



**CARGONEXX**

The future of trucking.

# **General Terms and Conditions Cargonexx GmbH**

(Status: 04/2019)

## Table of Contents

1. Application of the General Terms and Conditions of CARGONEXX and ADSp 2017.....	3
2. Registration.....	3
3. Usage of the Platform.....	3
4. Forwarding Orders Sent to CARGONEXX by Customers.....	4
4.1. Conclusion of a Contract of Carriage.....	4
4.2. Excluded Prohibited Goods.....	4
4.3. Execution of the Contract of Carriage.....	5
4.4. Package Items/Loading Equipment Exchange.....	5
4.5. Notification of Damage.....	5
4.6. Liability.....	6
4.7. Insurance.....	6
4.8. Remuneration for Forwarding Services.....	6
4.9. Factoring.....	6
4.10. Payment Periods.....	6
5. Transport Orders sent by Cargonexx to the Freight Carrier.....	7
5.1. Conclusion of a Contract of Carriage.....	7
5.2. Termination of the Contract of Carriage by the Carrier.....	7
5.3. Planning and Execution of the Transport.....	7
5.4. Usage of the mobile Cargonexx application by the Carrier.....	8
5.5. Reachability of the Carrier.....	8
5.6. Delays.....	9
5.7. Breach of Duty by the Carrier.....	9
5.8. Package Items/Loading Equipment.....	10
5.9. Transportation of Dangerous Goods.....	10
5.10. Waybills and Delivery Slips.....	11
5.11. Remuneration for Transport Services.....	11
5.12. Payment Terms and Offsetting.....	11
5.13. Prohibition of uploading Transport Orders to Freight Exchanges.....	11
5.14. Qualified Personnel, Minimum Wage Regulations.....	12
5.15. Proper Vehicle Equipment.....	12
5.16. Termination of the Contract of Carriage.....	12
5.17. Liability.....	12
6. Special Obligations of the Users.....	12
6.1. Required Licences and Insurances.....	12
6.2. Information and CARGONEXX's Right to Control.....	13
7. Termination of the User Contract.....	13
8. Data Protection.....	13
9. Liability for Platform Use.....	14
10. Changes to the GTC.....	14
11. Applicable Law/Place of Jurisdiction/Miscellaneous.....	14

## 1. Application of the General Terms and Conditions of CARGONEXX and ADSp 2017

CARGONEXX GmbH, Herrengraben 30, 20459 Hamburg (hereinafter: "CARGONEXX") operates an Internet-based platform for the processing of transport orders in its own name and on its own account (hereinafter: "Platform").

The platform is used exclusively based on these GTC and used exclusively for commercial purposes. Other terms and conditions of the user shall not apply, even if CARGONEXX does not expressly object to their validity. Unless these GTC include explicit regulations in this regard, the 2017 General German Forwarding Agent's Terms and Conditions [Allgemeine deutsche Spediteurbedingungen 2017 (ADSp 2017)] shall apply as supplementary and subordinate regulations, particularly where an express reference is made to ADSp 2017. They can be reviewed on the Internet at [www.dslv.org](http://www.dslv.org).

## 2. Registration

Registration is required for using the Platform. Only commercial customers/contractors are approved for use (hereinafter: "User(s)") that either commission CARGONEXX with processing the forwarding of freight transports (hereinafter: "Customer") or are commissioned by CARGONEXX with carrying out freight transports (hereinafter: "Freight Carrier" or "Carrier"). Following successful registration, a contract is concluded by using the CARGONEXX Platform (hereinafter: "User Contract").

The user hereby commits to truthfully entering its master data and uploading the necessary documents.

CARGONEXX will check the user's information and documents and shall have the right to obtain a credit report on the User. CARGONEXX reserves the right to refuse individual registrations even without indicating reasons.

By registering on the CARGONEXX Platform, the user hereby accepts the conditions stated below.

## 3. Usage of the Platform

CARGONEXX will grant the user the right to use the Platform for the duration of the User Contract, with the exception of times during which the servers used by CARGONEXX cannot be accessed due to maintenance work or for technical or other reasons beyond the control of CARGONEXX.

Use of the Platform shall only be permitted for the purpose it is intended for. The documents uploaded by the users must be checked for harmfulness (viruses, Trojans, etc.). The user hereby commits to refraining from uploading any harmful software or program codes onto the Platform.

CARGONEXX reserves the right to exclude individual users from using the Platform if violations against these GTC or legal provisions become known.

