

# **General Terms and Conditions of Business**

## for Handling Services Provided by the Frankfurt Animal Lounge of Lufthansa Cargo AG/Frankfurt am Main

Rev. 01.09.2013

### **I. General Provisions**

#### **1. Scope**

- 1.1. The following General Terms and Conditions of Business (the „Terms“) apply exclusively in conjunction with the tariffs of the Frankfurt Animal Lounge of Lufthansa Cargo AG (Frankfurt Animal Lounge) for services of the Frankfurt Animal Lounge. Where the Terms are silent, the law applies. The Frankfurt Animal Lounge does not acknowledge client's terms that contradict or deviate from the Terms or the law to the detriment of the Frankfurt Animal Lounge, unless the Frankfurt Animal Lounge consents to their application expressly in writing. The Terms apply even in cases where services are rendered unconditionally in full knowledge of client's terms that contradict or deviate from the Terms or the law to the detriment of the Frankfurt Animal Lounge.
- 1.2. The Terms also apply in their current version to future transactions with the client.

#### **2. Contract Formation, Services, Business Hours**

- 2.1. The Frankfurt Animal Lounge agrees to accept, handle, manage, care for, offer for pick-up and – if applicable – lodge animals imported as air cargo or in the company of passengers (the "Animals") from and/or to Frankfurt am Main Airport (the "Contract Services").
- 2.2. The client shall ensure that a written pre-advice is sent to the Frankfurt Animal Lounge latest 24 hours prior to delivery. This pre-advice must contain the AWB number, animal species, pieces, weight and way of built-up (loose or palletized). If the pre-advice is not sent latest 24 hours prior arrival of the animals, an increased handling tariff will be charged (please see actual tariff of the Frankfurt Animal Lounge). The client may however show that damage has either not occurred or is substantially less than the aforementioned lump sum.
- 2.3. The contract to render the services is concluded by the written acceptance of the Frankfurt Animal Lounge. If the order is placed orally or by phone, the contract is not concluded until the order is expressly accepted in writing.
- 2.4. The client shall ensure that all the declarations and information he

provides are true and complete. The client is liable to the Frankfurt Animal Lounge for any damage incurred due to a failure to provide true or complete information. Third parties are not allowed to modify printed forms issued by the Frankfurt Animal Lounge; such modifications are not legally binding on the Frankfurt Animal Lounge.

- 2.5. The Frankfurt Animal Lounge is entitled – and obligated, if given reasonable cause – to verify (a) the authenticity of signatures or stamps on applications, notices, declarations or other documents or (b) the authorization of the signer or bearer to present these documents (both official and unofficial).
- 2.6. Likewise, the Frankfurt Animal Lounge is entitled, but not obligated, to verify, determine or cause to be determined at any time whether the Animal's weight, type, nature, volume or condition conforms to the statements made in the presented documents. If not, the client is liable for the costs of such verification or determination.
- 2.7. The Frankfurt Animal Lounge's business hours are 24 hours a day, every day, including Sundays and official holidays. The handling of the animals may be dependent on the business hours of the customs authorities and the business hours of the Border Inspection Post (TGSH - Tiergrenzkontrollstelle).

### **3. Lodging**

- 3.1. Lodging will only be provided against payment of the fees set out in the applicable tariff / fare provisions.
- 3.2. After lodging the Animal is only delivered against the return of the storage request form that has been stamped and/or signed by the Frankfurt Animal Lounge in case a storage request was submitted before. Animals are only delivered once they have been cleared by the customs and veterinary authorities.
- 3.3. The fees owed under the tariff / fare provisions are immediately due and payable when the cargo is delivered up to the authorized recipient.

### **4. Fees, Payment Terms**

- 4.1. For the Services rendered hereunder, the Frankfurt Animal Lounge levies fees in accordance with the list of fees, as it may change from time to time, which forms part hereof and is posted in the Frankfurt Animal Lounge.
- 4.2. The fee (including value-added tax) is due and payable without discounts immediately after receipt of invoice. The statutorily required amount of value-added tax is itemized separately in the invoice.
- 4.3. The payment is not deemed made until the Frankfurt Animal Lounge can finally dispose of the amount paid. If the client is in default with respect to payment, the statutory provisions governing payment of

default interest shall apply. The Frankfurt Animal Lounge reserves the right to claim greater damages due to default with respect to payment.

- 4.4. If the client suspends his payments, becomes over indebted, is the subject of a petition to open composition or bankruptcy proceedings, or is in default in honouring due bills or checks, the Frankfurt Animal Lounge's entire claim shall become due and payable immediately.
- 4.5. The client is only entitled to set-off if his counterclaims are upheld by final and absolute judgement or undisputed. The client is only entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship and if his counterclaim is undisputed or upheld by final and absolute judgement.

