularly in questions of doubt as to the declarer's authority shall remain unchanged.
- 1.5 References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations apply without such clarification insofar as they are not directly modified or explicitly excluded in these GTC.

#### 2. Conclusion of the Contract

- 2.1 Details regarding the Load Carriers provided (i.e. weight, measurements, utility value, resilience, allowances and technical data) as well as any representations (i.e. drawings and images) are only approximate unless the usability for the contractually intended purpose requires exact conformity. They are only binding insofar as it has been expressly stated by IPP. Customary variations and variations that are the result of legal regulations or which show constructive or technical improvements, as well as the replacement of components with parts of equivalent value are always permitted provided that they do not impair the usability for the contractually intended purpose. The Customer shall have no claims for the retrofitting of already delivered equipment when there are design changes in an ongoing series. In all other respects, IPP's factory standards shall apply, unless expressly provided otherwise in the specification of Load Carriers of IPP.
- 2.2 The information provided by IPP on the Load Carriers are exclusively statements of quality (*Beschaffenheitsangaben*) and shall not be considered as guarantees (*Garantien*) in the legal sense. In particular, technical specifications and product descriptions and information alone do not represent any assurance of certain properties or corresponding guarantees. Guarantees in the legal sense can only be assumed for IPP in individual cases by managing directors and authorised signatories and must be in writing in any case.

- 2.3 IPP reserves all property rights and copyright to all illustrations, drawings, calculations, quotes, samples and any other information, tangible or intangible, including those in electronic form that are made available to the Customer. This information may only be made available to third parties with the prior approval of IPP in written or text form (e.g. letter, e-mail, or fax) and shall be returned to IPP immediately upon request or in the event a contract has not been concluded.
- 2.4 Any assignment of rights and obligations of the Customer under the GTC requires the prior approval of IPP. The assignment by the Customer of any monetary claim against IPP is nonetheless valid; however, IPP can, at its own discretion and in discharge of its obligation, perform its obligations to either the Customer or to the assignee (§ 354a German Commercial Code).

### **3. Ownership of the Load Carriers**

- 3.1 IPP shall at all times remain the owner of all Load Carriers provided to the Customer. The Customer acknowledges that and agrees that the Load Carriers represent a particular value to IPP because IPP maintains and handles all Load Carriers and manages the circulation of the Load Carriers as part of a pool. The Load Carriers are marked with the logo of IPP and/or its pooling partners and are clearly identifiable as IPP's property.
- 3.2 The Load Carriers may neither be pledged to third parties nor assigned as collateral. The Customer must inform IPP immediately in writing if an application for the initiation of insolvency proceedings is filed or insofar as there are any claims of third parties to the Load Carriers which belong to IPP (e.g. seizures; attachments; liens).
- If preliminary insolvency proceedings are opened against the Customer's assets or if there are well-founded indications of over-indebtedness or imminent insolvency on the part of the Customer, IPP shall have the right to demand that the Customer surrender the Load Carriers in their possession.
- 3.3 In the event the Customer is in breach of contract, in particular with nonpayment of the due remuneration, IPP reserves the right to withdraw from the contract according to the statutory regulations and to claim the return of the Load Carriers provided subject to the retention of title.
- 3.4 The Customer is obligated to handle the Load Carriers with care, to protect them from contamination and improper use and to insure them at their own expense, adequately to replacement value, against fire, water damage and theft.

### **4. Prices and Terms of Payment**

- 4.1 The consideration to be paid by the Customer to IPP for the contractual services shall be based on the prices agreed at the time the contract was signed, or rather the prices according to the current price list, plus VAT at the statutory rate. All prices are quoted in Euros.
- 4.2 Unless otherwise agreed, invoice amounts shall be due and payable without deduction immediately upon receipt of the invoice. If the Customer is in arrears with a payment, they shall pay interest on the amount outstanding at the applicable statutory default interest rate during the period of default and, in the case of merchants, from the date the payment is due (§ 353 German Commercial Code). The assertion by IPP of further damages caused by the default shall not be excluded.
- 4.3 If the Customer is rated worse than "satisfactory" by a credit agency and/or if a credit limit assumed for the Customer is reduced or canceled by a credit insurance company, IPP shall be entitled to make any further deliveries dependent on the prior provision of collateral security.
- 4.4 The Customer may set off claims or exercise rights of retention only to the extent that its claim is undisputed or final judgment has been rendered for it.

