



# General Terms and Conditions

## DB SCHENKER*Europac*

Schenker Deutschland AG | DB SCHENKER*Europac* | Coburg | as at June 2019

# General Terms and Conditions

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## Subject

Schenker Deutschland AG, Coburg – hereinafter referred to as DB Schenkereuropac – performs the following services, which constitute the subject of these General Terms and Conditions:

Trading in new or used packaging and packaging material  
Services associated with the cleaning of packaging, the handling of project business/development of packaging  
The rental/one-way use of reusable transport packaging (MTV)

## 1 Validity

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") shall govern the contractual legal relationship between Schenkereuropac and its clients (ordering parties) in accordance with the applicable lists of prices and services. They shall be applicable to all contracts deliveries and other services. The client's conditions of purchase, business and other conditions shall be rejected.

1.2 Within the scope of a current business relationship between merchants, DB Schenkereuropac's GTC shall also constitute part of the contract if DB Schenkereuropac fails to make express reference refer to their inclusion in individual cases.

1.3 DB Schenkereuropac's services shall be performed in accordance with established industrial practice as is usual at DB Schenkereuropac. DB Schenkereuropac shall also be entitled to have the services performed by subcontractors. The following shall apply to any statements concerning quality, colour, quantities, measurements and weights; in the absence of any express agreement to the contrary, deviations in weight and quantity of up to 10% above and below the agreed figures shall be admissible.

2 Quotations, conclusion of the contract, prices and copyright

2.1 Quotations by DB Schenkereuropac shall be without obligation in terms of price, quantity, delivery time and availability. Errors and amendments in the text of both quotations and prices, whether verbal or in writing, shall be excepted in all quotations. Decorative materials or specimen uses illustrated shall not be included in the scope of delivery.

2.2 Only the confirmation of order from DB Schenkereuropac in written or text form shall be crucial to acceptance of the order and the scope and time of delivery.

2.3 In the absence of any agreement to the contrary, VAT shall apply to all prices. DB Schenkereuropac shall charge VAT at the rate applicable on the day of performance. These prices shall not include any disposal costs or fees whatsoever for participation in a dual ("Green Spot") system. The client shall undertake to conclude its own corresponding agreements with recognised refuse collectors under the current (Germany) Packaging Order.

2.4 Should the delivery date be more than four months after conclusion of the contract, adjustment of the price to changed pricing bases (e.g. raw materials and wages) shall be admissible. DB Schenkereuropac shall then charge the prices applicable on the day of delivery. The same shall apply to orders for which no price has been agreed.

2.5 Costs of designs, appraisals, consultancy concepts and drawings shall be charged with the first delivery. They shall remain the property of DB Schenkereuropac. DB Schenkereuropac shall be entitled to copyright to designs, appraisals, consultancy concepts, etc which it has produced. Simple rights of use may be transferred against separate payment. Should DB Schenkereuropac have models, drawings, samples, etc produced in accordance with technical documents submitted by the client, the latter shall be liable for non-infringement of third-party proprietary rights by their use. The client shall indemnify DB Schenkereuropac against any claims by third parties arising from such use.

3 Delivery, transfer of risk, delay and force majeure

3.1 The risk of destruction or loss of, or damage to the goods shall be transferred to the haulier/freight forwarder on handover to the latter, or, if the goods cannot or are not to be shipped, on despatch of notification to the client of DB Schenkereuropac's readiness to deliver.

3.2

a) DB Schenkereuropac reserves the right to select the despatch route and mode of transport.

b) Delivery within Germany shall be "franco domicile", in the absence of any agreement to the contrary.

c) Additional costs arising from particular despatch wishes of the client shall be borne by the latter.

3.3 Partial deliveries and corresponding statements shall be admissible.

3.4 Commencement and observance of the delivery period stated by DB Schenkereuropac shall require clarification of all technical questions and proper, punctual fulfilment of the client's obligations.

3.5 Should an agreed delivery deadline be exceeded for reasons for which DB Schenkereuropac is responsible, the client must grant it an appropriate period of grace for writing. Said period of grace shall be at least three weeks. Should delivery not be made before the period of grace expires and should the client therefore wish to cancel the contract or demand compensation in lieu of the service, the client shall be obliged to notify DB Schenkereuropac in advance in writing, making an express demand for delivery associated with a further appropriate period of grace.

3.6 In a case of force majeure, DB Schenkereuropac's obligations shall be suspended. Should a major change occur in the conditions prevailing on conclusion of the contract, DB Schenkereuropac shall be entitled to cancel the contract. The same shall apply in the case of a shortage of energy or raw materials, labour disputes, official orders, traffic or operational disruptions, or should subcontractors fail to make delivery, or fail to do so punctually or properly, for the aforementioned reasons.