## **5. Statutory Regulations, Acceptance Exceptions, Price reduction**

- 5.1. The client shall comply with all national, international, statutory and regulatory orders and provisions applying to him or the Animals he is importing, including, without limitation, the IATA Live Animals Regulations. In particular, the Animals shall be in a condition suitable for transport.
- 5.2. Unless so instructed or required by a veterinary officer, customs authority or a mandatory statutory requirement, the Frankfurt Animal Lounge is not required to accept Animals that are not allowed to be transported by air, stored or imported under applicable national or international regulations.
- 5.3. The Frankfurt Animal Lounge is entitled and required to treat and care for Animals given up to it in accordance with their nature and in conformity with statutory provisions.
- 5.4. Any right of the client to reduce the price is excluded.

## **6. Client's Obligations to Cooperate**

If the client violates his contractual obligations to cooperate, the Frankfurt Animal Lounge is entitled to demand the reimbursement of the damages it sustains as a result, including any additional expenses. It reserves the right to assert further claims.

## **7. Force Majeure**

The Frankfurt Animal Lounge shall be exempted from its contractual duty to perform to the extent that any force majeure event or other obstacle of performance – including, without limitation, labour disputes, operational breakdowns, lack of materials and supplies, unforeseen Animal behaviour and instructions given by an authority having jurisdiction – (a) occurs after the contract is concluded or (b) is not made known to the

Frankfurt Animal Lounge until after the contract is concluded, provided that the Frankfurt Animal Lounge is not at fault therefore and it proves that such events or obstacles could not have been predicted or avoided even with the exercise of due diligence; the exemption applies for the duration of the event or obstacle. If the obstacle of performance persists for a long period of time, the Frankfurt Animal Lounge is entitled to withdraw from the contract. The client is excluded from bringing any claims for damages therefore.

## **8. Limitation Period**

Claims for defects of the performance against the Frankfurt Animal Lounge become time-barred within one year; the limitation period commences in accordance with the applicable statutory provisions. This limitation does not apply to damage claims due to wilful intent or gross negligence or culpably caused injuries of life, body or health.

## **9. Place of Performance, Legal venue, Governing Law, Severability Clause**

- 9.1. The sole place of performance shall be the place of the registered offices of Lufthansa Cargo AG, unless otherwise specifically agreed upon.
- 9.2. The courts at the place of the registered offices of Lufthansa Cargo AG or – at the option of the Frankfurt Animal Lounge – of the client's registered offices have jurisdiction over all obligations incurred under and in connection with the contractual relationship, including with respect to checks and bills of exchange, if the client is a merchant within the meaning of the German Commercial Code or is a legal entity or investment fund constituted under public law. The foregoing jurisdiction clause also applies to ordering parties with foreign domiciles. For consumers the statutory provisions for legal venue apply.
- 9.3. The laws of the Federal Republic of Germany solely and exclusively govern all rights granted and obligations incurred under and in connection with the contractual relationship, without giving effect to the principles of conflict of laws.
- 9.4. Should a provision in these Terms or a provision in any other agreements between the Frankfurt Animal Lounge and the client be or become invalid, this shall not affect the validity of any other provisions or agreements.

## **10. Liability**

- 10.1. The Frankfurt Animal Lounge assumes no liability for any transport in which the Animals are given inappropriate, defective or no packaging or

food and water, and no liability for any damages resulting there from unless the Frankfurt Animal Lounge failed to comply with the requirements of the IATA Live Animals Regulations or German Act on the Protection of Animals during Transport.

- 10.2 The Frankfurt Animal Lounge shall be not liable for indirect damages, loss of profit or turnover, loss of reputation, loss of anticipated savings, loss of customer relationships or loss of business opportunities.
- 10.3 Outside the scope of Section 10.1 the liability for damages by slight negligence, irrespective of its legal ground, shall be limited as follows:
  - a) The Frankfurt Animal Lounge shall be liable for claims accrued in one calendar year up to the amount of 100% of the fees paid to Lufthansa Cargo AG under this contract due to a breach of material contractual obligations.
  - b) The Frankfurt Animal Lounge shall not be liable due to a slightly negligent breach of any other duty of care applicable.
- 10.4 The limitations of liability under Section 10.2 and Section 10.3 shall not apply to any mandatory statutory liability, in particular to liability under the German Product Liability Act (Produkthaftungsgesetz), and liability for culpably caused injuries of life, body or health. In addition, such limitations of liability shall not apply if and to the extent Frankfurt Animal Lounge has assumed a specific guarantee.
- 10.5 Sections 10.2, 10.3 and 10.4 shall apply accordingly to liability of Frankfurt Animal Lounge for futile expenses.
- 10.6 Strict liability (i.e. liability without fault) of Frankfurt Animal Lounge for defects existing at the time of signing the contract is excluded.
- 10.7 The client shall be obliged to take adequate measures to avert and reduce damages.
- 10.8 The regulations of Section 10 shall also apply to the benefit of possible representatives, vicarious agents, employees and employees of Lufthansa Cargo AG or third parties used by Lufthansa Cargo AG to perform the contract.

## **11. Obligation to Hold Harmless**

The client agrees to indemnify and hold harmless the Frankfurt Animal Lounge from any customs fines and/or supplementary taxes with respect to the cargo except when such fines and fees are the result of the gross negligence or wilful misconduct of the Frankfurt Animal Lounge or its employees or vicarious agent.

