

## General Terms and Conditions of

### TRANSA Spedition GmbH for Transport, Freight and Forwarding TRANSA General Terms and Conditions of Transport

As at: 1 November 2017

#### Article 1 Scope

##### 1.1

These General Terms and Conditions of Business shall apply to all agreements on the implementation and procurement of national and international cross-border transport services and orders, and to any additional services, in the absence of any statutory requirement to the contrary. They shall also apply to agreements of the same type to be concluded between the Parties in future.

##### 1.2

The freight forwarder's or haulier's (hereinafter referred to as the Contractor) own terms and conditions of business, the German Freight Forwarder's Standard Terms and Conditions (ADSp) and the Terms of Contract for Goods Traffic and Logistics Operators (VBGL) shall not apply unless TRANSA has expressly consented to them. Should the applicability of ADSp or other general terms and conditions of business be agreed, they shall be subordinated to these General Terms and Conditions of Business.

#### Article 2 Additional principles of cooperation

##### 2.1

In addition to these General Terms and Conditions of Business, the Requirements Profile for Service Partners of TRANSA shall constitute a basis for further cooperation. Said requirements may be inspected on the internet and also obtained from TRANSA directly on request.

##### 2.2

These General Terms and Conditions of Business shall take precedence over the Requirements Profile for Service Partners of TRANSA and the Corporate Profile.

#### Article 3 Conclusion of the individual agreement

##### 3.1

Should a master agreement (particularly a charter or general agreement) exist between the Parties, the Contractor shall be obliged to accept and execute orders from TRANSA. A confirmation of order or other confirmation of acceptance by the Contractor shall therefore not be required. The corresponding undertaking by the Contractor shall be made when it receives the order. Refutable receipt shall thus be assumed if TRANSA is in possession of a PC fax transmission report, a fax report document, confirmation of receipt of an e-mail or comparable documents which it can submit.

##### 3.2

Orders may be placed in written form, verbally or by telephone. Electronic transmission (particularly by e-mail or fax) shall be sufficient for written placement of orders.

##### 3.3

In the absence of a master agreement between the Parties, the individual order shall be concluded by receipt

of the order by the Contractor and its actual execution. Should, under exceptional circumstances, the Contractor be unable to accept orders, it shall be obliged to inform TRANSA within 30 minutes of receipt of the order, so that other service providers can be commissioned.

#### Article 4 Delivery deadlines and periods

##### 4.1

The agreed delivery deadlines and periods shall be binding. Receipt of the consignment at the delivery address specified by TRANSA or its clients and transfer to the respective recipient shall be crucial to observance of the delivery deadline or period. If nothing else can be determined, delivery periods shall commence on the date on which the order is placed.

##### 4.2

Should the Contractor discover that it is impossible to observe an agreed deadline or that it can only make partial delivery by the deadline, it must inform TRANSA immediately. The Contractor must pay compensation for losses arising from a culpable omission or delayed notification, taking any existing statutory and/or contractual restrictions of liability into account. Separate provisions on contractual penalties shall remain unaffected. Acceptance of delayed delivery or partial delivery shall not entail a waiver of claims for compensation.

#### Article 5 Place of performance

In the absence of any agreement to the contrary, the place of performance of the Contractor's obligations shall be the delivery address requested or stated by TRANSA or its client. TRANSA's registered office shall be the place of performance for both Parties in all other respects.

#### Article 6 Implementation of transport

##### 6.1

In the absence of any express written agreement to the contrary, the agreed prices shall include all the costs of implementation of transport to the delivery address specified by TRANSA or the respective client. TRANSA or the respective client shall provide accompanying documents and the papers required for any customs clearance. However, an independent requirement to audit the content, integrity and accuracy of said papers shall be incumbent upon the Contractor, insofar as they are auditable and verifiable.

##### 6.2

In the absence of any express agreement to the contrary, transport and delivery of the cargo shall be by means of semitrailers, swap bodies, swap boxes or other customary means of transport. Details may be found in either the master agreements concluded between the Parties or the respective individual order.

