



SCHENKER

# General Terms and Conditions



SCHENKER | europac

June 2023

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## Subject

Schenker Deutschland AG, Coburg, always on behalf of Schenker AG, Essen - hereinafter **DB SCHENKER | europac** provides the following services, which are the subject of these General Terms and Conditions:

Trade in new or used packaging, load securing materials, auxiliary packaging materials, other packaging materials and load carriers as well as services relating to the cleaning of packaging materials and associated contractually agreed activities, the handling of project business, packaging consulting and development as well as the packaging of industrial goods, the rental of transport packaging and load carriers (rental object). Trade in work and professional clothing.

## 1 Validity

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") govern the contractual legal relationship between **DB SCHENKER | europac** and its clients (hereinafter referred to as the ordering party) in accordance with the respective valid price and service overviews, offers and other documents (such as price indexes, EPAL pallet criteria, freight tables, etc.). They apply to all contracts, deliveries and other services (see section "Subject"). The ordering party's terms and conditions of purchase and business as well as any other terms and conditions are hereby rejected.

1.2 Within the framework of an ongoing business relationship between merchants, the terms and conditions of **DB SCHENKER | europac** will become part of the contract even if **DB SCHENKER | europac** has not expressly referred to their individual relationship in the individual case.

1.3 The services of **DB SCHENKER | europac** are carried out in accordance with the recognised rules of technology in the handling customary at **DB SCHENKER | europac**. **DB SCHENKER | europac** is also entitled to have the services performed by subcontractors. The following applies to all information on quality, colour, quantities, dimensions and weights: Deviations in weight and number of pieces are permitted up to 10% above and below the agreed quantities, unless otherwise agreed.

## 2 Offer, conclusion of contract, prices and copyrights

2.1 **DB SCHENKER | europac's** offers are subject to change with regard to price, quantity, delivery period and delivery possibility. Errors and changes in both offer texts and prices are reserved in all offers, whether verbal or written. Decorative materials or application examples shown are not included in the scope of delivery.

2.2 **DB SCHENKER | europac's** order confirmation in written or text form is exclusively authoritative for the acceptance of the order, the scope of the delivery and the delivery date.

2.3 Unless otherwise agreed, all prices are subject to VAT. VAT will be charged by **DB SCHENKER | europac** at the rate applicable on the date of performance.

2.3.1 These prices do not include any disposal costs or fees for participation in a dual system within the meaning of the [Packaging Act](#). The ordering party undertakes to take all necessary steps himself on the basis of the [Packaging Act](#) and to conclude the corresponding agreements with recognised packaging disposal companies himself. **DB SCHENKER | europac** has no responsibility in this respect and does not provide any consultancy services within the meaning of the [Packaging Act](#).

2.4 A price adjustment to changed price bases (e.g. raw materials, wages) is also permissible after conclusion of the contract and before delivery. **DB SCHENKER | europac** will then charge the prices valid on the delivery date. The same applies to orders without price agreement. **DB SCHENKER | europac** will inform, if possible in advance, about the changed conditions.

2.5 Contractually agreed costs for drafts, expert opinions, consulting concepts, drawings, will be invoiced with the first delivery. They remain the property of **DB SCHENKER | europac**, unless otherwise agreed. **DB SCHENKER | europac** is entitled to the copyright to drafts, statements, consulting concepts and the like produced by **DB SCHENKER | europac**. Simple rights of use can be transferred by separate remuneration.

If **DB SCHENKER | europac** has production carried out according to the technical documents, models, drawings, samples or similar provided by the client, the client is liable for ensuring that the use of these documents does not infringe the industrial property rights of third parties. The ordering party indemnifies **DB SCHENKER | europac** against all third party claims arising from this.

## 3 Delivery, transfer of risk, delay and force majeure

3.1 The risk of destruction, loss or damage to the goods is transferred to the ordering party when the goods are handed over to the forwarder/carrier or, if the goods cannot or are not to be dispatched, when **DB SCHENKER | europac** sends notification that the goods are ready for delivery.

