

**GENERAL TERMS & CONDITIONS OF CONTRACT APPLICABLE  
TO THE ORGANISATION OF TRANSPORTATION OF GOODS BY ERHARDT TRANSITARIOS, S.L.**

## **0. DEFINITIONS**

"The Freight Forwarder" and "the Transport Operator" mean ERHARDT TRANSITARIOS, S.L., hereinafter referred to as ERTRANSIT. The company acts in general as a freight forwarder, transport operator or logistics operator and organises transportation. To provide transport services, it uses modes of transport and sub-agents of all kinds, which may be used for and on behalf of the Customer.

"Customer" means the party that contracts the services of ERTRANSIT; those to whom the latter addresses quotes, estimates, bookings, correspondence and email messages; the shipper, loader, sender, receiver, recipient or any intermediary, agent or dependent thereof. The Customer is liable for payment in full of the services provided by ERTRANSIT.

## **1. BASIS FOR THE SERVICE CONTRACT**

All services provided by ERTRANSIT are governed by these terms and conditions (T&Cs) of contract (and, as the case may be, by the terms of the ERTRANSIT bill of lading or any other transport document used in such services), which are deemed to be accepted in full by the shipper at the time of commissioning the service. They can be found on our website ("Menu") and provided on request from the Customer. On entering into a contract with ERTRANSIT, the Customer agrees that these T&Cs apply to any request for the provision of service, and to the service provided per se, made verbally, by email or otherwise, even when no specific reference is made here to. The limitations on liability in law set out in these general T&Cs of contract also apply to any claim filed through civil, mercantile, criminal, judicial, extrajudicial, contractual, extracontractual or any other channels. The Customer further undertakes to inform any third parties with which it may have entered into contracts of the existence, currency, validity and its acceptance of these T&Cs.

Any refusal by the Customer to accept these T&Cs must be given clearly and expressly in writing and submitted to ERTRANSIT immediately upon first receiving or being advised of the incorporation of same. Once 10 days have elapsed as from receipt or advice of incorporation of these T&Cs by the Customer or as from the commissioning of ERTRANSIT to provide the service, they will be considered as validly incorporated and accepted.

All our quotes are subject to our general T&Cs for transportation and may vary depending on changes in exchange rates, air, sea and overland freight rates, increases in fuel prices and other factors inherent in transport operations.

Delays, occupation and warehousing and any inspection by competent authorities are not generally included in our quotes and are invoiced separately unless the quote specifically indicates otherwise.

## **2. TRANSPORT DOCUMENTATION**

All transport operations contracted will be covered by a waybill, bill of lading, delivery note or similar document issued by ERTRANSIT or its agents, which will comply with the applicable domestic regulations and international conventions, the clauses of which will apply to ERTRANSIT and the Customer. Should there be any discrepancy between the said documents and these General T&Cs of Contract, or any point not covered, the order of prevalence will be as follows: first, the ERTRANSIT Bill of lading, second these General T&Cs of Contract and third any other transport document used, as the case may be.

## **3. DESCRIPTION OF GOODS AND PACKAGING**

The Customer assures ERTRANSIT of the accuracy of the declaration of goods in regard to the characteristics, lawfulness, description, brands, numbers, quantity, weight and volume of same. The Customer is answerable for any loss, damage, malfunctions and/or penalties that may be caused to third parties by any inaccuracy in the said data and by any unsuitable, faulty or wrongly used packaging that results in damage to the goods, to the handling equipment or to any means of transport, even if such inaccuracies or shortcomings come to light in operations not performed directly by ERTRANSIT, to which the Customer must pay compensation along with any additional expenditure occasioned by such circumstances. Similarly, the

Customer is answerable for any damage, loss and/or malfunctions arising from the improper stowage and/or lashing down of goods when this is for the account of the Customer, within the specific load unitisation measures used during transport (e.g. shipping containers). The Customer expressly assures that the packaging provided is suitable for the service contracted. Unless the Customer provides ERTRANSIT with specific written instructions to the contrary, no special actions will be taken in regard to packaging, which is entirely the responsibility of the Customer.

The Customer undertakes to inform ERTRANSIT in writing of the nature of any hazardous goods delivered to the latter for transportation, warehousing or handling and of the precautions, if any, that must be taken. In any event, the Customer must provide ERTRANSIT in advance with the safety data sheet for the goods plus any further document required by regulations governing the transportation of hazardous goods.