### **5. Deadlines for the Grant of Use of Load Carriers; Delays in Delivery**

- 5.1 Binding deadlines for supplies or services shall be determined by IPP at the time of the acceptance of the order or expressly confirmed in written or text form (e.g. letter, e-mail, fax) by IPP.
- 5.2 Insofar as IPP cannot observe binding delivery deadlines for reasons for which IPP is not responsible ("Non-availability of the Service"), IPP shall inform the Customer hereof immediately and at the same time, inform the Customer of the expected, new delivery deadline. If the service is still not available within the new delivery deadline, IPP shall be entitled to withdraw from the contract in full or in part; IPP shall reimburse the Customer immediately for any already provided consideration. A case of non-availability of the Service, within the meaning of this clause is, in particular, the non-timely self-delivery of Load Carriers to IPP from the sub-suppliers if (i) IPP has concluded a congruent covering transaction; or (ii) neither IPP nor its sub-supplier are at default; or (iii) IPP is under no obligation to place orders with sub-suppliers.
- 5.3 The occurrence of IPP's delay in delivery is determined according to the statutory regulations. However, in any case, an overdue notice from the Customer is required.
- 5.4 If the delivery or service of IPP is delayed for reasons for which the Customer is responsible, IPP shall be entitled to demand a lump-sum payment of at least 0.5% of the invoice amount per calendar week, but no more than 5% of the invoice amount, as compensation for the resulting damage including additional expenses (e.g. storage costs), commencing as of the delivery deadline or - in the absence of a delivery deadline – as of notification that the Load Carriers are ready for dispatch. Proof of higher damages (e.g. as a result of increased rates of loss and/or costs of returns) and any statutory claims of IPP (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, any lump sum payment shall be offset against further monetary claims. The Customer shall be allowed to prove that IPP has incurred no costs or only significantly lower costs than the above lump sum.

## **6. Handling**

- 6.1 The Customer and IPP shall agree on the locations where the Load Carriers are to be handed over and collected by IPP (so-called "Delivery Points"). Delivery Points are generally the warehouses and branches of retailers, as well as any additional recipients agreed to by the parties. Delivery points other than as agreed shall require prior agreement between the parties.
- 6.2 Unless otherwise agreed, IPP shall have the right to determine the manner of shipment (especially transport companies, shipping route and packaging).
- 6.3 The Customer shall ensure that loading and unloading times are kept reasonably short in view of the number of Load Carriers; a maximum period of 120 minutes shall be deemed reasonable. If the loading time exceeds this, the Customer shall pay EUR 80.00 per completed hour for the excess loading and/or unloading time needed, unless IPP is responsible for this additional time. The Customer shall be allowed to prove that IPP has incurred no costs or only significantly lower costs than the above flat rate.
- 6.4 The Customer shall permit IPP and their agents to inspect the Load Carriers provided during normal business hours, by prior arrangement, for the purpose of checking the quantity and condition of the Load Carriers. The time and duration of the inspection shall be agreed between the parties in advance. If the Load Carriers are located at a place that does not belong to the Customer, the Customer shall, as necessary, ensure that IPP has the appropriate right of access.

## **7. Obligations of the Customer to Cooperate**

- 7.1 The Customer is obligated to maintain a proper inventory. In particular, they must reduce the stock of Load Carriers booked to them by reporting actual transfers made by the Customer to IPP or to third parties. The reports must be made through an EDI interface or the IPP online portal. Any delivery data corrections or cancellations must be made in the same manner.

- 7.2 The Customer shall notify IPP immediately, but no later than seven (7) days after shipment, of the shipment or transfer of Load Carriers to third parties. IPP must be able to collect the Load Carriers from these reported locations or third parties.

This notification is the basis for crediting the Customer's Load Carrier account at IPP. The Customer therefore assures the accuracy and completeness of the information provided.