##### 6.3

The requirements for the vehicles to be used by the Contractor shall be set forth in the individual orders.

#### 6.4

Under no circumstances shall loaded vehicles be parked unattended. The Contractor undertakes to guarantee that sufficient protection is provided overnight and/or at weekends. Should stops on car parks be necessary, the route must be planned so that supervised car parks can be used. Should this not be possible in isolated cases (e.g. because supervised car parks are full), further instructions must be obtained from TRANSA.

#### 6.5

Freight documents shall be made available to the Contractor during each loading procedure. An original requirement to audit the content, integrity and accuracy of said documents shall be incumbent upon the Contractor, insofar as they are auditable and verifiable.

#### 6.6

The Contractor's rights to provision of collateral if the consignment is incomplete pursuant to Section 416 of the [German] Commercial Code (HGB) and its statutory right of cancellation pursuant to Section 417 II HGB shall be expressly precluded, any entitlement of the freight forwarder to additional remuneration or demurrage remaining unaffected. TRANSA's instructions shall be followed at all times.

### **Article 7 Loading and unloading, securing loads**

#### 7.1

The Contractor shall be obliged to carry out loading and unloading, including safe loading for operation and carriage, and to guarantee and accomplish operationally safe loading and operational safety. The Contractor undertakes to observe all the statutory provisions, particularly Association of German Engineers' (VDI) Guideline 2700 et seq. In particular, the Contractor, or the drivers which it uses, shall stow and secure the goods on the vehicle, thus ensuring its operational safety and the safety of the load for carriage to the last unloading point, and to maintain them without restriction. The scope of pricing shall take remuneration for loading and unloading into account and shall also include these services.

#### 7.2

Should, under exceptional circumstances and notwithstanding Article 7.1, the Contractor not carry out loading and unloading itself, it shall bear an independent inspection and examination obligation in respect of safe loading for carriage, insofar as this is auditable and verifiable, before accepting the vehicle. Any existing, discernible shortcomings must be reported to TRANSA before commencement of the journey. Under no circumstances may transport commence if the Contractor detects evident shortcomings.

#### 7.3

The Contractor undertakes to train all the drivers it uses regularly on securing loads, insofar as may be necessary for performance of the contractual services. Training certificates for the drivers used must be made available on request.

#### 7.4

The Contractor shall guarantee proper stowage and securing of the goods on the vehicle and shall indemnify TRANSA against any liability to third parties, particularly authorities and courts, taking any existing statutory and/or contractual restrictions of liability into account, should these obligations be breached.

### **Article 8 Packaging**

The respective client of TRANSA shall be responsible for packaging the goods. However, the Contractor shall bear an obligation for full examination of the suitability of the packaging for transport and of its marking before accepting the load, insofar as they are auditable and verifiable. TRANSA must be informed of any existing shortcomings immediately. Should the Contractor not notify any shortcomings, it shall be assumed that the load was transferred properly packed and marked. Should the Contractor not notify any shortcomings despite their perceptibility, the objection of inadequate packaging by the consignor shall be waived.

### **Article 9 Marking**

The respective client of TRANSA shall be responsible for marking and numbering the goods, insofar as may be necessary. However, the Contractor shall bear an obligation for full examination of the marking and numbering of the respective goods before accepting the load, insofar as they are auditable and verifiable. TRANSA must be informed of any unsatisfactory or insufficient marking or numbering before acceptance of the load. Should the Contractor not notify any shortcomings, it shall be assumed that the load was transferred properly marked and numbered. The Contractor shall therefore waive the objection of unsatisfactory or insufficient marking or numbering of goods in the case of perceptible unsatisfactory or insufficient marking or numbering of the respective goods.

