

# STANDARD TERMS AND CONDITIONS



SIMPLi RETURN GmbH

## Preface:

SIMPLi RETURN GmbH organises for its customers the worldwide collection, transportation and recycling of batteries of all kinds and chemical systems primarily those intended for industrial use.

## 1. Scope, German Freight Forwarders' Standard Terms and Conditions (ADSp), and the General Terms and Conditions of Logistics-Services Providers 2019 (Logistics GTC)

- 1.1. The most current version of the German Freight Forwarders' Standard Terms and Conditions (ADSp) governs all contracts for services entered into by SIMPLi RETURN GmbH (as Contractor) and its Customers insofar as such contracts constitute Freight Forwarding Contracts (Verkehrsverträge) within the meaning of the German Freight Forwarders' Standard Terms and Conditions. Where the German Freight Forwarders' Standard Terms and Conditions do not apply to the performance of logistics services, the General Terms and Conditions of Logistics-Services Providers 2019 (Logistics GTC) govern in a secondary capacity. The following Standard Terms and Conditions apply supplementally.
- 1.2. All Standard Terms and Conditions apply only where Customer is a business operator within the meaning of Section 14 of the German Civil Code (BGB) and where Customer signs the contract acting in Customer's capacity as a commercial enterprise or independent contractor, or where Customer is a legal entity formed under public law or specially funded under public law.
- 1.3. The inclusion of Customer's terms and conditions that deviate from these Standard Terms and Conditions is hereby expressly barred unless such terms and conditions are acknowledged in writing by Contractor. In this context, in particular, even actions in fulfilment of the contract as are performed by Contractor without reservation in awareness of conflicting or deviating terms and conditions do not constitute acceptance by Contractor of Customer's terms and conditions.
- 1.4. Unless expressly stipulated to the contrary in writing, the German Freight Forwarders' Standard Terms and Conditions, the General Terms and Conditions of Logistics-Services Providers 2019 (Logistics GTC), and these Standard Terms and Conditions also govern all future business relations; this also applies in particular to verbally issued orders for increased volume or additional services, even in the event

such orders do not expressly refer to these Standard Terms and Conditions.

- 1.5. Contractor can be reached during its business hours via the following contact information: SIMPLi RETURN GmbH, Stollwerckstr. 9a, 51149 Cologne, phone: +49 (0) 2203 9147 1040, e-mail and online portal: [info@simplireturn.com](mailto:info@simplireturn.com), <https://www.simplireturn.com/>  
Contractor's business hours are 9:00 a.m. to 5:00 p.m. on work days, excluding national holidays and holidays observed in North Rhine-Westphalia or Berlin.

## 2. Contract formation

- 2.1. Contractor presents its services in the SIMPLi Return Portal (Portal) without obligation or guarantee; this does not constitute an offer to enter into a contract. Via the Portal, Contractor offers prospective Customers the opportunity to send quotation inquiries to Contractor without obligation. To do so, prospective Customers can fill out all of the mandatory fields in the inquiry form, which are marked with "\*\*\*". Before the inquiry is sent, the relevant information required to prepare an offer is summarised in an "overview".
- 2.2. As an alternative to the digital inquiry via the Portal, Customer can also communicate the inquiry to Contractor, including all of the relevant information, either by phone or e-mail.
- 2.3. In response to the inquiry, Contractor will send Customer a binding offer, which must then be accepted by Customer by the stated deadline.
- 2.4. If Customer does not accept the offer within two weeks of receipt, Contractor has the right to revoke the offer.

## 3. Performance by Contractor

- 3.1. In exchange for payment, Contractor will perform various services for Customer in connection with the return, transportation, and/or environmentally responsible disposal of batteries.
- 3.2. Contractor must perform such services in compliance with all of the relevant provisions of law, in particular waste disposal legislation. Contractor's actions are taken independently and on its own responsibility. Contractor hereby affirms that Contractor possesses sufficient professional and technical expertise as required to perform the contracted services.
- 3.3. Contractor has the right to delegate its performance, in whole or in part, to third parties (subcontractors).
- 3.4. Contractor has the right to render partial performance and issue partial invoices accordingly except where doing so is unworkable for Customer.