- 7.3 In principle, Load Carriers may only be sent to approved/participating partners of the pool. If Load Carriers are provided to non-authorized recipients, IPP is entitled to an additional lump sum payment for loss ("out-of-pool lump sum"), which is based on the conditions agreed upon at the time the contract was made or the conditions applicable at the time in question.
- 7.4 The Customer is obligated to properly store all shipping documents (in particular consignment notes, bills of lading, postal delivery bills or duplicates thereof) and other customary documents relating to the grant of use of Load Carriers and shall provide IPP with copies of these documents upon request.
- 7.5 The Customer is obligated to perform an annual inventory by counting their own actual stock of Load Carriers and comparing this with the account balance. The results of the inventory must be reported to IPP immediately.

## **8. Force Majeure**

- 8.1 In cases of force majeure, the party affected thereby is released from its contractual obligations as well as from any liability for damages or other contractual remedies resulting from any infringement of contract, from the point at which the occurrence took place and for its full duration and extent.
- 8.2 "Force Majeure" are events that occur that are not in the party's control which would cause the invoking party to be unable to perform its obligations either in whole or in part. Force Majeure shall include (but is not limited to):

- War, armed conflicts and animosity or the serious threat of such, as well as civil war, rioting, revolution, military or power struggles and mob violence;
- Acts of terrorism, sabotage or piracy;
- Lawful or unlawful administrative acts, administrative orders, regulations, rules, or instructions which would cause IPP to be unable to perform its obligations either whole or in part;
- Natural catastrophes such as flooding, earthquakes, wildfires;
- Epidemics, pandemics, endemics;
- Explosions, fire or destruction of machinery, facilities or manufacturing plants, sustained outages in ways or means of transportation, telecommunications or electrical systems;
- Strikes and lawful lockouts.

Supply problems and other defaults by IPP's suppliers shall be considered Force Majeure insofar as IPP's supplier was unable to perform an obligation on its part as a result Force Majeure as described in sentence 2 above.

- 8.3 Each party shall show the respective other party without delay the occurrence as well as the duration and extent of the condition caused by Force Majeure and shall make its best efforts to limit its impact.
- 8.4 At the time that condition constituting Force Majeure occurs, both parties to the contract shall coordinate how they shall proceed after the Force Majeure has ended and shall determine whether the Good that was not delivered during that time should still be delivered.
- 8.5 Each contracting party is entitled to withdraw from the contract that was impacted by Force Majeure if it lasts more than six (6) months or when it is proven that it will last for such a period of time. The right of each party to terminate the contract for good cause in the case of a lengthy Force Majeure shall remain unaffected.

If a party to the contract withdraws as a result of another instance of Force Majeure or terminates for cause, the claims for compensation for services already rendered shall remain unaffected. For remaining services, the claims for remuneration shall be reduced proportionally when comparing the value of the total performance with that of the services not yet rendered.

## 9. Claims for Defects of the Customer

9.1 IPP's warranty extends exclusively to the information contained in the quality agreement "General Pallet Standards + Specification" („*Allgemeine Paletten Standards + spezifikation*“). Further quality agreements are expressly excluded. Unless otherwise agreed between IPP and the Customer, IPP accepts no liability for public statements (e.g. advertising statements) made by manufacturers of the Load Carriers or for

- natural wear and tear,
- damage after delivery caused by unsuitable or improper storage, handling or use of the Load Carriers,
- the suitability of the Load Carriers for a purpose other than that set forth in the contract,
- Subsequent improvements or modifications to the delivered Load Carriers by the Customer or third parties.

9.2 Any claims for defects asserted by the Customer presuppose that the Customer inspected the Load Carriers for any defects immediately after delivery. If a defect is determined at the time of delivery, during the inspection or subsequently at any point in time then the Customer must inform IPP immediately hereof. In any case, the Customer must notify IPP about obvious defects within two working days from the delivery, and about hidden defects within four working days from the discovery of the defect. The notification shall be made in written or text form (e.g. letter, e-mail, fax). If the Customer fails to carry out the proper inspection and/or notification of defects, IPP's liability for the defect which was not reported shall be excluded, in accordance with the statutory provisions; this shall not apply insofar as IPP has maliciously failed to disclose a defect.