The Customer understands and agrees that neither ERTRANSIT nor its agents or representatives have the ability to confirm the truthfulness of the information referred to in this clause, particularly as regards the status and condition of goods. In case of any failure to provide information or provision of insufficient or incorrect information, the Customer is answerable for any damage caused to ERTRANSIT or to the agents and sub-agents of the latter who may be involved in the various phases of transportation. ERTRANSIT is entitled to claim a refund on any expenditure incurred for this reason and is exempt from any liability should the goods need to be unloaded, destroyed or neutralised, as the case may be, and has no obligation to compensate the Customer.

ERTRANSIT reserves at all times the right to accept goods or not and thus to provide the service or not if the goods covered by a transport contract are poorly prepared, appear damaged at first sight or have faulty packaging.

## 4. LIABILITY IN LAW

The Customer agrees that ERTRANSIT is to perform the contract and carry out other instructions, and is to organise the transportation, handling, haulage and storage of the load entrusted to it at its own discretion, unless the Customer gives specific instructions with sufficient prior notice by any of the means indicated above as to how the transport contract is to be carried out.

As a Freight Forwarder, transport commission agent or logistics operator, ERTRANSIT is responsible for organising transportation (except in cases in which the Customer has issued specific instructions as to how transportation is to be organised) and is answerable for any failure to meet its contractual obligations in the circumstances and for the liability period envisaged in domestic legislation and in the international conventions applicable, always under the same circumstances and with the same position as if it were the effective transporter.

As a warehouse and depositary, ERTRANSIT is liable only for damage to goods caused as a result of a failure to meet its contractual obligations in the cases and circumstances envisaged in the regulations applicable. The liability of ERTRANSIT applies as from the time when the goods are handed over to its employees and ends at the time when they leave its warehouses for transportation.

As a customs clearance agent, ERTRANSIT is answerable only for damage caused through its own negligence or fault, but is in no case answerable if it has followed the instructions of the Customer. The Customer agrees that it is the debtor for tax purposes and that ERTRANSIT is merely acting in accordance with its instructions.

Their legal liabilities are defined as follows:

4.1 ERTRANSIT Is liable only for material damage caused to goods and in no case for consequential damage, property damage or loss of profit.

4.2 Any legal action against employees and/or dependents of ERTRANSIT, be they under indefinite or fixed term contracts, may only be brought within the limits and in the circumstances envisaged in clauses 5 and 6.

4.3. Those limits may not be exceeded even if legal action is brought against ERTRANSIT and its employees and/or dependents, be they under indefinite or fixed term contracts, jointly or separately through contractual or extracontractual channels. The said limit is understood as a joint maximum figure for all those involved.

4.4. ERTRANSIT answerable for choosing and giving instructions to the agents subcontracted as carriers, freight forwarders, warehouse operators, etc, but is exempt from liability if agents were chosen in accordance with instructions from the Customer, shipper or any other party with an interest in the goods, and when the instructions given to subcontracted agents were issued in accordance with orders received from the Customer or shipper. In such cases, ERTRANSIT may waive its rights to proceed against the subcontracted agents and assign same to the Customer/shipper.

4.5. In any event, the liability of ERTRANSIT may not exceed that of those to whom it resorts to perform the services.

4.6. The liability of ERTRANSIT ends at the time when the goods transported are placed at the disposal of the recipient (or the agents, sub-agents or commission personnel of the latter) at the agreed destination (or such place as may eventually replace same). ERTRANSIT may not be held answerable for deposit and/or warehousing costs, delays or any other costs that may arise at the destination due to any lateness and/or failure to collect the goods on the part of the recipient. In such cases, ERTRANSIT reserves the right to pass on to the Customer any amounts claimed from it by subcontracted agents (freight forwarders, operators, carriers) and others involved in the transport chain (port terminals and other operators) as a result of failure by the recipient to collect and/or remove goods at the point of destination.

## 5. LIMITATION OF LIABILITY

5.1. ERTRANSIT is answerable only up to maximum amount equivalent to the real value of the goods lost or damaged and in the cases and with the financial limits detailed below:

For domestic carriage of goods by road and any other activity not mentioned in the paragraphs below (e.g. warehousing and logistics), the provisions applicable are those of Act 15/2009 of 11 October on overland goods transport contracts or such regulations as may implement or supersede same, and the liability of ERTRANSIT is limited to a maximum of €6 per kg of gross weight of the goods damaged or lost.

For international carriage of goods by road, the Convention on the International Contract for the Carriage of Goods by Road (CMR) applies and the liability of ERTRANSIT is limited to 8.33 SDR (Special Drawing Right) per kg of gross weight of the goods damaged or lost.