## **II. Contract services for Air Carriers**

**If the client is an Air Carrier the following special conditions of this Section II shall apply in addition to the provisions set forth in Section I:**

### **12. Acceptance from Client**

- 12.1 If the client wants special or additional treatment for the Animals, he shall state this separately in advance in writing. If this results in additional costs for the Frankfurt Animal Lounge, these costs will be charged to the air carrier.
- 12.2 When accepting the Animals, the Frankfurt Animal Lounge will check their condition based on the IATA Live Animals Regulations Standard; objections, if any, will be noted on the Frankfurt Animal Lounge's certificate of acceptance. Unless so instructed or required by a veterinary officer, customs authority or a mandatory statutory requirement, the Frankfurt Animal Lounge is entitled to refuse to accept any Animal with identifiable injuries, damages or condition of health which preclude acceptance in the Frankfurt Animal Lounge's estimation. This applies in particular to Animals who are obviously not in a condition to be transported.

### **13. Offering to Recipient / Collector**

- 13.1 The Animals are offered to the recipient / collector or his agent on behalf and for the account of the air carrier in exchange for a delivery order released by the air carrier and cleared using the prescribed system by the customs authorities and the veterinary officers. Under no circumstances does the Frankfurt Animal Lounge act as the Animal's recipient vis-à-vis the air carrier within the meaning of the contract of carriage.
- 13.2 The air carrier assigns all payment claims concerning the fees to be paid by the recipient / collector for the services of the Frankfurt Animal Lounge to the Frankfurt Animal Lounge. Frankfurt Animal Lounge accepts the assignment. If the fees are not paid, the Frankfurt Animal Lounge is entitled to refuse to offer the Animals for pick-up, unless such refusal is contrary to good faith and animal protection.
- 13.3 The Frankfurt Animal Lounge only offers the Animals for pick-up by the recipient / collector in exchange for a receipt.
- 13.4 The air carrier shall ensure that the Animals are picked up by the recipient / collector at the time named in the advance notice. If the Animals are not picked up by this time, they will be cared for a period not to exceed 10 days at the air carrier's expense. The IATA Tact Rules apply.
- 13.5 If the Animals are not picked up by the recipient / collector within this

10-day period, the IATA Tact Rules Article 2.8.1 and 2.8.2. apply.

- 13.6 If the Animals are imported from outside the European Union or if the recipient / collector lodges a complaint regarding the condition of the Animals, the Animals will not be delivered to the recipient / collector until they have been examined and released by the veterinary officer. The Animal is deemed to be in sound condition on pick-up if the recipient / collector makes an unconditional pick-up of the cargo or if the veterinary officer releases the Animal following a veterinary examination. Costs incurred to medically examine and release an Animal following a complaint will be charged to the air carrier, unless he can prove the Frankfurt Animal Lounge is at fault.

#### **14. Special provision regarding liability**

To the extent services of the Frankfurt Animal Lounge are provided for Air Carriers, the following provisions of this Section 14 for loss, damage or delayed delivery shall apply and supersede any conflicting provisions.

- 14.1 The liability of the Frankfurt Animal Lounge is restricted to the amount of the client's liability as the air carrier towards the other party to the contract of air carriage.

### **III. Contract services as an air carrier**

**If Lufthansa Cargo AG provides services as an air carrier the following special conditions of this Section III shall apply in addition to the provisions set forth in Section I:**

#### **15. Acceptance from Client**

- 15.1 If the client wants special or additional treatment for the Animals, he shall state this separately in advance in writing. If this results in additional costs for the Frankfurt Animal Lounge, these costs will be charged to the client.
- 15.2 Sections 12.2 applies mutatis mutandis.

#### **16. Offering to Recipient / Collector**

- 16.1 Sections 13.3, 13.5 apply mutatis mutandis
- 16.2 The client shall ensure that the Animals are picked up by the recipient / collector at the time named in the advance notice. If the Animals are not picked up by this time, they will be cared for a period not to exceed 10 days at the client's expense. The IATA Tact Rules apply.

- 16.3 If the Animals are imported from outside the European Union or if the recipient / collector lodges a complaint regarding the condition of the Animals, the Animals will not be delivered to the recipient / collector until they have been examined and released by the veterinary officer. The Animal is deemed to be in sound condition on pick-up if the recipient / collector makes an unconditional pick-up of the cargo or if the veterinary officer releases the Animal following a veterinary examination. Costs incurred to medically examine and release an Animal following a complaint will be charged to the client, unless he can prove the Frankfurt Animal Lounge is at fault.

## **17. Special provision regarding liability, governing law and legal venue**

To the extent Lufthansa Cargo AG provides services as an air carrier, the following provisions of this Section 17 for loss, damage or delayed delivery of air cargo shall apply and supersede any conflicting provisions:

- 17.1 The liability is determined by the applicable international treaties (in particular, but not limited to the Warsaw Convention or Montreal Convention) underlying the air carriage. Unless otherwise provided for to the advantage of claimant by the applicable convention or by law, the limitations of liability of the "General Terms and Conditions of Carriage of Cargo" of Lufthansa Cargo AG shall apply.
- 17.2 In such case the applicable law and the legal venue are determined by these international treaties.