9.3 In the event of any complaints regarding delivered Load Carriers, the Customer shall immediately give IPP the opportunity to inspect the deliveries in question and provide all necessary cooperation.

If delivered Load Carriers are defective, IPP shall remedy the defect by either making new deliveries at their own expense and at their own discretion or by rectifying the defect by way of subsequent improvement. IPP's right to refuse subsequent performance under the statutory conditions (e.g. in the case of minor defects such as slight moisture or soiling) shall remain unaffected. In the event of a replacement delivery, the Customer shall return the defective Load Carriers to IPP.

IPP will bear the expenses necessary for inspection and subsequent performance, in particular storage, transport, route, work and material costs, in accordance with the statutory provisions if a defect actually exists. Should the Customer's request for subsequent performance turn out to be unjustified, then IPP may claim reimbursement of all costs incurred as a result of the unjustified claim (in particular costs for inspection and transport), unless the lack of defectiveness could not be recognized by the Customer.

9.4 IPP is entitled to make subsequent performance due conditional upon the Customer paying the consideration due. However, the Customer remains entitled to retain an appropriate part of the consideration, this depending on extent and manner of the defect.

9.5 IPP has at least two attempts at subsequent performance to rectify a defect. The Customer can withdraw from the contract or reduce the agreed consideration if IPP's subsequent performance has failed or if a deadline reasonably set by the Customer has expired without change, or can be dispensed with under the statutory provisions. However, there shall be no right to withdraw from the contract if the defect is negligible (e.g. minor moisture, slight soiling).

- 9.6 Claims of the Customer for damages or reimbursement of futile expenses incurred as a consequence of a defect of the Load Carrier shall be subject to the limitations under Sec. 11 and are, apart from that, excluded.

## **10. Industrial Property Rights**

- 10.1 IPP is liable for the supplied goods to be free from industrial property rights and copyrights of third parties within the Federal Republic of Germany. IPP shall have no such liability for any other country unless expressly otherwise agreed between IPP and the Customer. Each party shall be obliged to immediately inform the respective other party by giving notice in written or text form (e.g. letter, e-mail, fax) if claims are made against it due to the asserted infringement of such rights.
- 10.2 In the event that any Load Carrier supplied by IPP infringe on a third party's industrial property right or copyright, IPP shall be liable to the Customer as follows:
- IPP will, at its own discretion and at its own costs, either grant the Customer a right of use on the grounds of a license agreement or exchange or otherwise modify the Load Carrier supplied so that this no longer breaches third party rights.
  - If this turns out to be impossible to achieve under reasonable conditions, the Customer reserves its statutory rights of withdrawal or price reduction.
  - The Customer's claims for damages, if any, are subject to Sec 11.
  - Claims for defects of the Customer with respect to an infringement of industrial property rights or of copyrights held by third parties are excluded if such infringement was caused by improper handling in violation of the contract, or by the use of the Load Carrier supplied in a way which could not be foreseen by IPP, or by a modification or alteration of the Load Carrier supplied by the Customer or by using the Load Carrier supplied in combination with other items than the Load Carrier supplied by IPP, or if the Customer is responsible for the infringement of third party rights. The Customer will indemnify and hold IPP harmless from any claims made by third parties for the infringement of its industrial property rights or copyrights.

## **11. Liability for Damages**

- 11.1 Insofar as not otherwise derived from these GTC including the following provisions IPP shall be liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.
- 11.2 IPP shall be liable for damages – no matter for what legal grounds – in case of willful intent and gross negligence. Provided that no lower standard of liability applies (e.g. diligence for one's own affairs, negligible breach of an obligation), IPP shall be liable in case of simple negligence only
- a) for damages arising from injury to life, body or health,
  - b) for damages from the breach of an essential contractual duty (obligation, the satisfaction of which only enables the proper execution of the contract at all and with which the contractual partner relies and may as a rule rely on its compliance); in this case IPP's liability is however limited to the reimbursement of the foreseeable, typically occurring damages.
- 11.3 The liability restrictions which can be derived from para. 11.2 herein above shall apply to the breach of a duty by persons whose fault IPP is responsible for according to the statutory provisions. They shall not apply insofar as IPP has maliciously failed to disclose a defect or has assumed a guarantee for the condition of the Load Carrier. The same shall apply to claims of the Customer according to the Product Liability Act.
- 11.4 The Customer can only withdraw from or terminate the contract owing to the breach of a duty, which does not consist of a defect, if IPP is responsible for the breach of duty. A free right of termination of the

Customer (in particular according to §§ 650, 648 German Civil Code) is excluded. Incidentally the statutory pre-requisites and legal consequences shall apply.

