

Porath GmbH – customs agents

Terms of contract – direct representation

1. Our terms of contract apply exclusively. Conditions of the client which are inconsistent with our terms of contract or which deviate from our terms of contract shall be void and of no effect. Our terms of contract apply to all future business relationships with the client, even if they are not expressly stipulated again. Modifications and additions to these terms of contract must be made in writing in order to be valid.
2. The client and respectively the importer, in whose order he is dealing, is informed that he will be the customs declarant in terms of the Community Customs Code (hereafter: CC). The contractual basis in this respect is Article 4 No. 18 CC.
3. The client shall reimburse instantly all duties and further expenses which the customs agent advances on loan for him in connection with the performance of the contract. In particular cases, we can claim indemnification from third parties' claims.

Further expenses include the costs incurred in asserting our legal rights to defend unjustified third parties' claims arising in connection with our performance on behalf of the client.

4. We are entitled to demand that the client provides a bank guarantee waiving the defence of preliminary injunction (sec. 771 German Civil Code). This guarantee ensures our claims against the client arising from the contract.

The security can amount to up to 25% of the customs value that we will presumably declare within the first six weeks of our performance. If we demand the bank guarantee during the course of the contract, it will amount to 25% of the customs value that has been declared within the last six week before the demand.

Each party can ask for an adjustment of the amount of the bank guarantee, if the declared value of goods has changed by more than 15% compared to the last stipulation of securities during the last [three] months before adjustment has been demanded.

The security has to be returned after three years from the time when the last custom debt arose from a customs clearance based on the parties' contract. In case of legal disputes concerning customs clearances based on this contract, this period will be extended by the time from filing an appeal against a tax assessment to a final decision.

5. The client assures that he is the purchaser of the applied goods or acts with a mandate of the buyer. The client or the importer respectively is entitled to full tax deduction. Otherwise, the client shall inform the customs agent about this matter separately.
6. Early enough before the customs declaration, the client informs the customs agent about:
 - a) the CN-Code of the dispatched goods; should there be no CN-Code at the time of the customs clearance, the customs agent is entitled to a separate identification;
 - b) all necessary details for the customs declaration, especially all details of content, quantity, no. of pieces, weight as well as the minimum entry price provisions;
 - c) the use of temporary or quantitative limited import quotas.
7. The client provides the customs agent with all documents needed for the particular customs clearance. This includes particularly:
 - a) import and export authorizations, import and export licences, end-use documents, International Import Certificates, export licenses of third countries, control documents and goods certificates;
 - b) valid proof of preferential origin, provided that the client wants to make use of preferential tariff treatment;
 - c) the original delivery verification within 14 days after customs clearance, provided that the customs agent acts as fiscal representative according to the German Value Added Tax Act (Umsatzsteuergesetz - UStG)
8. Notwithstanding No. 20 of the German General Forwarding Conditions, we are entitled to a right of detention concerning all documents received from the client or third parties in connection with the customs clearance until the complete payment of the stipulated remuneration and the complete reimbursement of the further expenses under No. 3. This right of detention also persists after the contract has ended.
9. The customs agent's right to refuse orders of customs declaration for important reasons, for example, on default of payment, missing documents, or insufficient description of goods, remains explicitly reserved.

10. Transit procedures

- a) The client is responsible for assuming the goods only with the respective proof print of the electronic NCTS-consignment notes and for the duly and timely presentation to customs of the goods in transit. The client ensures that the carrier/driver and every subsequent carrier will be given the following instructions:
- The carrier has to use the route and the border crossing stipulated in the accompanying document. Changes can only be made with the express consent of the principal.
 - At the office of destination or at the authorised consignee where the assumed goods are delivered, the alternative proof document handed out by the customs office of departure has to be presented, stamped and sent back to the principal. Address: Porath GmbH, Am Windhukkai 5, D-20457 Hamburg
 - If the goods are passed on to a subsequent carrier during the transport, the carrier/driver is obliged to hand out all relevant documents and to inform the subsequent carrier of his duties arising from the transit procedure.
 - Transshipping of goods under customs control to a different means of transport or unloading these goods has to be executed under customs control. If goods are damaged or if the customs seal is broken, either the next customs office has to be notified or the event has to be recorded by next police station.
 - We have to be informed, if there is any deviation from the normal course of carriage or if the goods cannot be presented to the customs office of destination, either by fax (+49 40 325843-43) or by email info@porath.com.

Notwithstanding the obligation arising from No. 3, the client is responsible to us for any damages resulting from a violation of this duty of notification.

- b) In the case of an incorrect presentation to customs in the NCTS transit procedure the client bears all further costs for the handling of enquiry and reminder procedure. The client shall pay a minimum handling lump sum (NCTS-repair fee) for incorrectly supplied goods of €200,- net for every NCTS-procedure plus the statutory sales tax. Additional expenses will be calculated according to the expenditure of time.

- c) Should the transit document guarantee be used in excess of the time-limit for presentation to customs, the client pays 0.08 % of the guaranteed duties per day to the customs agent. The customs agent does not guarantee permanent availability of a transit certificate guarantee for the implementation of NCTS-transit procedure and may request securities customary in banking from the client.
- d) The client bears the costs and tax disadvantages which originate from non-presentation to customs and respectively non-payment of duty, through loss, theft, or deception in transit procedure.

11. The client shall bear all costs and tax disadvantages, incurred by false, partial or late information and respectively by not presenting the requisite documents.

Provided that the client is not itself the importer of the goods, the client and the importer are liable to the customs agent as co-debtors for all costs and tax disadvantages which arise in connection with the performance of the contract.

The client assigns to the customs agent all claims against the importer, resulting of the importer's failure to communicate the necessary facts and documents correctly, completely and timely.

12. The customs agent does not assume any liability for an incorrect identification of the CN-Code, provided that he has not acted intentionally or in a grossly negligent manner.

Tariff information by the customs agent is not binding. The client is informed that a binding tariff ruling may be applied for at the competent customs authorities.

13. The customs agent is not obligated to check the possibility and requirements of the customs clearance at a reduced rate of duty, or to inform the client of this. The client is solely responsible to catch up on any customs exemption and the requisite documents in this regard, unless a separate is agreed in writing.
14. The customs agent is not obligated to check whether the goods infringe industrial property rights of third parties.
15. The customs agent works on the legal basis of the German General Forwarding Conditions (Allgemeine Deutsche Speditionsbedingungen - ADSp) in the appropriate current version, provided that these terms of contract do not allow a differing provision. The content of the ADSp is known to the client and is a fixed element of this contract.

The customs agent has signed liability insurance over KRAVAG, Hamburg. The maximum liability according to the customs insurance policy averages € 50.000 per case of loss, the insured total is a maximum of € 750.000- per calendar year.

The customs agent is liable for all losses which arise in connection with the customs declaration, but only to the extent of the sum insured, provided that he has not acted intentionally or with gross negligence. Higher indemnity limits are covered on separate request for reimbursement of expenses.

16. Should one or more of the provisions in these terms of contract be completely or partially ineffective, the validity of the other provisions will not be affected. A provision will take the place of the ineffective provision with a similar content, which serves the intended propose of the provision which has ceased to apply.
17. The place of performance for all contractual obligations is Hamburg.

The place of jurisdiction for all legal disputes arising out of or in connection with the contract is Hamburg. For claims against the customs agent, Hamburg is the exclusive place of jurisdiction. German Law applies.