## 3.7 Additional conditions for rental/one-way use

3.7.1 Following written award of a contract to DB Schenkereuropac under these GTC, DB Schenkereuropac shall make the desired reusable transport packaging (MTV) available to the client on a rented basis, under these General Terms and Conditions. Further conditions shall emerge from the respective quotation. The client shall be obliged to confirm receipt of the reusable transport packaging to DB Schenkereuropac in writing.

3.7.2 On termination of the rental agreement, the empty reusable transport packaging must be provided for collection by DB Schenkereuropac in a clean condition, unlabelled and folded or reduced in volume, as applicable. DB Schenkereuropac shall assume responsibility for and the costs of cleaning in cases of slight soiling of reusable transport packaging. In cases of heavy soiling (e.g. by oil and/or paint) or damage to reusable transport packaging, DB Schenkereuropac shall charge the cleaning or repair costs to the client separately, according to outlay. Should the rented item be lost, DB Schenkereuropac shall be entitled to invoice its replacement value.

3.7.3 The following shall apply additionally to one-way use:

Following delivery of the reusable transport packaging, the client shall be allowed two working days (working days shall be Monday to Friday inclusive) to fill it. Two working days (working days shall be Monday to Friday inclusive) shall be allowed for transport of the filled reusable transport packaging from the client to the recipient. Following delivery of the full reusable transport packaging to the intended recipient, the latter shall be allowed two working days (working days shall be Monday to Friday inclusive) to empty it.

When transferring the filled reusable transport packaging to its haulier, the client shall be obliged to inform DB

Schenkereuropac of the following in writing or in reproducible form:

- Date of transfer of the reusable transport packaging to the haulier
- The full name and address of the haulier
- The full name and address of the recipient of the reusable transport packaging
- The precise number and type of the reusable transport packaging transferred to the haulier

DB Schenkereuropac shall charge a one-way rate for the above services. The one-way rate shall cover provision of reusable transport packaging for a maximum period of six working days between provision of the empty reusable transport packaging to the client and collection of the empty reusable transport packaging from the recipient, provided properly and on time. DB Schenkereuropac shall collect the reusable transport packaging from the recipient four working days after transfer to the haulier for despatch.

DB Schenkereuropac shall quote separately for one-way rates with extended terms and charges for use abroad.

Should DB Schenkereuropac make a futile attempt at collection from the recipient notified by the client within six working days of delivery of the full reusable transport packaging, it shall be entitled to invoice the client EUR 12.50 per futile journey. This shall not apply if DB Schenkereuropac is informed of delayed provision in good time, in writing.

## 4 Terms and conditions of payment

4.1 All payments shall be due within ten days of date of invoice, strictly net.

4.2 The goods must be examined for defects immediately and a complaint made to DB Schenkereuropac within seven days in a case of concealed defects, otherwise the goods shall be deemed to have been accepted.

4.3 Only undisputed or non-appealable receivables may be offset against demands for payment by DB Schenkereuropac, and a right of reduction and/or retention exercised only in respect of such receivables.

## 5 Reservation of title

5.1 The goods shall remain the property of DB Schenkereuropac until full payment of all receivables, including incidental claims, claims for compensation, etc, has been made.

5.2 Reservation of title shall also subsist if individual receivables of DB Schenkereuropac are included in a current invoice and the balance has been determined and acknowledged.

## 6 Guarantee

6.1 The ordering party/client shall examine the suitability of the goods and service provided by DB Schenkereuropac for its purposes and decide on its use on its own responsibility. Advice and recommendations from DB Schenkereuropac in this respect shall thus be without obligation and shall not justify any claims under guarantee or for liability.

6.2 Defects in goods delivered shall be determined in accordance with the content of the contract and statutory provisions.

6.3 The client may not assert any claims against DB Schenkereuropac for defects in its goods and services, should their value or fitness only be slightly reduced.

6.4 Should DB Schenkereuropac's goods and services be defective and should this be notified by the client in writing in good time in accordance with Clause 6.7, DB Schenkereuropac shall repair or replace them (additional period for performance), at its discretion. It shall be granted an opportunity to do so within an appropriate period of at least eight days. Should the additional period for performance not produce the success due under the contract, the client shall be entitled to a second additional period for performance. There shall be no further entitlement to an additional period for performance.

Should it not be possible to rectify the defect after two additional periods for performance or should the repair or replacement be regarded as a failure for other reasons, the client may demand a reduction in payment (price reduction), cancel the contract (resignation) or demand compensation under the conditions of Clause 7, at its discretion.

Failure of rectification shall only be assumed if DB Schenkereuropac has been granted sufficient opportunity for rectification or replacement, should rectification or replacement be impossible, should they be refused or delayed unreasonably by DB Schenkereuropac, should there be justified doubt about the prospects of success or should unacceptability exist for other reasons.