## **4. Forwarding Orders Sent to CARGONEXX by Customers**

### **4.1. Conclusion of a Contract of Carriage**

The customer sends CARGONEXX a request via the platform concerning the preparation of a forwarding offer for a transport. The request needs to at least include the information indicated in the mandatory fields of the Platform. Based on this information, CARGONEXX will submit a binding offer for the execution of the transport.

The customer can accept the offer within the period of validity specified by CARGONEXX. Accepting the offer (by clicking on the corresponding button) will conclude a contract of carriage between CARGONEXX and the Customer – unless the contract involves the transportation of excluded prohibited goods (see sec. 4.2).

CARGONEXX has the right to cancel an order within a period of 30 minutes after it has been entered via the platform, if it is obvious that the execution of the order is not possible due to operational reasons. If this should be the case, CARGONEXX will proactively inform the customer that no contract has been concluded.

In exceptional cases, requests can be made using other means (e.g. by email or over the phone). In such cases, a contract of carriage will not be concluded until CARGONEXX sends the customer a written offer (e.g. via email), which the latter must confirm in writing.

Contractual penalties from the customer due to exceeded delivery times or damage/losses will not be accepted.

If the customer issues instructions after the contract has been concluded and before transport has been carried out, that have an effect on the costs, times, type or scope of the transport process, CARGONEXX shall be permitted to demand reimbursement from the customer for additional expenses and transport charges incurred due to this. If CARGONEXX no longer considers itself able to properly carry out the contract of carriage on account of these instructions, CARGONEXX shall have the right to terminate the transport agreement without this leading to any claim for compensation payments from the customer.

If the customer cancels the contract of carriage, the statutory provisions of sec. 415 of the German Commercial Code [Handelsgesetzbuch (HGB)] (Termination of the Freight Contract by the Sender) shall apply.

### **4.2. Excluded Prohibited Goods**

Following prohibited goods are excluded from transport, including the following:

- High-value electronic items which are at risk of theft, such as smartphones, flat-screen televisions, PCs and cameras
- Weapons and ammunition
- Valuables, works of art, unique items, antiques
- Any kind of motor vehicles
- Living animals, animal carcasses, body parts or mortal remains of humans
- Shipments that require a license for transport

- Glass and porcelain (unpackaged)
- Liquors, cigarettes
- Relocation goods

The Customer alone shall be responsible for ensuring that the shipments intended for transport do not contain any prohibited goods. CARGONEXX shall not have any duty to inspect the goods.

#### **4.3. Execution of the Contract of Carriage**

CARGONEXX is a forwarding agent within the meaning of sec. 453 HGB and does not render the transport services itself, but instead commissions Freight Carriers at its discretion.

CARGONEXX will freely determine the means of transport and forwarding route and select the executing companies. CARGONEXX will conclude the necessary freight, storage and forwarding contracts in its own name and issue information and instructions to the executing companies. CARGONEXX will carry out these tasks independently but will take the customer's interests into account. If the Customer issues instructions, CARGONEXX will follow them within the limits of sec. 4.1.. CARGONEXX shall be authorized to transport the cargo as consolidated cargo within the meaning of sec. 460 HGB. Transshipments will only be carried out if an explicit arrangement has been arranged with the customer.

A proof of delivery/bill of lading shall only be forwarded in digital form. Those can be purely electronic documents (e.g. E waybills) or digital photographs or scans of the physical proofs of delivery. Alternatively, mobile devices can be used on which the required information is visible. Signatures and documents from these devices are considered suitable documents. CARGONEXX will not forward any proofs of delivery or loading documents in paper form.

The Customer shall permit the Freight Carrier to inspect the loading.

#### **4.4. Package Item/Loading Equipment Exchange**

Unless stated otherwise, package items and/or loading equipment must be evenly exchanged, i.e. the Freight Carrier gives the place of loading the same number, type and quality of package items and/or loading equipment from its inventory that it takes when loading and receives the number of package items and/or loading equipment of the same type and quality at the point of unloading that correspond to what was loaded. The carrier has the right to refuse to take pallets of a quality lower than 1a.

#### **4.5. Notification of Damage**

The customer must provide notification of any damage right away, or at least within the statutory periods. Notification of damage must be in writing, by email or via an online form provided by CARGONEXX. The customer must specifically identify the damage or loss that has occurred and use suitable means to document this (e.g. photos). If the shipment is not delivered, notification of the damage must be made immediately after the specified delivery period has elapsed. If no delivery period has been determined, then notification of damage has to take place after the customary delivery period.