International carriage of goods by sea is subject to the Convention for the Unification of Certain Rules of Law Relating to Bills of Lading - Hague-Visby Rules, and the liability of ERTRANSIT is limited to 666.67 SDR per package or 2 SDR per kg of gross weight of the goods damaged or lost, whichever is higher.

Domestic carriage of goods by sea is subject to Act 14/2014 of 24 July on Maritime Shipping, and the liability of ERTRANSIT is limited to 666.67 units of account per package or unit, or two units of account per kg of gross weight of the goods lost or damaged, whichever is higher.

For international carriage of goods by air, the Montreal Convention and its subsequent amendments (as per the protocols in force in Spain) apply and the liability of ERTRANSIT is limited to 17 SDR per kg of gross weight of the goods damaged or lost.

For domestic carriage of goods by air, Spanish law applies and the liability of ERTRANSIT is limited to 17 SDR per kg of gross weight of the goods damaged or lost.

In no case will be declared value of the goods as per the bill of lading, carriage document, shipping document or any other document issued by ERTRANSIT or its agents be considered as a declaration of "real value" that would prevent any limitation on the liability of ERTRANSIT. Such declared values are representations the contents of which are not considered relevant or value, given that ERTRANSIT cannot confirm the accuracy or truthfulness of the value declared by the Customer.

5.2. ERTRANSIT is liable for delays in delivery only in cases in which such liability is expressly established in the applicable legal regulations, in which cases it is answerable on the terms set out in those legal regulations, and its liability may in no case exceed the equivalent of the remuneration payable by virtue of the contract entered into with ERTRANSIT. In any event, delivery periods indicated to the Customer are understood always to be approximate and subject to the vicissitudes of the form of transport used. Should the Customer desire that specific delivery date be guaranteed for goods, this must be expressly indicated when the transport service is contracted. To be binding, it must be expressly accepted in writing by ERTRANSIT. The Customer understands and agrees that if the Hague Rules and/or Hague-Visby Rules apply, ERTRANSIT cannot be held liable for delays, so ERTRANSIT will not be answerable for delays in any case. In any event, ERTRANSIT is not answerable for more than 2.5 times the freight charges proportional to the delay goods and proportional to the transport leg affected by the delay.

5.3. When liability is derived from actions or events during the performance of transport, and should there be any subrogation of the freight forwarder, the liability of the latter may in no case exceed that held in regards to it by rail, shipping, air and road carriage companies, deposit warehouses or any other intermediaries involved in the course of the transport operations, as per the applicable domestic regulations and international conventions.

5.4. These limits apply to all claims addressed to ERTRANSIT and its employees and/or agents, regardless of whether those claims are based on contractual or extracontractual liability and of whether they come in the form of lawsuits, counterclaims, arbitration, amicable claims or otherwise.

5.5. Special Drawing Rights (SDR) are units of account as defined by the International Monetary Fund.

## 6. EXONERATION FROM LIABILITY

ERTRANSIT is not liable for any loss, damage or expenditure, including loss of profit, loss of customers, fines, penalties, lawsuits arising from losses due to depreciation or penalty clauses, fluctuations in currency exchange rates or in the value of goods, fees or tax increases by the authorities for any reason.

The following grounds for the exoneration from liability of ERTRANSIT apply:

6.1. ERTRANSIT may not be held liable should any of the following circumstances arise:

- Culpability or negligence on the part of the Customer or its authorised representative.
- Defects in or absence of packaging, signage, lashing or stowage, provided that ERTRANSIT was not responsible for packaging, marking, lashing and stowing the goods. Nor may ERTRANSIT be held liable for the packaging of goods when contents cannot be confirmed.
- War, rebellion, revolution, insurrection, seizing of power, confiscation, nationalisation or requisition by or under the orders of a government or public or local authority.
- Transportation of objects the contents of which are unlawful or illegal, or which cannot be transported without prior declarations or are subject to special requirements or provisions (armaments, cash or commercial bills, toxic, flammable or hazardous materials, dual use goods with no prior declarations, living creatures, etc.) the fulfilment of which must be checked in advance by the Customer. In such cases any

liability that may arise from failure to comply with the requirements for such prior declarations and/or examinations lies exclusively with the Customer.

- Strikes, lockouts and other industrial disputes that affect work.
- Damage caused by nuclear energy.
- Natural disasters.
- Force majeure.
- Theft.
- Circumstances that ERTRANSIT could not have avoided and whose consequences it could not have foreseen.
- Flaws inherent in goods.
- Piracy.
- Incorrect labelling or marking.
- Other grounds for exoneration envisaged in the conventions and provisions of law in force.