## **12. Statute of Limitations**

- 12.1 The general statute-of-limitations for claims from defects of quality and title is one year from providing the defective Load Carrier.
- 12.2 The aforementioned statutes-of-limitations shall also apply to contractual and non-contractual claims for damages of the Customer which are due to a defect to the Load Carrier provided, unless the application of the regular legal statute-of-limitations (§§ 195, 199 German Civil Code) would lead to a shorter statute-of-limitations in an individual case. The statutes-of limitations of the Product Liability Law shall remain unaffected in any case.

## **13. Protection of Trade Secrets**

- 13.1 The Customer may use IPP's trade secrets, which have or will become known during the business relationship with IPP, solely for the contractually intended purpose. The protected trade secrets shall include all written, spoken or in any form electronically stored information, all research and work results, knowledge, data, designs, know-how, analyses, calculations, studies, copies, transcripts and other documents that the Customer has received or will receive from IPP or on their behalf, or which the Customer acquires from IPP or which he has created or will create in connection with such information or which includes such information or which is based on all or part of this information.
- 13.2 The Customer is prohibited from either using or communicating these trade secrets to third parties for any reason outside the contractually-intended purposes without IPP's express permission and is required to return them to IPP without undue delay on demand or in case of failure to conclude a contract. Information, which was known to the public before the notice or transfer by IPP or which was generally accessible or which will become public at a later date without infringing an obligation to secrecy, shall not be deemed to be trade secrets.
- 13.3 The aforementioned obligations to secrecy shall also apply after the conclusion of the business relationship between IPP and the Customer.

## **14. Contract Duration and Termination**

- 14.1 Unless otherwise specified, the Contract shall be valid for an indefinite period.
- 14.2 The Contract can be terminated in writing by either party with a notice period of three months to the end of the month.
- 14.3 The right of either party to terminate the contract for good cause without notice remains unaffected. A reason justifying immediate termination without notice exists in particular if the other party breaches an obligation arising from the Contract, for example a payment obligation or an obligation of the Customer to cooperate in accordance with Sec. 7 herein, and the breach continues to exist even after a deadline set for remedial action lapses without success, or if a significant deterioration in the financial circumstances of the other party has occurred or threatens to occur, thereby jeopardizing the terminating party's fulfilment of contractual claims, or if insolvency proceedings have been opened against the assets of a party or the opening of such proceedings has been rejected for lack of assets. A significant deterioration in the Customer's financial circumstances shall be deemed to exist in particular if a credit agency rates the Customer as worse than "satisfactory" and/or a credit insurance company reduces or cancels a credit limit assumed for the Customer.
- 14.4 If the Customer continues to use the Load Carriers beyond the termination date of the contractual relationship or the Customer fails to return the Load Carriers to IPP for any other reason, this shall not

constitute an extension of the contractual relationship. The (corresponding) application of § 545 German Civil Code is expressly waived.

**15. Applicable Law and Place of Jurisdiction**

- 15.1 These GTC and the contractual relationship between IPP and the Customer shall be governed by the laws of the Federal Republic of Germany.
- 15.2 If the Customer is a merchant within the meaning of the German Commercial Code, a governmental entity or a special governmental estate, exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the court competent for IPP's business place. The same applies if the Customer is an entrepreneur within the meaning of § 14 German Civil Code. IPP is, however, also entitled to file an action at the place of performance for the delivery obligation pursuant to these GTC or to an individual agreement prevailing these GTC, or at the general place of jurisdiction of the Customer. Imperative legal provisions, in particular with respect to any exclusive venue, shall remain unaffected.