#### **4.6. Liability**

CARGONEXX shall be liable according to sec. 22 - 28 ADSp 2017 and as stipulated by the statutory requirements.

CARGONEXX shall be exempt from liability for damage to prohibited goods and shipments that have not been adequately packaged. Moreover, CARGONEXX shall not be liable for damages caused by third parties, force majeure, exposure to weather, the effects of other goods, damage due to animals or natural changes. In addition, the statutory liability exclusions and limitations and those found in ADSp 2017 shall apply. According to the statutory provisions, the Customer shall be liable for all direct and indirect damage that occurs while the goods are in the possession of CARGONEXX or its vicarious/executing agents, particularly the Freight Carriers commissioned with the transport. The duty to compensate shall include fines, penalties and costs for legal defense. If third parties assert rights to the shipment during the period that it is in the possession of CARGONEXX, the Customer must indemnify CARGONEXX from all claims, unless they have been culpably caused by CARGONEXX.

#### **4.7. Insurance**

The customer shall be self-insured unless explicitly arranged otherwise. CARGONEXX will only conclude further insurances if it is explicitly and separately agreed upon.

#### **4.8. Remuneration for Forwarding Services**

Forwarding services will be carried out for the remuneration specified in the order acceptance of CARGONEXX. All remuneration is to be understood as subject to value added tax in the respective, legally applicable amount. The fees contain all costs necessary for the transports and include toll charges. Not included are costs or additional expenses according to sec. 4.1 and 4.3 that are unforeseen or not caused by CARGONEXX. Sec. 17 ADSp 2017 (Expenditure and Indemnity Claims) shall apply additionally. CARGONEXX shall be entitled to demurrage, with the regulations in sec. 5.6 applying accordingly.

#### **4.9. Factoring**

CARGONEXX shall have the right to assign payment claims against the Customer within the course of factoring.

#### **4.10. Payment Periods**

In accordance with sec. 456 HGB, the forwarding fee will be payable no later than once the invoice has been received. If the invoice is not paid within 30 days after the invoice is issued and received, the payment shall be in default without a reminder being necessary. As soon as the default occurs, CARGONEXX shall have the right to demand default interest at the statutory rate.

## **5. Transport Order Sent by CARGONEXX to Freight Carriers**

### **5.1. Conclusion of a Contract of Carriage**

The Freight Carrier issues a binding offer for a transport order by clicking on the corresponding button. This offer is based on the conditions, requirements and fees that CARGONEXX has published on its platform for the specific transport concerned. CARGONEXX can accept this offer within the period specified on the platform. In the case that multiple Freight Carriers make an offer for individual transport orders, CARGONEXX will have the right to select one of the Freight Carriers as the contractual partner at its discretion. At the latest, CARGONEXX will notify the Freight Carrier whether the contract has been concluded or not by the time the acceptance period elapses. The Freight Carrier is obligated to maintain its offer until it receives the electronic notification. CARGONEXX's acceptance of the offer will conclude a binding transport order between CARGONEXX and the Freight Carrier.

The Freight Carrier must declare that it had sufficient opportunity to become familiar with the web-based bidding and order process before concluding the transport contract. It must also declare that it has familiarized itself with the conditions and requirements for the specific transport concerned and can implement them according to the transport contract.

### **5.2. Termination of the Contract of Carriage by the Carrier**

If the carrier cancels the contract of carriage, Cargonexx will search for an alternative carrier (alternative transport). If the charges for the alternative transport exceed the charges agreed in the original contract of carriage, the carrier who cancelled the transport order must refund the difference to Cargonexx. Cargonexx will invoice the carrier for this amount. This regulation always applies, irrespective of the time of termination by the carrier. The reimbursement of the difference also applies if Cargonexx must book a significantly more expensive special trip due to unforeseen market conditions and/or the short-term nature of the transport. Cargonexx guarantees that it will make every reasonable effort to find the cheapest possible alternative.

### **5.3. Planning and Execution of the Transport**

The planning and execution of the transport shall be the sole responsibility of the carrier commissioned by CARGONEXX with the transport.

With the provision of the transport order, CARGONEXX shall provide all information relevant to the performance of the transport in accordance with the order. Unless otherwise specified in the transport order, the carrier is authorized to transport the consignments as consolidated cargo within the meaning of § 460 HGB (German Commercial Code).