### 3.2

a) **DB SCHENKER | europac** reserves the right to choose the shipping route and method.

b) Unless otherwise agreed, delivery is made "free domicile" within Germany, mainland and.

c) Delivery conditions deviating from this (e.g. island deliveries and/or cross-border deliveries) and the associated prices may be contractually agreed separately at the request of the ordering party. In all other respects, any additional costs caused by special shipping requests of the ordering party will be borne by the ordering party.

3.3 Partial deliveries and corresponding invoices are permissible.

3.4 The start of and compliance with the delivery time stated by **DB SCHENKER | europac** presuppose the clarification of all technical questions and the timely and proper fulfilment of the ordering party's obligations.

3.5 If an agreed delivery date is exceeded for reasons for which **DB SCHENKER | europac** is responsible, the ordering party has to set a reasonable period of grace for delivery in writing. This period of grace is at least three weeks. If delivery does not take place after expiry of the period of grace and the ordering party therefore wishes to withdraw from the contract or claim damages instead of performance, it is obliged to notify **DB SCHENKER | europac** of this in writing beforehand with an express request for delivery together with a reasonable further period of grace.

3.6 In the event of force majeure (see clause 8), **DB SCHENKER | europac's** obligations to fulfil the contract may be suspended; if there is a significant change in the circumstances existing at the time the contract was concluded, **DB SCHENKER | europac** is entitled to withdraw from the contract. The same applies in the event of energy or raw material shortages, industrial disputes, official decrees, traffic or operational disruptions or if commissioned sub-suppliers do not deliver, do not deliver on time or do not deliver properly for the aforementioned reasons.

## 3.7 Supplementary conditions for rental

3.7.1 After placing the order in writing with **DB SCHENKER | europac** on the basis of these General Terms and Conditions, **DB SCHENKER | europac** will make the desired rental item available to the client for rental. The further conditions result from the respective offer. The client is obliged to provide **DB SCHENKER | europac** with a written receipt of the rental item.

3.7.2 At the end of the rental period, the client/ordering party must make the rented item available for collection by **DB SCHENKER | europac** in a swept, stripped and, if necessary, folded or reduced-volume condition. **DB SCHENKER | europac** will assume the cleaning and cleaning costs in the event of intended soiling of the rental item. In the event of unintended soiling (e.g. by oils and/or varnishes) or damage to the rented item, **DB SCHENKER | europac** will charge the client separately for the cleaning or repair costs at cost or, in the event of total economic loss, for the replacement value of the rented item. In the event of loss of the rental item, **DB SCHENKER | europac** is entitled to charge the replacement value of the rental item.

## 4 Terms of payment

4.1 All payments are due within 14 days of the invoice date without deduction, unless otherwise agreed before conclusion of the contract.

4.2 The goods must be inspected for defects immediately upon receipt and, in the event of hidden defects, a complaint must be made in writing to **DB SCHENKER | europac** immediately within 7 days of receipt, otherwise the goods will be deemed to have been approved, in particular as being free of defects, whether in terms of quality and/or quantity.

4.3 **DB SCHENKER | europac's** payment claims can only be offset against undisputed or legally established claims and a right of reduction and/or retention can only be exercised on the basis of such claims.

## 5 Retention of title

5.1 The goods remain the property of **DB SCHENKER | europac** until all claims, including ancillary claims, claims for damages, etc., have been paid in full.

5.2 The retention of title also remains in force if individual claims of **DB SCHENKER | europac** are included in a current account and the balance is drawn and recognised.

## 6 Warranty

6.1 The ordering party/client must always sufficiently check the suitability of the goods and services supplied by **DB SCHENKER | europac** for its purposes and decides on their use on its own responsibility. **DB SCHENKER | europac's** advice and recommendations in this respect are non-binding and do not justify any warranty or liability claims.

6.2 The defectiveness of a delivered good is determined by the content of the contract and the statutory provisions.

6.3 The client cannot assert any rights due to defects in the delivery and performance of **DB SCHENKER | europac** insofar as the value or the suitability of the delivery and performance is only insignificantly reduced.