### **Article 10 Pallet exchange**

Following corresponding commissioning by individual order, the Contractor shall carry out a pallet exchange unless otherwise provided for in the individual order. Depending on what is specified in the order, the Contractor shall either utilize its own pallets at the loading point and receive them back at the unloading point, or use a step-by-step exchange with a return to the loading point. It undertakes to return the pallets to the respective loading point within a reasonable period, but not more than seven working days after transfer. The Contractor shall receive payment which has been included in the remuneration for transport. It shall no longer be possible to demand separate remuneration. Should the Contractor have omitted or been unable to exchange any pallets or exchangeable pallets at the unloading point, it must obtain confirmation from the recipient. In this case, the corresponding number of unexchanged or non-exchangeable pallets shall be credited to the Contractor's pallet account. Should no, or no punctual, return of exchangeable pallets take place, and should the Contractor be unable to submit any confirmation of non-exchange in accordance with the foregoing, TRANSA shall be entitled to invoice the Contractor for the pallets at cost price (the price at the time of invoicing shall be decisive).

### **Article 11 Remuneration**

In the absence of any express written agreement to the contrary, the prices agreed between the Parties shall be firm, fully inclusive prices for the agreed services and shall preclude any additional claims whatsoever by the Contractor.

### **Article 12 Payment**

#### 12.1

A freight credit note is created for each of the transports commissioned by TRANSA. In the absence of any agreement to the contrary, payment shall be made in the conventional commercial manner within thirty working days. The period shall commence on receipt of the credit note, but no earlier than on the date of

delivery/performance by the Contractor. Article 13 of these General Terms and Conditions of Business shall apply to the conditions of due payment.

#### 12.2

TRANSA shall only comply with changes to the Contractor's bank account details if they have been notified to its accounts department in writing. Otherwise payments shall be made to the old accounts in full satisfaction of the debt.

#### 12.3

The Contractor shall only be entitled to assign receivables from TRANSA to third parties with TRANSA's prior written consent. The provisions of Section 354a HGB shall remain unaffected.

#### 12.4

The place of fulfilment for payments by TRANSA shall be its principal domicile in Offenbach. The Contractor must bear bank charges incurred for payments to foreign bank accounts for transport within Germany.

### **Article 13 Conditions of due payment and execution of orders**

#### 13.1

The conditions of due settlement of payments to be made by TRANSA shall be receipt from the Contractor of a proper commercial invoice and substantiation of delivery of the goods (e.g. by a receipted delivery note, proof of delivery, CMR waybill, packing list, etc.). A further condition of due settlement shall also be the submission of all insurance certificates, permits, licences and approvals under the [German] Road Haulage Act (GüKG). In particular, permits and authorisations under Sections 3, 5 and 6 GüKG in the name of the business carrying out transport must be presented. Payment shall only be due when these documents have been submitted in full. The payment period is governed by Article 12 of these General Terms and Conditions of Business.

#### 13.2

Proper, complete execution of transport within the scope of all the transport commissioned shall require that agreed vehicle capacity is provided on time and that the goods collected are transferred to the respective recipient in full, undamaged and within the agreed period, against a clean receipt, or that other evidence or documents are provided which substantiate that the goods have been delivered to the respective recipient in full and undamaged, within the agreed delivery period.

### **Article 14 Liability**

#### 14.1

Within the scope of domestic transport, the Contractor shall bear liability under these General Terms and Conditions of Business and the statutory provisions, particularly haulage and freight forwarding law. In the case of cross-border and international transport, mandatory applicable harmonised transport legislation shall apply. In the absence of application of mandatory regulations, these General Terms and Conditions of Business, supplemented by the statutory provisions, shall apply.

#### 14.2

**Notwithstanding the statutory provisions of Section 431 I and II HGB, the standard limit of liability under Section 449 II HGB in cases of damage to and loss of goods shall be fixed at 40 special drawing rights per kilogramme of the gross weight of the consignment.**

**Should TRANSA's liability to its own clients be lower than this limit of liability, the Contractor commissioned shall also only be liable up to this limit.**

#### 14.3

Should a vehicle not be provided at a time agreed between the Parties or should a vehicle unsuitable for execution of the specific transport be provided (e.g. in the case of refrigerated transport or an unsafe vehicle), the costs of procuring a replacement vehicle, but at least EUR 150, shall be charged after a period of four hours has elapsed, calculated from the provision time originally agreed. Should flat-rate compensation be charged, the Contractor shall be entitled to demonstrate that no loss, or a loss of less than EUR 150, was actually incurred due to the failure to provide the vehicle.