## 4. Payment terms

- 4.1. The remuneration for Contractor's services is based on the prices agreed to with Customer, plus the value-added tax stipulated by law. Insurance policies (e.g., inland marine insurance), customs and other duties are invoiced separately.
- 4.2. The application of a cash discount is permitted only where this has been expressly agreed.
- 4.3. The net amount of the invoice is due and payable in full immediately upon receipt. The issue or signing of the delivery ticket or recycling certificate is not a prerequisite for payment becoming due.
- 4.4. Customer hereby grants revocable consent for the invoice to be sent to the contact details provided by Customer (e-mail address) in the electronic formats .doc, .rtf, .pdf or .xml via e-mail, as an e-mail attachment, or as a web download.
- 4.5. As the invoice recipient, it is Customer's responsibility to ensure that electronic invoices are able to be received properly, and that technical features such as filter programs and firewalls are adapted accordingly. Customer is to promptly update any change in its contact information in its profile settings in the Portal or via another means in writing. Where invoices are sent to the contact addresses provided by Customer at the time of the order, they will be considered received.

- 4.6. Unless otherwise agreed, payment can be made via electronic funds transfer or direct debit from a bank account. Where invoices are paid via the SEPA commercial direct debit process, Customer will receive a pre-notification regarding the direct debit, at latest one day prior to the due date. This pre-notification can be sent simultaneously with the invoice to be debited as a component of the invoice. This also applies in the event the invoice is sent via e-mail.
- 4.7. Customer has the right to offset an invoice only where Customer's counterclaims have been upheld in court, are uncontested, have been acknowledged by Contractor, or are linked via reciprocal obligation to Contractor's primary account receivable, i.e., where the counterclaims arise under the same contractual relationship.
- 4.8. Customer may exercise a right to withhold payment only where Customer's counterclaim is based on the same contractual relationship.
- 4.9. Where payment is delinquent by more than two months, Contractor has the right, at any time and notwithstanding the stipulated payment terms, to demand prepayment, cash payment, cash on delivery, or other forms of security, to revoke payment periods granted and to declare outstanding payments immediately due and payable. In the event Customer refuses to remit prepayment, etc., Contractor has the right, without further notice and without Customer accruing any kind of rights to damages from Contractor, to withdraw from the portion of the contract that has not yet been fulfilled. In such case, Customer must compensate Contractor in full for the actual costs incurred.

## 5. Delivery and collection of containers

- 5.1. Unless otherwise agreed, containers will be delivered to/collected from the delivery or collection address(es) supplied by Customer.
- 5.2. Statements made concerning delivery/collection dates and times are non-binding except where they have been expressly stipulated as binding.
- 5.3. For purposes of the delivery and/or collection of containers at the stipulated times, Customer will ensure that there is (vehicular) access to the holding area such that the delivery and collection can be undertaken properly and without undue delay. Customer is to ensure that the accessways to the holding area can be navigated safely by transport vehicles with a total weight of up to approx. 40 tonnes.
- 5.4. In the event of wait times and downtime brought about by Customer of more than 60 minutes in connection with the delivery or collection of a container, Contractor has the right to charge a reasonable amount for the loss incurred due to the delay.
- 5.5. Subsection 4.6 of the German Freight Forwarders' Standard Terms and Conditions notwithstanding, in the case of cross-border deliveries/collections, Customer is always responsible for the generation of export documentation and other customs documents (e.g., for import customs declarations).** Contractor is responsible for obtaining transportation permits and providing escort vehicles. Services are performed subject to permit(s) being issued by the authorities. The transportation will be undertaken after the permit(s) have been issued. The delivery of containers in accordance with the offer does not include any police escort or traffic management measures as may be required, which after consultation with Customer and depending on expenses will be passed on to Customer in the form of a surcharge of +7.5% as necessary. Unless otherwise provided in the offer, additional charges incurred due to customs clearance (e.g., customs inspection, import duties, etc.) will be passed on to Customer in the form of a surcharge of +7.5%. This applies to transportation by ship and likewise to any storage charges at the port of shipment or port of destination.

## 6. Container holding area requirements

- 6.1. Contractor is to be informed of the holding area for rented containers. Unless Customer has granted express consent, the shipment of rented containers to a location other than the delivery address, especially in

another country, is not permitted and affords Customer the right to terminate the contract for cause.

