



## **General Terms and Conditions (01.01.2010)**

### **Preliminary Remarks / Object of Agreement**

The company Diversa Hambach GmbH, Benzstrasse 2, 71272 Renningen, Germany, registered in the Commercial Register of the city of Stuttgart under the number HRB 2770 – hereinafter known as provider – operates under the domain [www.fracht24.net](http://www.fracht24.net) the Internet platforms ([www.trans-boerse.com](http://www.trans-boerse.com), [www.schuettgut-boerse.com](http://www.schuettgut-boerse.com) and [www.express-boerse.com](http://www.express-boerse.com) also named freight exchange services) with the purpose of the procurement of bulk cargo transports between carriers (contractors) and companies with a need for transportation (principals). After successful registration, registered members of this platform can act in any role which means that they may either offer their free capacities or may look for free capacities as an entrepreneur or insert cargo loadings themselves. The provider is in no way involved in the contractual agreements between principal and contractor and he does particularly neither act as a mediator nor as an agent of the principal or of the contractor. He does not guarantee for specific performances in the legal transactions of the users made by using the freight exchanges. The specific performance and liability of the provider depend on his activity as a mere operator of the platform and are limited according to the following agreements:

These general terms and conditions are valid for any agreement between the provider and the user concerning the use of the platforms which are object of this agreement.

The usage of the freight exchanges is exclusively reserved to customers who are entrepreneurs and professional carriers or have business interest in such carriers.

### **Conclusion of Agreement**

#### **2.1**

The provider gives the user the opportunity to register for the supply of the freight exchanges by means of completing a format in which he enters his personal data. The end of the registration which implies the sending of the data represents the offer to conclude this user agreement. The agreement is completed as soon as the provider accepts this offer and sends the log-in data (password) with a notification via e-mail.

#### **2.2**

During registration the user is obligated to indicate his data correctly and completely and to inform the provider about later changes without delay. Necessary updates that may have to be made in the user array are responsibility of the user himself.

### **Liabilities/Probation Period**

#### **3.1**

All amounts stated in this agreement are net prices and shall apply plus the current value-added tax (VAT).

#### **3.2**

For the first month after conclusion of this agreement the agreed fees under 3.3 are completely inapplicable. During the running probation period both contracting parties have an ordinary right to terminate the agreement according to no. 6.2. The provider will call or e-mail the user before the agreement expires and asks whether the agreement shall enter into a fee required agreement (3.3.) after

the probation period or not. After expiration of the probation period, the agreement does not automatically switch over to a fee required agreement.

### 3.3

Usage-dependent fees are subject to the current Price List. The fee needs to be paid every first working day of the month in advance.

### 3.4

The provider provides the online service within the feasible conditions. A permanent and failure-free performance will not be guaranteed.

### 3.5

As far as single failures and interferences exceed a period of 24 hours or if the complete period of all failures in a calendar year accounts for more than 1% the provider refunds already paid fees pro rata. Apart from that, a refund is excluded. The user will be notified in case of operation interruptions that exceed the period of 24 hours.

### 3.6

The adjustment of the functionality and the appearance of the system are subject to changes.

### 3.7

The user is excluded from the right to withhold or to offset his payments because of counterclaims unless they are not undisputed or legally decided.

## **Users Duties of Care**

### 4.1

The log-in data provided by the provider have to be kept in a safe place and shall be revoked from access by third parties. The disclosure of the user rights and the relevant data to third parties who are not contracting parties or acting for them is prohibited.

### 4.2

The user has to use the system in an adequate way and must avoid any excessive loading of the technical infrastructure which might affect the security and functionality.

### 4.3

The data of other users that is provided by the provider may only be used by the user for application purposes of the advertised service. Further use of the complete or the partial use of data in any form is prohibited.

### 4.4

Any contents in text form, picture or other digital form within the domains of the freight exchanges provided on demand are subject to the copyright of the provider. The further use of printed or digital forms particularly, as well as the description of one or more pages in frames or the technical facilitation of such a description is prohibited.

### 4.5

The automatic data recall which is provided under the above mentioned domains by the provider is only allowed by means of a software interface installed for this purpose.

## **Use of the System / Platform Entries**

### **5.1**

Platform entries have to be made completely and truthfully. As far as the user becomes active as a principal he is assuring that he only offers capacities which are in fact, available and that he changes and deletes the respective entries in case free capacities will be planned subsequently or otherwise by the freight exchanges. The corresponding applies to the offered carriers.

### **5.2**

The user is obligated not to publish entries, whose publication or subsequent completion may violate existing laws or the rights of third parties.

### **5.3**

The repeated entry of identical entries and the purposeless use to insert entries, particularly the entry of irrelevant contents or the use to exploit the platform as an advertising space for purposes that do not correspond with the purposes agreed between principal and contractor is prohibited.

### **5.4**

The provider reserves himself the right to delete entries that do not correspond with the previously outlined rules without prior warning in order to guarantee the functionality of the entire system.