#### 14.4

Should additional services be commissioned which are not covered by freight forwarding or haulage, only statutory liability shall apply.

#### 14.5

The Contractor shall be obliged to impose the aforementioned limits of liability on any subcontractors commissioned and to ensure that uniform liability is created throughout the entire transport chain.

#### 14.6

In other respects, reference is made to Articles 17.3, 18.5 and 19 of these General Terms and Conditions of Business.

### **Article 15 Insurance**

#### 15.1

The Contractor undertakes to subscribe freight forwarder's liability insurance with the statutory minimum amount of cover pursuant to Section 7a GüKG, third-party insurance with cover of at least EUR 50 million for material damage and bodily harm, and employer's liability insurance with cover of at least EUR 2.5 million for material damage and bodily harm and EUR 100,000 for financial loss, and to maintain insurance throughout the entire term of the contractual relationship. In the case of cross-border road traffic, the Contractor shall be obliged to subscribe insurance pursuant to the provisions of Section 7a GüKG and third-party and employer's liability insurance with the aforementioned minimum cover. It is expressly stated that this obligation shall also apply to transport which takes place exclusively abroad.

#### 15.2

Evidence of all insurance must be presented on the Contractor's initiative when the business relationship is cultivated, but no later than immediately after conclusion of the contract or placing of an order. TRANSA shall only place orders if full and proper substantiation is available. Evidence of insurance must be provided annually or when an insurance policy expires in accordance with the certificate, on the Contractor's initiative.

### **Article 16 Set-off, rights of retention and lien**

#### 16.1

The Contractor shall not be entitled to set-off against claims by TRANSA and/or to assert rights of retention, particularly to the goods handed over for transport or to the service itself. This shall not apply in respect of claims by the Contractor which have force of law, are not disputed by the Parties or which TRANSA acknowledges as justified. Notwithstanding the provision in sentence 1, the Contractor may set off such claims against claims by

TRANSA and assert rights of retention and lien, following prior notice and the fruitless expiry of a period of grace of one week.

#### 16.2

The Contractor shall not be entitled to assert rights of lien to the goods transferred for transport. Freight forwarders' or warehouseman's and other rights of lien shall be precluded. This shall not apply, should the Contractor assert rights of lien for claims which have force of law, are undisputed by the Parties or which TRANSA acknowledges as justified. Notwithstanding the foregoing provision, a right of lien may also be asserted following prior notice and the fruitless expiry of a period of grace of one week for settlement of existing claims.

#### **Article 17 Provisions of the GüKG in the version of the [German] Act on Combating Illegal Employment in Commercial Road Haulage (Gük-BillBG)**

##### 17.1

The Parties agree that contractual execution of transport shall also include compliance with the following obligations of the Contractor:

- The Contractor declares that it is in possession of the necessary permits and entitlements for the transport of freight pursuant to Sections 3, 5 and 6 GüKG (permit, Eurolicence, third-country approvals and ECMT licences) and that it shall use these permits and entitlements in an admissible way. It expressly declares that only permissible cabotage journeys shall take place.
- The Contractor shall only use crews with the necessary work permit. This shall expressly apply to drivers who are third-country nationals.
- The Contractor also undertakes to ensure that crews hold an official licence, including an officially authenticated translation into German, pursuant to Section 7b(1)(2) GüKG and - if necessary - in the respective national language in the case of cross-border transport, pursuant to the applicable statutory requirements of the country in question, and that they carry it on every journey.
- The Contractor undertakes to submit all the documents to be carried to TRANSA or its appointed agents on demand, or have them submitted by its personnel. The Contractor shall issue corresponding instructions to its personnel.
- Should the use of a subcontractor be admissible, the Contractor undertakes to include this duty of presentation and the other aforementioned obligations in the contract with subcontractors. The Contractor must conduct suitable audits to ensure that the aforementioned conditions are being reliably fulfilled, before using any subcontractors. The Contractor also undertakes to conduct regular audits of compliance with these requirements by the subcontractors used.