6.4 Insofar as the delivery and service of **DB SCHENKER | europac** is defective and this has been objected to by the client in good time in writing in accordance with clause 6.7, **DB SCHENKER | europac** will, at its discretion, rectify the defect or make a subsequent delivery (supplementary performance). For this purpose, it has to be given the opportunity within a reasonable period of at least fourteen working days. If the supplementary performance does not lead to the contractually owed success, the client is entitled to a second supplementary performance. There are no further claims for supplementary performance. If the defect cannot be remedied even after two attempts at supplementary performance or if the rectification or replacement delivery is to be regarded as having failed for other reasons, the client may, at its discretion, demand a reduction in the remuneration (abatement), withdraw from the contract (rescission) or claim damages under the conditions set out in clause 7. A failure of the rectification is only to be assumed if **DB SCHENKER | europac** has been given sufficient opportunity for rectification or replacement, if the rectification or replacement is impossible, if it is refused or unreasonably delayed by **DB SCHENKER | europac**, if there are justified doubts regarding the prospects of success or if there is unreasonableness for other reasons. If the defects are merely insignificant, the right of withdrawal is excluded. In the case of insignificant defects, the client can only reduce the remuneration. However, withdrawal and reduction are only permissible if the client expressly threatens **DB SCHENKER | europac** with this beforehand in writing with a reasonable further period of grace. Furthermore, in the event of a reduction, this will be limited to the loss of the agreed remuneration for the individual, defective delivery of the goods. If the client makes use of his right of withdrawal, this only applies in relation to the individual, defective delivery of the goods.

6.5 If the supplementary performance fails, the client may claim damages instead of performance under the conditions set out in Clause 7.3 or compensation for the expenses incurred for the purpose of supplementary performance, provided that the expenses do not increase because the subject matter of the delivery has subsequently been taken to a place other than the original place of delivery, unless the transfer is in accordance with its intended use.

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6.6 The client's rights of recourse in accordance with § 478 of the German Civil Code (BGB) remain unaffected; however, these exist against **DB SCHENKER | europac** only insofar as the client has not made any agreements with its customer that go beyond the statutory claims for defects.

6.7 Claims for defects on the part of the client presuppose that the client has complied with the obligations to inspect and give notice of defects in accordance with § 377 of the German Commercial Code (HGB).

## 7 Liability

7.1 **DB SCHENKER | europac** excludes its liability - unless otherwise stipulated in the contract or by law - for slightly negligent breaches of duty, irrespective of the legal grounds.

7.2 The exclusion of liability does not apply if damages from injury to life, body or health are affected or claims under the Product Liability Act are affected as well as in the case of fraudulent misrepresentation, in particular fraudulent concealment of material defects. Furthermore, liability for the breach of obligations the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on (cardinal obligations) remain unaffected.

7.3 In the event of negligent breach of cardinal obligations, **DB SCHENKER | europac's** liability is limited to the amount of damage that was foreseeable and typical for the contract at the time of conclusion of the contract. Liability for pure financial loss is excluded.

7.4 The above exemptions from and limitations of liability also apply to breaches of duty by its employees and other vicarious agents of **DB SCHENKER | europac**.

## 8 Force majeure

8.1 The party affected by a case of force majeure is not responsible for the delay or impossibility caused thereby.

8.2 Force majeure within the meaning of this contract is defined as all unforeseeable events or events which - even if they were foreseeable - are beyond the control of the contracting parties and the effects of which on the performance of the contract cannot be prevented by reasonable efforts on the part of the contracting parties. These include but are not limited to: energy crisis, high authority intervention, closure of public roads, war (declared or undeclared), warlike condition, riot, revolution, rebellion, military or civilian coup, insurrection, tumult, riot, blockade, embargo, buccaneering, government order, sabotage, third party caused outages or restrictions on electronic data interchange, cybercrime by third parties, acts of terrorism, strike, slowdown, lockout, piracy, epidemics, pandemics, quarantine, fire, flood, storm surge, hurricane, typhoon, or other catastrophic weather, earthquake, landslide, lightning, shipwreck, aircraft crash, average, major transportation accident.

8.3 If a case of force majeure occurs, the party affected by it will notify the other party of the incident in writing immediately after becoming aware of the material circumstances. In doing so, it must describe the event that has occurred in more detail and indicate which contractual obligations it is likely to be unable to fulfill, or only able to fulfill with delay, as a result of it.