- 6.2. The features of the holding area must be such that the ground is level, horizontal and able to bear the weight of the container (including batteries) of up to four tons, and that the containers are protected from the impact of weather conditions (e.g., rain, snow); setup recommendations are to be obtained from Contractor as needed.
- 6.3. Customer is responsible for correctly securing the containers at the holding area. Holding areas for containers owned by Contractor may remain unmonitored only on private – i.e., not publicly accessible – premises. Due to regulations on the carriage of dangerous goods, among other things, unmonitored holding areas in public traffic areas, in particular without surveillance by personnel trained pursuant to Section 1.3 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), are not permitted.
- 6.4. Where applicable, Customer is responsible for compliance with the German Road Traffic Regulations (StVO), the rules applicable under traffic law, and the legal requirements associated with premises liability (e.g., sufficient lighting or identification) for the containers, even on Customer's own premises.

## 7. Handling and filling containers

- 7.1. Customer must handle the containers with care and observe the instructions for use provided to Customer. The containers are to be secured such that, while parked, they do not go missing, are not damaged, and are not soiled or sustain wear and tear beyond the normal degree associated with use in conformity with the contract.
- 7.2. Customer must use the containers only for the industrial batteries stated in the order. Customer must comply with the packing rules applicable to the storage and transportation of industrial batteries. Where Customer does not comply with the packing rules, Contractor has the right to refuse to collect the containers. As applicable, where batteries have been mixed together in an unacceptable fashion at the collection site, in interim storage, or at the recycling location, they will need to be re-sorted and separated at Customer's expense. Any resulting empty runs, additional sorting expenses, or disposal costs as may be incurred will be charged to Customer. Contractor also has the right to return improperly filled receptacles, in which case Customer will be charged accordingly.
- 7.3. Contractor undertakes solely the collection, transportation, and/or recycling of such industrial batteries as are the subject of the offer confirmed by Contractor.
- 7.4. In the event that products/waste of a type other than that stipulated or other than such types of waste or batteries as are permitted to be held in the respective containers are turned over, Customer must pay the actual costs of the environmentally responsible removal or recycling of the batteries, in particular also any disposal costs charged by the acceptance site.
- 7.5. Where containers have obviously been filled with incorrect products/waste fractions, Contractor has the right to refuse to collect and dispose of the container and to charge Customer for the collection attempt (call-out fee).

## 8. Customer's liability

- 8.1. Even after the batteries have been turned over to the shipping company, Customer remains the "responsible party" within the meaning of the German Circular Economy Act (KrWG). At no time does Contractor become the owner of the batteries turned over.
- 8.2. Customer is liable for loss incurred due to damage to or improper use of the special containers, in particular due to filling the container with batteries that are not permitted (incorrect batteries), due to exceeding the container's maximum allowable total weight, or due to improperly packing batteries. Customer shall indemnify and hold Contractor harmless from and against any and all claims made.

8.3. In the event of extraordinary soiling or other damage to one of Contractor's containers, in addition to the stipulated fee, Customer must pay for the actual costs of restoring the container.

#### 9. Contractor's liability

9.1. Sections 22 through 27 of the 2017 German Freight Forwarders' Standard Terms and Conditions contain liability rules, some of which deviate from the statutory provisions. Section 23 limits the statutory liability for damage to goods under Section 431 of the German Commercial Code (HGB) for losses sustained while in the custody of the carrier to 8.33 SDR/kg, in the case of multimodal transportation including transport by sea to 2 SDR/kg, and furthermore, per occurrence to EUR 1.25 million or 2 SDR/kg, whichever is greater. With regard to customer-authorized storage, Section 24 limits the carrier's liability for damage to goods to 8.33 SDR/kg, however up to a maximum of EUR 35,000 per occurrence. Where Customer's loss consists of a difference between the expected and actual inventory of the goods stored, the foregoing notwithstanding, the amount of the carrier's liability is limited to EUR 70,000 per year. With the exception of personal injury and property damage to third-party goods, the carrier's liability for losses other than damage to goods is limited to EUR 35,000 per occurrence. In any case, with the exception of personal injury and property damage to third-party goods, in the case of customer-authorized storage the carrier's liability is limited to EUR 2.5 million per occurrence regardless of how many claims are filed in connection with an occurrence; in the case of multiple injured parties, the carrier's liability is pro-rated in proportion to their claims.