6.2. ERTRANSIT may not be held liable for the loss of or damage to goods unless such loss or damage occurs while the goods are under the custody and control of ERTRANSIT prior to being made available to the Customer. As soon as they are so made available, ERTRANSIT may no longer be held liable in any circumstances.

6.3. ERTRANSIT may not be held liable if the goods have been transported by the Customer or its representative.

6.4. ERTRANSIT may not be held liable for any consequences arising from loading or unloading operations not performed by itself or its agents.

6.5. ERTRANSIT may not be held liable for any losses, damage or expenditure arising from shortcomings or flaws in the number, contents, wait, marking or description of the goods.

6.6. ERTRANSIT may not be held liable for any consequential damages or losses such as loss of profit, loss of customers, depreciation or penalty clauses.

## 7. INSURING OF GOODS

7.1. ERTRANSIT Will not insure goods against loss or damage during haulage, storage or transportation unless the Customer specifically instructs it in writing to do so, in which case it must pay the amount of the insurance contracted. No claims will be accepted if the Customer has not first paid the invoice for transportation and insurance.

7.2. When ERTRANSIT is expressly instructed by the Customer to take out insurance on goods, it will do so always as an agent acting in the name of the Customer.

7.3. The terms and conditions of insurance will be those set out in the policy contracted, which are at the disposal of the Customer on specific request.

7.4. ERTRANSIT accepts no liability for any disputes or claims that may arise between the Customer and the insurance company contracted as a result of the insuring of the goods.

## 8. PRICE OF THE SERVICES CONTRACTED

The transport and other services provided by ERTRANSIT are understood to be contracted under the rates in force at the time of contracting, and within the limits set out therein. The terms of payment agreed between ERTRANSIT and the Customer are considered as incorporated into the price of each service contracted as an integral part thereof. If there are no rates or if the quotes given by ERTRANSIT or its agents do not include prices for all the outlays or services effectively made and/or provided, contracting is deemed to take place at the usual or market prices prevailing in the place

where the contract is performed. Any additional expenditure that arises as a result of events or circumstances after the date of contracting or, as the case may be, after the date of issue of the shipping documents, are for the account of the Customer, provided that they are duly substantiated and are not due to the fault or negligence of any of those involved in providing the services contracted. All services and outlays by ERTRANSIT must be paid for at cash rates, unless other, special conditions are agreed on in advance and accepted by both parties.

Any reference to expenses of all types, fees, carriage or freight charges being payable at source, at destination, prepaid or payable on delivery and any other similar indication will be included only if the Customer so requests, and will not affect the obligation of the Customer to pay the rates for all the services provided by ERTRANSIT in cash and prior to the performance of the services. Should there be any delay in payment, the Customer must also pay ERTRANSIT any delayed payment interest or amount lost due to fluctuations in currency exchange rates, bank charges and any other financial harm suffered by ERTRANSIT or its agents due to the delay in payment. The Customer understands that it is not entitled to withhold or offset any amount against other amounts owed to ERTRANSIT. Should there be any doubt, or should the recipient of the cargo would not be the charterer or loader, the freight and other charges that make up the price and cost of the transport operation will be considered always as payable at destination.

It is understood that unless there is express agreement to the contrary, goods will be handed over to shipping agents at street level, and any additional resources required are for the account of the recipient of the goods.

For goods delivered on cash on delivery basis, brokerage fee of 5% on the amount payable will be charged, with a minimum of €5. ERTRANSIT is liable for collecting the said outlays only when they are paid to us via a confirmed banker's cheque at the instruction of the issuing Customer to recipient/addressee of the goods, which cheque is in the name of the recipient and/or loader.

Should there be any delay in payment for the service, as from the agreed due date of the invoice (invoice issue date) the debtor undertakes to pay a penalty in the form of delayed payment interest (following a notification by official fax) at the rate in force at that time plus five base points. ERTRANSIT will also place the debt recorded at that time in the hands of the insurance company CREDITO Y CAUCION, S.A., with which amounts claimed are insured, which company is empowered to take any legal action that may be available.

## **9. OBJECTIONS IN CASE OF DAMAGE/MALFUNCTION OF GOODS & DUTY OF CUSTODY**

9.1. At the time of delivery of the goods transported or stored, the recipient must check the conditions in which the goods are handed over, and confirm the quantity and the number and weight of the packages. Should any defect or malfunction be found in the goods or should any item/package be lost, the recipient must place this on record on the handover of the goods by making a note of the fault/malfunction found in the goods on the transport document or bill of lading.