8.4 In the event of the occurrence of a force majeure event, both parties are obliged to use their best efforts to limit and mitigate the damage.

8.5 In the event of force majeure, the parties agree on a special right of termination in the event that the force majeure event lasts for more than 30 days.

## 9 Limitation

9.1 The limitation period for claims due to defects in the deliveries and services of **DB SCHENKER | europac** and for claims due to its liability for damages is one year.

9.2 This does not apply insofar as longer periods are mandatory by law and in cases of injury to life, limb or health, in the event of an intentional or grossly negligent breach of duty by **DB SCHENKER | europac** and in the event of claims for damages under the Product Liability Act.

## 10 Secrecy / Data Protection / Compliance

10.1 The ordering party/client is obliged to treat as confidential and as a business secret all information which it has received from **DB SCHENKER | europac** marked as confidential or similar (or verbally designated as confidential and later confirmed in writing as confidential) or which is confidential because of its nature. This obligation of confidentiality does not extend to information which was already lawfully in the possession of the ordering party/client prior to the commencement of the contractual negotiations or which was publicly known or becomes publicly known (through no fault of the ordering party/client).

10.2 Both parties comply with the requirements of the respective applicable data protection regulations. **DB SCHENKER | europac** obliges its employees to comply with the relevant legal provisions on the protection of personal data and trains its employees in this respect. Should the applicable data protection law contain specific principles that are mandatorily applicable to the provision of the service (for example, compliance with data protection-friendly implementation of technical requirements through privacy by design or privacy by default), the parties will place particular emphasis on practical implementation.

If the performance of a service by the Contractor involves activities for which the conclusion of a processing contract is required under the applicable data protection provisions (for example within the meaning of Article 28 of the European Data Protection Regulation (GDPR)), such a contract has to be negotiated and concluded between the parties. Personal data must always be treated confidentially by the contractor. For more information on how we handle your personal data, please refer to the data protection information at:

<https://www.dbschenker.com/de/datenschutz>.

10.3 The parties agree that the import, export and re-export of goods and/or the provision of related services may be subject to laws and other regulations validly adopted by competent authorities (hereinafter referred to as "Export Control Regulations"), in particular EU and US export control laws and regulations. Each Party represents and warrants that in the performance of its obligations under this agreement, it complies and will continue to comply with all export control regulations applicable to it, including anti-boycott provisions, sanctions requirements and sanctions list screening in the context of import, export, customs clearance and domestic transactions.

The ordering party/client is responsible for determining whether the ordering party's/client's goods are subject to such export control regulations and for obtaining all necessary licences, approvals, permits and / or exemptions therefrom. The ordering party/client will provide **DB SCHENKER | europac** with all relevant information that **DB SCHENKER | europac** may reasonably request in order to check compliance with export control regulations before providing the services owed.

With respect to services relating to countries for which US embargoes have been or will be imposed, the ordering party/client expressly confirms that

(i) such consignments do not contain goods of US origin or content unless authorised by the relevant US authorities; and

(ii) such consignments and/or the services related to such countries do not have a US connection unless such consignments and/or services are authorised by the relevant US authorities.

**DB SCHENKER | europac** reserves the right to suspend performance in cases where trade restrictions are applicable, newly introduced, reintroduced or modified. The ordering party/client confirms that **DB SCHENKER | europac** is not obliged to provide services in connection with goods for internal repression, ITAR goods and/or military goods and will not provide services in connection with goods for internal repression, ITAR goods and/or military goods and guarantees that the goods referred to in this paragraph will not be and have not been handed over to **DB SCHENKER | europac**.

## 11 Jurisdiction and applicable law

11.1 The place of performance and jurisdiction for deliveries and payments, as well as all disputes arising between the parties, is Coburg. **DB SCHENKER | europac** is, however, also entitled to sue the ordering party at its registered office.

11.2 The relations between the contracting parties will be governed exclusively by the law applicable in the Federal Republic of Germany.

11.3 If individual provisions of the above GTC or of the contract concluded on the basis of these GTC are or become invalid, this will not affect the validity of the remaining provisions. Instead of the ineffective provision, such a provision is considered to be agreed which comes closest to the intention of the parties in a legally and economically secure manner.