In accordance with the contract of carriage, the carrier is obliged to transport the cargo in due time, without damage and to provide ancillary services (e.g. loading and unloading of cargo) in connection with the transport. The carrier shall meet the requirements of Clause 4.2 ADSP 2017.

CARGONEXX has the sole right to issue instructions regarding the transport. If the carrier recognizes obstructions which make the proper and contractual performance of the transport difficult or impossible, he must immediately obtain instructions from CARGONEXX. In no event shall the Carrier make any decision without the authorization of CARGONEXX or in direct consultation with the

shipper or consignee of the shipment or their respective representatives, unless such consultation has been approved in advance by CARGONEXX in written form.

#### **5.4. Usage of the mobile CARGONEXX application by the Carrier**

The carrier must ensure that the driver uses the latest version of the CARGONEXX MOBILE APP. In order to use the app correctly, the dispatcher sends a message from the CARGONEXX platform to the driver's smartphone. This message contains a link. The driver activates the link and opens the tour in the CARGONEXX MOBILE APP. If the driver has not yet downloaded the CARGONEXX MOBILE APP, he will be asked to do so. The driver may have to update the CARGONEXX MOBILE APP to the latest version. The driver confirms the tour in the CARGONEXX MOBILE APP and herewith enables the tracking functionality. By opening the CARGONEXX MOBILE APP, the driver agrees that the CARGONEXX MOBILE APP may use the corresponding services of his smartphone required for tracking and that CARGONEXX may use the geo-information according to the terms of use of the CARGONEXX MOBILE APP. The CARGONEXX MOBILE APP Terms of Use and the Tracking Privacy Policy are set forth in the CARGONEXX Privacy Policy.

The driver must open the CARGONEXX MOBILE APP tour at least 2 hours before loading, confirm the order and thus activate the transport tracking function.

If it is not possible for the carrier to guarantee tracking via the CARGONEXX MOBILE APP, he is obliged to enter the status information, e.g. arrival, loading and unloading times, proactively and independently into the corresponding data fields of the CARGONEXX platform. In this case, the expected time of arrival must be entered at least two hours in advance and updated immediately if changes occur. Loading and unloading times must be confirmed at the latest 15 minutes after the loading and unloading have taken place. The carrier must inform CARGONEXX either via the CARGONEXX MOBILE APP or the platform of any potential delays as soon as they are recognizable to the carrier. In this case, the carrier needs to ensure that he is available for queries from the Cargonexx service team (see "Reachability of the carrier").

If the carrier does not use the CARGONEXX MOBILE APP and the status information is not proactively entered on the CARGONEXX platform or the entries are not plausible, CARGONEXX service team members will call the carrier in order to obtain the relevant information. CARGONEXX will charge the carrier a handling fee of 20,00 € for the additional effort.

#### **5.5. Reachability of the Carrier**

The carrier guarantees that he will be reachable for Cargonexx during the transport process. The transport process begins two hours before loading and ends with the last unloading, which must be documented by the consignee. Reachable means that the carrier responds to calls or e-mails within 15 minutes.

In order to ensure reachability outside of office hours, the carrier needs to provide Cargonexx with an emergency telephone number or the telephone number of the driver and authorizes Cargonexx to contact the driver directly if the carrier cannot be reached via the other numbers that were provided.

## **5.6. Delays**

The dates and times for loading and unloading of the goods shall be agreed in the contract of carriage between CARGONEXX and the carrier. Before concluding the contract of carriage, the carrier checks whether he is able to guarantee the agreed times and, by concluding the contract of carriage, gives his binding consent to the agreed times. A delay occurs if the carrier fails to meet the agreed loading and unloading times.

The carrier is obliged to proactively communicate all delays to Cargonexx in a timely manner. In timely manner means that the communication must take place as soon as the carrier is able to recognize a possible delay. If the carrier does not inform CARGONEXX of a delay in due time, CARGONEXX is entitled to demand compensation from the carrier or to charge the carrier a lump-sum compensation fee of 15% of the agreed freight charge. This provision shall apply irrespective of whether the carrier is responsible for the delay or not.

If the carrier culpably causes a delay and/or does not observe to the agreed calendar day of loading or unloading, Cargonexx is entitled to demand compensation for the damage from the carrier or to charge the carrier a lump-sum compensation fee of 15% of the agreed freight charge. Culpable causation includes all cases for which the carrier is responsible. This includes, for example, late arrival at the place of loading and/or unloading due to the driver's shift times, oversleeping by the driver or if the driver is unable to locate the place of loading and/or unloading.