9.2. If there is any irregularity, damage or loss of goods that cannot be detected at the time of delivery and is not recorded on the delivery note, the recipient must indicate any reservations in writing (with photographic evidence if possible) within 24 hours as from the delivery of the goods, or as per the time indicated in the terms and conditions set out in the transport document, bill of lading, shipping document or the legislation applicable if shorter.

9.3. The requirements set out in points 9.1 and 9.2 above are understood to be requirements for procedure, so if they are not met the right to file any claim is deemed to have expired.

9.4. The Customer understands and accepts that in order to file any claim against ERTRANSIT it must keep the goods on which the claim is based under its own custody at its own expense, and must invite ERTRANSIT to conduct an expert appraisal thereon to obtain sufficient valid evidence of the scope and cause of the damage/loss claimed for. The Customer understands and accepts that if ERTRANSIT is not permitted to carry out such expert appraisal the latter is unable to defend itself. In such circumstances ERTRANSIT is exempted from all liability for the claim filed by the Customer.

## 10. EXPIRY

The deadline for bringing action against ERTRANSIT, its dependence and/or its employees is one year as from the handover of the goods to the Customer or, in the case of total loss, as from the date on which the goods should have been handed over. After that time all rights to bring claims are deemed to have expired.

However, the deadline for action arising from the effective performance of the various transport operations is as per the periods indicated in the transport documents, bills of lading, etc. or, as the case may be, those set in the domestic regulations or international conventions by which the various forms of transport are regulated. The starting point for counting time is as set out in such documents or conventions.

Invoices from ERTRANSIT for transport and storage services, including costs and expenses, may in no case be accumulated into other lawsuits. Unless the law states otherwise, the Customer may in no case withhold any amount owed to ERTRANSIT or use such amount to pay itself any sum presumably or potentially payable as compensation.

## **11. LIMITATION OF LIABILITY OF THIRD PARTIES**

ERTRANSIT is authorised to select and contract forwarding agents, carriers, warehouse operators, customs agents, shipowners, shipping lines, airlines, charter brokers and any other agents required for the transportation, storage, handling and delivery of goods. All such personnel are deemed to be actors independent of ERTRANSIT.

Goods are entrusted to them subject to all the terms and conditions (including limitations on liability for loss, damage, expenses or delay in delivery), rules, regulations and stipulations applicable, be they written, printed or stamped, as set down on waybills, transport documents, bills of lading and receipts issued by such forwarding agents, carriers, warehouse operators, etc. or contained in the domestic regulations or international conventions applicable.

## **12. LIABILITY OF EMPLOYEES/DEPENDENTS**

Any direct legal action against employees and/or dependents of ERTRANSIT, be they under indefinite or fixed term contracts, for the loss of or damage to goods may be brought only within the time limits envisaged in clauses 5 and 6. In any legal action brought jointly against ERTRANSIT and its employees, be they under indefinite or fixed term contracts, the maximum compensation may not exceed the limits set in the relevant clause.

### **13. RIGHT OF WITHHOLDING AND NOTARIAL PROCEDURES**

In all events, ERTRANSIT has the general and specific right to withhold goods transported and documents from Customers who have failed to pay the amounts owed for the services entrusted, or who have breached the terms of payment agreed with ERTRANSIT, in which case the agreements reached are considered nonvalid and not subject to objection, and all unpaid sums are automatically considered as immediately due, with ERTRANSIT having the right to withhold all the goods in its possession. It may also enforce any other withholding right admissible in law.

ERTRANSIT has the right to bring any notarial procedure permitted to it in law.

The Customer is liable for any damage or deterioration of the goods, especially in the case of perishable goods, arising from any exercising of the right of withholding or notarial procedure by ERTRANSIT.

Should the goods on which the right of withholding or notarial procedure is to be exercised be lost or destroyed, ERTRANSIT will have the same rights indicated above in regard to any compensation paid out by insurance companies, carriers, etc.

### **14. SURVIVAL CLAUSE**

Should any clause of these terms and conditions of contract or any part of any such clause be declared null and void, non-valid or inapplicable, or should a judge or institution with sufficient authority and competence deem that ERTRANSIT has failed to provide any information, the remaining clauses will continue to be fully valid and applicable.

### **15. APPLICABLE LEGISLATION AND JURISDICTION**



These terms and conditions apply to any contract signed by ERTRANSIT, and any dispute that may arise therefrom, are to be governed and construed in accordance with Spanish law.

Any dispute or action that may arise or be exercised against ERTRANSIT, its employees and/or its dependents must be submitted to Spanish jurisdiction.

ERHARDT TRANSITARIOS, S.L. – ERTRANSIT

May 2021