##### 17.2

All authorisations and permits pursuant to Sections 3, 5 and 6 GüKG in accordance with Article 17.1 must be submitted on the Contractor's initiative when the business relationship is cultivated, but no later than immediately after conclusion of the contract or placement of an order. TRANSA shall only place orders if full and proper substantiation is available. Substantiation of maintenance of the aforementioned authorisations and permits must be submitted to TRANSA annually or on their expiry, on the Contractor's own initiative.

##### 17.3

Should TRANSA or its appointed agents be fined or receive forfeiture orders, etc., due to offences committed

by the Contractor/its personnel, the freight forwarder or subcontractor, the Contractor shall be obliged to refund them and all the costs incurred, taking any existing statutory and/or contractual restrictions of liability into account. The Contractor undertakes to indemnify TRANSA and/or its personnel against all the aforementioned claims, in full.

#### **Article 18 Provisions on driving times and rest periods**

##### 18.1

TRANSA and the Contractor mutually agree that contractual execution of transport shall also entail compliance with all regulations on driving time and rest periods. In this respect, the Contractor expressly guarantees that:

- All the crew driving and rest times pursuant to Regulation (EC) 561/2006, the [German] Crew Act and Crew Order shall be observed.
- Only crews shall be provided who are personally capable of executing the agreed transport under the agreed conditions while observing all the aforementioned regulations in respect of driving time already completed and rest periods to be observed. The client shall be entitled to demand presentation of the tachograph disc and, if a digital tachograph is fitted, a printout of the corresponding data, for the purpose of auditing driving time already elapsed and the time of the last rest period of the crew used. The Contractor shall instruct the crew which it uses accordingly and ensure that these obligations are fulfilled.
- The obligations described above shall be included in the contract for carriage with any freight forwarders or subcontractors to be used and compliance with the regulations by the freight forwarders or subcontractors used shall be audited regularly.

##### 18.2

Should TRANSA assume vehicle scheduling, it shall do so in compliance with all the applicable regulations. Following transmission of the schedule to the Contractor or its representative, the Contractor shall be obliged to verify the schedule, allowing for all the circumstances, particularly the route and crewing, etc. Should it emerge that execution of the transport in compliance with the statutory requirements, particularly the applicable driving and rest periods, cannot be sufficiently guaranteed, the client must be informed immediately. In this case, the original schedule shall be amended. Under no circumstances may a journey commence if the Contractor has established that it can only be made by infringing the applicable crew regulations.

##### 18.3

Should specific execution of the transport in accordance with the client's instructions and compliant with the driving and rest period regulations not be possible, or should this emerge during execution, the Contractor shall be obliged to obtain an individual instruction from the client, pursuant to Sections 418 and 419 HGB. Under no circumstances may the permissible driving times be exceeded or prescribed breaks and rest periods be ignored. It is expressly stated that this obligation shall also apply if the Contractor or a third party is responsible for scheduling.

##### 18.4

It is expressly stated that instruction, training and induction of the crew used in respect of driving and rest periods shall remain the exclusive responsibility of the Contractor. The

client shall therefore not be entitled to give instructions to the Contractor's personnel.

18.5

Should fines, forfeiture orders or other penalties be imposed upon the Contractor or its appointed agents due to offences committed by the Contractor/its personnel or the freight forwarder or subcontractor used by the Contractor, the Contractor shall be obliged to refund them and to indemnify the Contractor and the party responsible under the [German] Administrative Offences Act internally, taking any existing statutory and/or contractual restrictions of liability into account.

#### **Article 19 Observance of the statutory minimum wage**

19.1

The Contractor undertakes to comply with the provisions of the [German] General Minimum Wage Act (MiLoG) without restriction. In particular, the Contractor declares that it shall pay all of its employees the statutory minimum wage and that it shall make the corresponding payment on the due date agreed with the employee, but no later than on the last banking day of the month following the month in which the work was done.