9.2. Supplemental to the German Freight Forwarders' Standard Terms and Conditions and the General Terms and Conditions of Logistics-Services Providers 2019 (Logistics GTC), unless otherwise provided in this contract, Contractor is liable to Customer as follows:

- a) for all damage caused by wilful intent or gross negligence on the part of Contractor, Contractor's respective legally authorised representatives, or parties assisting Contractor with performance;
- b) for losses arising from the loss of life and limb, health, or wellbeing caused by wilful intent or gross negligence on the part of Contractor, Contractor's respective legally authorised representatives, or parties assisting Contractor with performance;
- c) where Contractor, Contractor's respective legally authorised representatives, or parties assisting Contractor with performance have concealed a defect with fraudulent intent or made an express warranty;
- d) for claims under the German Product Liability Act (ProdHaftG) up to the maximum amount stipulated by law;
- e) where none of the situations described in 1 a) through d) above applies, Contractor is liable to Customer in other respects for ordinary negligence only in the event of a breach of material duties under the contract by Contractor, Contractor's respective legally authorised representatives, or parties assisting Contractor with performance, whereby liability is limited to such loss as is typically foreseeable. "Material duties under the contract" as intended here refers to duties the satisfaction of which is central to proper performance of the contract occurring at all and compliance with which the other party places its trust and should be able to place its trust in as a matter of course. The parties are in agreement that in the case of property damage, the typically foreseeable loss amounts to a maximum of EUR 5,000,000.00, and in the case of other financial loss, a maximum of EUR 250,000.00.

Further liability on the part of Contractor is excluded.

#### 10. Force majeure

An event of force majeure exempts the affected party, for the duration of its impact, from satisfying those duties the satisfaction of which is rendered impossible or has become unreasonable due to the force majeure event. Events of force majeure are events originating externally that can neither be foreseen nor averted via reasonable conduct, including but not limited to governmental interventions, war, civil unrest, natural disasters, pandemics, strike, lockout, major transportation disruptions, e.g., due to road blockades, business interruptions not caused by the business operator and which are unforeseeable (e.g., by fire), or measures taken by government agencies for which the respective party cannot be held responsible. Where an event of force majeure extends longer than three months, either party may terminate the contract for cause without a notice period. Such a situation does not establish any claims for compensation or damages.

#### 11. Confidentiality, identifying customer as a reference

9.3. Customer must safeguard as business secrets all commercial and technical information and knowledge that are not known to the public and which Customer learns of in connection with the business relationship with Contractor. When involving third parties, Customer must require such third parties to comply with an analogous obligation. Within the scope provided by law, Customer must require Contractor's employees entrusted with the performance of this contract to maintain confidentiality analogously, including after they leave Contractor's employ.

9.4. Press releases in connection with the business relationship with Contractor are permitted only after joint consultation of the parties in advance and only where both parties are identified.

9.5. Contractor may name Customer as a reference customer after Customer's prior written consent has been obtained. Customer may refuse its consent only for good cause and may revoke consent that it had once granted. In the latter case, Contractor retains the right to use up previously prepared promotional materials.

9.6. The information can also be provided online, for instance on Contractor's commercial website, and may include the depiction of Customer's company logo. To this end, Customer hereby grants to Contractor a non-exclusive, non-transferrable right, without restriction as to time or place, to use such name rights and trademarks as may be required for doing so.

#### 12. Data privacy

9.7. Contractor will comply with such data privacy provisions as apply in the respective regions in which it operates, in particular within Germany those of the European General Data Protection Regulation (GDPR) as well as those of Germany's national regulations that govern supplemental to the GDPR, in particular the German Federal Data Protection Act (BDSG).

#### 13. Miscellaneous

9.8. The parties agree that the contract shall be governed by German law to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods.

9.9. For all disputes arising under or in connection with this contract, venue shall be proper in Cologne to the extent permitted.

9.10. The language of the contract is German.

[Last updated: 6 July 2020]