Delays for which the carrier is not responsible are excluded from this regulation, though only if the carrier informs Cargonexx proactively and in timely manner about the delays. This includes, for example, delays due to traffic issues and delays for which the shipper or consignee is responsible. Upon request by CARGONEXX, the carrier must prove with suitable documents (e.g. excerpts from telematics) that the reason for the delay was out of his control. CARGONEXX shall have the right to withhold payment of the freight charge until the appropriate documents of proof have been surrendered.

## **5.7. Breach of Duty by the Carrier**

If the carrier breaches his obligations under the contract of carriage, he shall compensate CARGONEXX for the loss resulting from the breach. If carrier is not able to carry out the transport during the contractually agreed loading and unloading times and not without risks for the consignments, CARGONEXX may commission a third party to carry out the transport without setting a deadline and demand the resulting costs from the carrier.

A breach of duty shall also be deemed to have occurred if the carrier does not use the CARGONEXX MOBILE APP two hours before the first loading (see regulations in the section " Usage of the mobile Cargonexx application by the carrier ") and cannot be reached by the Cargonexx Service Team (see regulations in the section "Reachability of the carrier").

As soon as Cargonexx detects a breach of duty, Cargonexx will send an e-mail to the carrier informing him that it will commission a third party for the transport and charge the carrier for the resulting costs. This also applies in the event that Cargonexx has to book a significantly more expensive special trip due to market conditions and/or the short-term nature of the transport. Cargonexx guarantees that it will make every reasonable effort to find the cheapest possible alternative.

Additionally, Cargonexx has the right to claim further damages from the carrier.

## 5.8. Package Items/Loading Equipment

Unless otherwise agreed in the contract of carriage, package items/loading equipment shall be exchanged 1:1 between the shipper and consignee (see Section 4.3). The obligation to repatriate and the exchange risk are taken into account in the amount of the remuneration paid to the carrier at 5% of the order value. If no exchange of package items/loading equipment is culpably carried out, CARGONEXX will charge € 10.00 per Euro pallet, € 75.00 per stillage/lattice box pallet and € 6.00 per Düsseldorf pallet. The carrier is entitled to prove a lesser damage.

If the package items/loading equipment which the carrier receives from the shipper is of lower quality than 1a, the carrier is obliged to document these quality defects sufficiently, e.g. by photos and/or a written confirmation by the shipper. The carrier also has the right to refuse to receive pallets of a quality lower than 1a.

If the carrier does not have the possibility to exchange loading equipment, he can return the loading equipment to a loading equipment pooling network and have it credited to the CARGONEXX account. The return and selection of the pooling network needs to be agreed between the carrier and CARGONEXX in advance. After the return of the package items/loading equipment, the carrier must provide CARGONEXX with a digital copy of the credit note. Deductions from the credit note amount due to quality failures will only be accepted by CARGONEXX if the defects were documented sufficiently by the carrier during loading. If the carrier does not provide sufficient documentation, CARGONEXX will charge 3.50 € per Euro pallet for the repair. The costs for repair may vary depending on the package items/loading equipment.

If the carrier does not exchange the package items/loading equipment 1:1 between the shipper and consignee and does not provide any credit notes from pooling networks, CARGONEXX is entitled invoice the carrier for the value of the package items/loading equipment. The value of the loading equipment shall be determined from the valuations listed above.

The credit note that was received by the carrier upon returning the package items/loading equipment to the pooling network must be made available to CARGONEXX within 30 days after unloading. The carrier can either submit the credit note electronically, upload it to the platform, or send it by e-mail. The carrier will receive a credit note for the corresponding amount within 5 working days. If the credit note is not provided within 30 days of unloading, there is no possibility of subsequent crediting.

## 5.9. Transportation of Dangerous Goods

In the case of a dangerous goods transport, the carrier is obliged to only deploy drivers who have been instructed in accordance with 8.2.3 ADR and, if necessary, have a valid ADR certificate. The vehicles must be equipped for the transport of dangerous goods with orange-coloured marking in accordance with section 5.3.2 ADR, fire-fighting equipment in accordance with section 8.1.4 ADR and other protective equipment in accordance with section 8.1.5 ADR and written instructions in accordance with section 5.4.3 ADR.