19.2

In the case of admissible use of subcontractors, the Contractor also undertakes to guarantee that suitable measures will be taken to ensure that they also observe the statutory provisions of MiLoG. Before using any subcontractors, the Contractor must conduct suitable audits to ensure that the aforementioned conditions of MiLoG are being fulfilled reliably. The Contractor also undertakes to conduct regular audits of compliance with these requirements by the subcontractors used.

19.3

Should a claim be made against TRANSA or its appointed agents due to infringements of Section 13 MiLoG in conjunction with Section 14 of the [German] Employee Secondment Act or of other legislation by the Contractor/its personnel, the Contractor shall be obliged to indemnify TRANSA and/or its personnel comprehensively against all the aforementioned claims, to their full extent, on first request.

#### **Article 20 Anti-terror regulations, observance of statutory requirements**

20.1

The Contractor guarantees that it will properly implement all measures in connection with the application of relevant European statutory provisions on combatting terrorism. It also guarantees that its business, workforce, third parties which it commissions, customers and suppliers have been audited under applicable European law and have no connection with individuals, organisations or corporate bodies covered by European Council anti-terror Regulations (EC) 2580/2001 and (EC) 881/2002, in the broadest sense. The Contractor shall completely and irrevocably indemnify TRANSA against all direct and indirect claims by third parties resulting from the Contractor's insufficient implementation of measures required by law to combat terrorism.

20.2

Should the performance of services be wholly or partially prohibited under statutory provisions or regulations involving, but not restricted to, the law of the USA, the

European Union or national legislation, involving, but not restricted to, laws and regulations related to the combating of terrorism and embargos, TRANSA shall be entitled to terminate the services or parts thereof with immediate effect, without giving notice to the contracting party, and to terminate the business relationship out of court. In such cases, TRANSA shall not be liable for the consequences of cessation of the service or termination of the business relationship.

#### **Article 21 Customer protection**

Behaviour characterised by trust shall form the basis of cooperation between all the parties. Against this background, absolute customer protection to the benefit of TRANSA is agreed for the entire term of cooperation between TRANSA and the Contractor and for a term of two years after termination of their cooperation. Customer protection shall apply to clients for which TRANSA commissions the respective Contractor. It shall also apply to loading and unloading points used by the Contractor within the scope of its business relationship with TRANSA. Should the Contractor culpably infringe the customer protection clause, TRANSA shall be entitled to assert a claim for flat-rate compensation of EUR 2,000 for each and every infringement. The Contractor shall be entitled to demonstrate that TRANSA has not, in fact, incurred a loss, or only incurred a lower loss. Claims for compensation which exceed this amount and other claims shall remain unaffected.

#### **Article 22 Confidentiality of the business relationship**

The Contractor undertakes to treat all commercial or technical information which is not in the public domain and of which it becomes aware from the business relationships, including from conclusion of the contract and the business relationship with TRANSA, as confidential, and not to disclose it to third parties. A corresponding obligation must be imposed on its personnel and any subcontractors. This obligation shall also subsist without restriction after termination of the business relationship. Should the Contractor culpably infringe the confidentiality obligation, TRANSA shall be entitled to assert a claim for flat-rate compensation of EUR 1,000. The Contractor shall be entitled to demonstrate that TRANSA has not, in fact, incurred a loss, or has only incurred a lower loss. Claims for compensation which exceed this amount and other claims shall remain unaffected.

#### **Article 23 Integrity clause**

23.1

The Parties undertake to introduce all necessary measures to prevent corruption and other criminal offences. In particular, they shall take all necessary precautionary measures within their own companies to prevent gross misconduct. Irrespective of the form of participation in committing, inciting or aiding and abetting an offence, gross misconduct is understood to be:

- a) Serious criminal offences committed in business dealings. These shall include criminal offences constituting fraud, embezzlement, falsification of documents, falsification of technical records, falsification of data which could be produced as evidence, indirect false certification, suppression of documents, and anti-competitive agreements in respect of invitations to tender
- b) Offering, promising or granting benefits to civil servants, officials or persons with special public service obligations who are involved in the award or execution of contracts (bribery or granting an unfair advantage)
- c) Offering, promising or conferring benefits on members of the board, managing directors or other

employees of TRANSA who are not themselves office holders or persons with special public service obligations