Should only slight defects be involved, the right of cancellation shall be precluded. The client shall only be entitled to reduce payment in a case of slight defects. However, cancellation and reduction shall only be admissible if the client expressly threatens DB Schenkereuropac with them in writing. In advance, setting a further appropriate period of grace. In other respects, reduction shall be restricted to withholding of the agreed payment for the individual, defective goods or service. Should the client exercise its right of cancellation, it shall only apply to the individual, defective delivery of goods.

6.5 Should the additional period for performance prove fruitless, the client may demand compensation in lieu of performance under the conditions of Clause 7.3 or refund of the outlay necessary for rectification, provided that the outlay does not increase because the item delivered has subsequently been carried to a place other than the original place of delivery, unless such carriage corresponds to its intended purpose.

6.6 The client's rights of recourse under Section 478 of the German Civil Code (BGB) shall remain unaffected. However, they shall only subsist against DB Schenkereuropac insofar as the client and its customers have not concluded any agreements in excess of statutory claims for defects.

6.7 Claims for defects by the client shall require the latter to have fulfilled the requirements to examine and make a complaint under Section 377 BGB.

## 7 Liability

7.1 In the absence of any contractual or statutory provision to the contrary, liability on the part of DB Schenkereuropac on any statutory basis whatsoever, shall be precluded in cases of slightly negligent breaches of obligation.

7.2 Preclusion of liability shall not apply, should harm to life, limb or health be involved or claims under the German Product Liability Act be affected, and in cases of malicious deception, particularly malicious concealment of material defects. Liability for breach of obligations of which the fulfilment renders proper execution of the contract possible and in the observance of which the contracting parties usually trust and may have confidence (cardinal obligations) shall also remain unaffected.

7.3 In a case of negligent breach of cardinal obligations, the liability of DB Schenkereuropac shall be restricted to contractually typical losses foreseeable on conclusion of the contract. Liability for purely financial losses is precluded.

7.4 The above exemptions from and limits of liability shall also apply to breaches of obligation by DB Schenkereuropac's employees and other agents.

## 8 Time barring

8.1 The period of limitation for claims for defects in goods from and services by DB Schenkereuropac and under its liability for compensation shall be one year.

8.2 This shall not apply, should longer statutory periods be mandatory, or in cases of harm to life, limb or health, in cases of deliberate or grossly negligent breach of obligation by DB Schenkereuropac and in cases of claims under the Product Liability Act.

## 9 Confidentiality/Data protection/Compliance

9.1 The ordering party/client shall be obliged to treat all information which it has received from DB Schenkereuropac and which is marked as confidential or similar (or which has been verbally deemed confidential and later confirmed as such in writing), or which is confidential by its nature, as confidential and as a commercial secret. This confidentiality obligation shall not extend to information which was already in the legitimate possession of the ordering party/client or in the public domain (without culpability on the part of the ordering party/client) before the commencement of contractual negotiations.

9.2 Both parties agree to fulfil the requirements of the applicable data protection regulations. The contractor obliges his employees to comply with the relevant legal provisions for the protection of personal data and educates his employees to that effect. Both parties will pay special attention to the practical implementation in the case that data protection law contains special principles which are mandatory for the provision of the service (for example, compliance with the data protection-friendly implementation of technical requirements by Privacy by design or Privacy by default).

If the realization of a service provided by the contractor is associated with activities for which the conclusion of a processing contract in accordance with the applicable data protection provisions (for example within the meaning of Art. 28 of the General Data Protection Regulation (GDPR) is required, such a contract must be negotiated and concluded between the parties.

In any case, personal data have to be treated confidentially by the contractor.

9.3 In the event that the service or parts of the service contemplated herein is prohibited under any laws or regulations, including but not limited to US-law, law of the European Community or national laws, including but not limited to laws and regulations relating to the fight against terrorism and embargos, [DBSL Company] is entitled to cancel the service or parts of the service at any time, without prior notice and without incurring any liability to Customer whatsoever.10 Court of jurisdiction and applicable law.

10.1 The place of fulfillment and court of jurisdiction for deliveries and payments, and for any disputes arising between the parties, shall be Coburg. However, DB Schenkereuropac shall also be entitled to bring an action against the client at the latter's registered office.

10.2 Relationships between the parties shall be governed exclusively by applicable law in the Federal Republic of Germany.

10.3 Should individual provisions of the above GTC or of a contract concluded under them be or become invalid, the validity of the remaining provisions shall remain unaffected. In lieu of the invalid provision, a provision shall be deemed to have been agreed which reflects the legal and financial intent of the parties as closely as possible.