### **5.10. Waybills and Delivery Slips**

The carrier must provide CARGONEXX with a digital copy of the consignment note or other transport documents as suitable proof of delivery within 24 hours of unloading as proof of correct transport and delivery. The digital copy may be a scan or photograph of the original documents but needs to be in legible quality. The transmission can take place via the platform or the CARGONEXX MOBILE APP or by email to [billing@cargonexx.de](mailto:billing@cargonexx.de). CARGONEXX does not accept proof of delivery or transport documents by post or fax. Documents sent by the carrier by post or fax shall be deemed to not have been received.

If the carrier sends the proof of delivery or transport documents later than 24 hours after unloading, CARGONEXX is entitled to charge a handling fee of 20,00 €.

### **5.11. Remuneration for Transport Services**

The commissioned transport services shall be carried out at the rates agreed upon in the transport order in accordance with Clause 5.1. All rates shall be exclusive of value added tax at the statutory rate applicable at the time. The charges include all costs necessary for transport, including tolls and pallet exchange costs. Additional expenses will only be reimbursed upon agreement and proof of costs.

Regarding demurrage charges, the provisions of ADSp 2017 No. 11 ("Non-compliance with loading and unloading times, demurrage charges") shall apply. The demurrage charge amounts to € 55.00 per hour and is calculated pro rata temporis.

### **5.12. Payment Terms and Offsetting**

The payment period is 5 working days after receipt and successful verification of the digital proof of delivery. Should the proof of delivery not be complete or legible or should there be other uncleared issues regarding the transport, the term of payment shall not commence until all open questions have been clarified. CARGONEXX aims to pay or credit all fees within 48 hours of receipt of the proof of delivery. The carrier's lien is waived. Rights of retention shall only exist if they have been recognized or legally established. Assignments of freight claims by the carrier to third parties require the prior consent of CARGONEXX, except in cases of § 354 a HGB (German Commercial Code).

### **5.13. Prohibition of Uploading Transport Orders to Freight Exchanges**

Freight carriers are expressly forbidden to

- to place transport enquiries listed on the platform on freight exchanges or other brokerage platforms,
- to place transport orders that are concluded with CARGONEXX on freight exchanges or other brokerage platforms.

Any violation may lead to an immediate termination without prior warning by CARGONEXX. Furthermore, the carrier acknowledges CARGONEXX's right to demand a penalty fee of 1,000 € in the event of infringement and to set off all or part of the existing or future claims of the carrier against them.

#### **5.14. Qualified Personnel, Minimum Wage Regulations**

For the transport, the Freight Carrier shall only engage technically qualified personnel with sufficient verbal and written skills in German or English.

In addition, the Freight Carrier must pledge to CARGONEXX to adhere to the relevant statutory Minimum Wage Regulations (MiLoG).

Otherwise, the provisions of sec. 7 b of the German Road Haulage Act [Güterkraftverkehrsgesetzes (GüKG)] (“Deployment of Lawfully Employed Driving Personnel”) and sec. 32 ADSp 2017 (“Compliance”) shall apply.

#### **5.15. Proper Vehicle Equipment**

The Freight Carrier shall be responsible for properly equipping its vehicles. Sec. 4.2 ADSp 2017 shall apply accordingly. The Freight Carrier must make sure that the vehicles used can be reached at all times.

The Freight Carrier shall equip its vehicles and their drivers with electronic resources (e.g. smartphones or tablet computers with a photo function on which the web application provided by CARGONEXX is installed – once it is available).

#### **5.16. Termination of the Contract of Carriage by CARGONEXX**

Sec. 415 HGB shall be applicable for terminating the transport order.

#### **5.17. Liability**

The Freight Carrier shall be liable pursuant to the statutory provisions, particularly those of sec. 425 et seqq. HGB. Derogating from sec. 431 (1) HGB, the amount of liability due to loss or damage of the shipment shall be up to 40 special drawing rights per kilogramme of raw weight.

The liability of the Freight Carrier for partial or complete loss or damage of the freight and exceeding the delivery period in the course of cross border transports for which the CMR-Convention applies, underlies exclusively the provisions of the CMR-Convention.

As the customer, CARGONEXX’s liability is limited to € 200,000.00 per damage according to sec. 29 ADSp 2017 in the cases mentioned there.