- d) Offering, promising or granting benefits to any person engaged in a freelance capacity by TRANSA who is active in the award or handling of contracts, e.g. planners, consultants or project managers
- e) The unauthorised procurement, retention, use or disclosure of commercial and trade secrets for the purpose of competition, self-interest, benefiting a third party or with the intention of harming the proprietor of the business, within the meaning of Section 17(2) of the [German] Act Against Unfair Competition (UWG); the unauthorised use or disclosure of technical drafts or instructions disclosed in the course of business, and commercial information of the client, also on diskettes and other media for the purposes of competition or self-interest;
- f) Infringements of the first part of the [German] Act against Restrictions on Competition (GWB), including involvement in agreements on prices or components of prices, prohibited price recommendations, involvement in recommendations of or agreements on the submission or non-submission of tenders, the offsetting of compensation, participation in profits and payments to other bidders

Serious misconduct within the meaning of the above shall also have been committed if the bidder or Contractor offers, promises or grants inadmissible advantages to parties associated with employees, managing directors or other decision-makers of TRANSA. Such misconduct shall also apply if the bidder or Contractor provides specific assistance with planning and tendering which is intended to undermine competition.

### 23.2

Should an employee or managing/executive director of the Contractor or a subcontractor commissioned by the latter be guilty of serious misconduct within the meaning of Article 23.1 to the detriment of the client in connection with the handling of the delivery/service, the Contractor shall pay a contractual penalty to TRANSA. It shall amount to:

- a) 7% of the audited gross amount charged, if a managing director/executive director of the Contractor is guilty of misconduct;
- b) 5% of the audited gross amount charged, if the misconduct was committed by an authorised signatory or agent;
- c) 2% of the audited gross amount charged, if the misconduct was committed by other staff or subcontractors of the Contractor.

The Contractor shall be entitled to demonstrate that TRANSA has not, in fact, incurred a loss, or only incurred a lower loss.

Assertion of a further claim for compensation shall not be affected by the contractual penalty. A contractual penalty imposed shall be credited against the claim for compensation.

A contractual penalty in accordance with this provision shall be waived if a subcontractor of the Contractor is guilty of serious misconduct in accordance with Article 23.1, if the selection of said subcontractor was stipulated by TRANSA and the Contractor or its employees, executive directors, managing directors or third parties otherwise employed by the Contractor are not involved in the serious misconduct.

### 23.3

Should an employee or managing director/executive director of the Contractor be guilty of serious misconduct within the meaning of Article 23.1:

- a) The client shall be entitled to extraordinary termination of the contract without notice;
- b) The Contractor shall be precluded from the award of contracts by TRANSA for a period of at least six months. Should a strong suspicion of misconduct pursuant to Article 23.1 exist, TRANSA shall not award any further contracts to the Contractor in question.

### Article 24 Data protection

TRANSA shall be entitled to process and store data which it receives from its Contractors within the scope of the business relationship, in accordance with the provisions of the [German] Federal Data Protection Act. Should the Contractor wish to make use of special terms granted by TRANSA and should more extensive use of data be necessary for this purpose, it shall constitute the subject of a separate agreement.

### Article 25 Applicable law and court of jurisdiction

#### 25.1

The exclusive court of jurisdiction for any litigation between the Parties shall be that with jurisdiction at TRANSA's registered office in Offenbach, in the absence of any binding statutory provision to the contrary. Should the CMR be applied, the Parties shall agree that the venue stipulated shall serve as an additional venue within the meaning of Article 31(1) CMR.

#### 25.2

The law of the Federal Republic of Germany shall apply exclusively, in the absence of binding statutory provisions to the contrary. This shall also apply should binding international regulations contain partial omissions and complementary national law be applied.

### Article 26 Severability clause

Should individual parts of these General Terms and Conditions of Business be or become legally ineffective, the effectiveness of the remaining provisions and the entire contract shall remain unaffected. In such a case, legislation shall apply instead of the ineffective provision.