## **Expiration of the Agreement / Cancellation**

### **6.1**

Each contracting party is entitled to cancel the agreement any time towards the end of one month.

### **6.2**

According to no. 3.2 this agreement may be cancelled any time during the running probation period by both contracting parties.

### **6.3**

Each party shall additionally be entitled to cancel the agreement for significant reasons. A significant reason is given particularly in case of a violation against common duties of care outlined in no. 4, in case of repeated publications of unauthorized platform entries in spite of warnings and in case the user performance in connection with the use of the freight exchanges threatens their technical systems and their failure-free functionality.

If the user is for more than 14 calendar days behind with the monthly payment for one month, the provider may irrespectively claim for compensation and may cancel the contractual relationship exceptionally without previous notice.

## **Disabling Access**

### **7.1**

The provider reserves himself the right to disable the access to the freight exchanges in case of a violation against the obligations to perform and against the breach of a standard of conduct outlined in this agreement. This shall particularly apply in case of an incorrect or an incomplete data entry, repeated unauthorised platform entries, delay or charge back, interference of technical procedures, impairment of the rights and interests of other users, opening of insolvency proceedings in regard to the property of a user or in the grounds of a significant reason for termination.

## 7.2

There is no refund of already paid fees or a (partial) reduction of fees that were already due at this moment during the period from the disabling of the access in this case.

## 7.3

If the user is suspected to be in breach of contract according to no. 7.1 the disabling of the access is also permitted due to revision purposes during a period of 14 days. If the suspicion will be confirmed no. 7.2 shall apply. If not, the access will be activated and the respective fees during the disabling of access shall be refunded.

## 7.4

Existing portal entries of the user will be removed from the supply as soon as the access is disabled.

## 7.5

In the case of a disabled access due to the breach of a standard of conduct by the user, any further new registration without approval of the provider is prohibited.

## **Datenschutz**

### 8.1

The user agrees that the provider saves his personal data electronically and that he may use them for any purposes that are in connection with the implementation of this agreement. Data transfer to third parties shall be implemented only for payment purposes via an external payment service provider.

### 8.2

The provider is authorised to provide access to other users' personal data in connection with the portal entries as far as they are they are required for the contact establishment. This particularly applies to the contact information, including name and residence of the user and advertiser respectively.

### 8.3

The user has been explicitly instructed about these agreements including the method, quantity, location and purpose of the elicitation and the use and implementation of required personal data necessary for the implementation of the contractual performances. The user explicitly accepts this data processing.

### 8.4

This agreement shall be freely revocable at any time. The revocation or the application for cancellation shall be treated as an ordinary cancellation by the next available date. Further use of the freight exchanges is from the date of the revocation not possible anymore. Existing entries shall be removed from the system.

## **Liabilities of the Provider**

### 9.1

The provider shall not be liable for the content of the platform entries, the correctness and completeness of the data of other users as well as its usability by the user in a certain way.

### 9.2

The conclusion of the legal transaction aimed at by the user through the freight exchanges system, its proper implementation in regard to any resulting obligation from this as well as the creditworthiness and integrity of other users of the system will not be guaranteed. The users are in so far solely and independently responsible for their legal transactions through the freight exchanges.

### 9.3

The liability for damages due to data abuse by other users and damages resulting from the contractual disabling of access according to no. 7 is excluded.

### 9.4

The liability of the provider is limited to deliberate action and gross negligence. This does not apply in case of a health impairment and bodily injury as well as of a violation of cardinal duties.

### 9.5

In the case of liability, the liability is limited to the contractual and predictable damage.

## **Release from Liability**

### 10.1

The user is obligated to dispense the provider from any claims of third parties, which they assert due to the use of the freight exchange systems that are contrary to agreement, particularly the platform entries including content contrary to agreement, or the unauthorised use of information as well as a violation of laws on account of the user. This also includes the acceptance of costs for a required legal defence, lawyers' fees and law costs.

## **Anwendbares Recht / Gerichtsstand**

### 11.1

The contractual agreements between user and provider shall be governed completely by the German law.

### 11.2

Legal domicile for any claim in this agreement is the city of Stuttgart if the contracting party is an agent, a juristic person of the public law or tangibles governed by the public law. The same applies to persons who do not have a general personal jurisdiction in Germany or who have moved their residence outside of Germany or whose habitual residence is not clarified during the commencement of proceedings.

## **Final Clauses**

### 12.1

Oral subsidiary agreements to this agreement are not existent.

### 12.2

Modifications, supplementations and the cancellation require written or text form, as far as the previous agreements do not deviate from the agreement.

### 12.3

Repeals of the written form clause require the written form on their part.

### 12.4

The provider reserves himself the right to change his general terms and conditions groundless. The user will be informed of these changes. They shall be considered agreed, if the user does not revoke within a 4 week period. The provider reserves himself the right to cancel the agreement properly by the next available date.

## **Salvatorious Clause**

13.1

The case of invalid content of individual agreements leaves the remaining agreement unaffected.