### **6. Special Obligations of the Users**

#### **6.1. Required Licences and Insurances**

When concluding the User Contract, the Freight Carrier must declare that it has a valid permit to carry out commercial road haulage (GüKG permit, EU licence or a CEMT licence) and has concluded valid liability insurance according to sec. 7 a GüKG. The Freight Carrier must commit to maintaining the licences and the liability insurance during the term of the User Contract. Once collaboration commences and as soon as newer documents are available, the Freight Carrier must upload a digital copy of the current permit and liability insurance to the Platform. Moreover, the Freight Carrier must

immediately announce each and every change, particularly premature expiration of the permit or insurance. CARGONEXX shall have the right to request copies of permits / insurance policies at any time, and the Freight Carrier must submit them right away.

In the event that there is no valid permit on hand for carrying out commercial road haulage, it shall only be permissible for transports to be executed with a maximum laden weight of no more than 3.5 tons. When registering on the Platform, the Freight Carrier will be obligated to show this by confirming the corresponding declaration.

## **6.2. Information and CARGONEXX's Right to Control**

The Freight Carrier must allow CARGONEXX to review its business documents at its place of business to verify that the services owed are being complied with – in particular, the provision and maintenance of required permits, insurance policies and other legal requirements – or to commission a third party committed to professional secrecy to do so (tax consultant, auditor, lawyer). In the event that any irregularities occur that involve a breach of agreement, the Freight Carrier shall be required to compensate CARGONEXX for the related costs and damages. If the employees or vicarious agents who are deployed do not exhibit the required qualifications, then CARGONEXX shall be permitted to demand that they be replaced immediately by other employees and/or vicarious agents for executing the order.

## **7. Termination of the User Contract**

The User Contract has been concluded indefinitely. It may be terminated by either party at the end of a month by observing a period of notice of one month. The notice must be given in written form.

Forwarding and freight orders that have already been issued shall not be affected by the termination, and they must be fulfilled as arranged even after the User Contract comes to an end.

After the User Contract comes to an end, the User shall no longer have the right to use data or web-based applications provided by CARGONEXX.

If there is good cause, the contract may be terminated without notice by either side. Specifically, good causes within the meaning of this contract include – but are not limited to – the following:

- Failure on the part of the Freight Carrier to provide CARGONEXX with information on the expiration of any licences / insurance policies or permits in a timely fashion or at all
- Non-compliance with requirements and conditions from transport contracts following a prior written warning by CARGONEXX
- Violations of major obligations, especially the regulations of the Minimum Wage Act, the driving and rest periods or other social legislation pertaining to commercial road haulage.

## **8. Data Protection**

CARGONEXX has committed to observing the statutory provisions on data protection. In particular, reference is made in this context to the data protection provisions.

## 9. Liability for Platform Use

CARGONEXX guarantees that the Platform is suitable for the use described in sec. 1. CARGONEXX shall not be liable for damages that arise due to loss of data, transmission errors or other errors due to harmful software. This shall also apply for damages caused by the behaviour of other users or their improper use of the platform. The User alone will be liable for this. The regulations on liability in sec. 4 (Forwarding Orders) and sec. 5 (Transport Orders) shall take precedence in the respective areas of application.

## 10. Changes to the GTC

CARGONEXX reserves the right to adjust or change the GTC, e.g. if actual or technical changes in the service make this necessary. CARGONEXX will notify the User concerning the planned changes in a timely fashion – at least 4 weeks in advance. The User shall have the right to object to the change within this period. In the case of an objection, CARGONEXX shall have the right to terminate the relationship with the User at the end of the month and delete the User's account. Individual orders that have already been issued will not be affected by the termination, and they must be fulfilled as arranged and according to the valid GTC at the time the contract was concluded even after the User Contract has come to an end. If the User does not object within the given period, then the changed terms and conditions of use will be regarded as approved. When announcing the planned changes, CARGONEXX will notify the User of the right to object and the legal consequences due to exercising/ not exercising the right to object.

## 11. Applicable Law/Place of Jurisdiction/Miscellaneous

For all contracts which are agreed upon between the contracting parties, especially transport-, forwarding and/or storage contracts and their transaction the Law of the Federal Republic of Germany shall apply. The place of jurisdiction shall be Hamburg, unless ADSp 2017 or the CMR Convention allow for another place of jurisdiction. The legal statutes of limitation shall apply. Should a provision of these GTC be completely or partially ineffective, the legal effectiveness of the rest of the provisions shall not be affected by this.

(Status: 04/2019)