

# Master Service Agreement

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hereinafter **Agreement**

The terms and conditions of this Agreement entered into by and between Parties, attached and / or incorporated by reference, are part of an agreement entered into by Transporeon GmbH (hereinafter **Service Provider**) as stated in the Statement of Work or other offer or order form and the Party executing this Agreement as **Customer** (hereinafter both also individually as **Party** or collectively as **Parties**).

This document is confidential. It may not be disclosed to third parties or otherwise made publicly available unless Service Provider expressly agrees to such disclosure.

Security classification: Protected

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## Definitions

|                          |   |
|--------------------------|---|
| Affiliate                | Any legal entity that directly or indirectly controls, is controlled by or is under common control with another party; for these purposes, "control" means ownership of more than 50% of shares or being entitled to appoint the board of directors of a legal entity   |
| Carrier                  | Logistic service provider: company which participates or wishes to participate in a tender organized by Service Provider  |
| Confidential Information | any information (whether written, electronic, oral, digital or otherwise), including, but not limited to, trade secrets as defined in the German Business Secrets Act (GeschGehG) or the Directive (EU) 2016/943 of the European Parliament and of the Council on the Protection of undisclosed know-how and business information (Trade Secrets), disclosed by the Disclosing Party to the Receiving Party or any Affiliate of the Receiving Party for the Purpose. Confidential Information shall include in particular: (a) Trade secrets, price or product information, practices, manufacturing processes, documentation, know-how, ideas, inventions, business relationships, orders and offers, customer and prospect lists, business strategies, business plans, financial planning, personnel matters, digitally embodied information (data); (b) any documents and information of the Disclosing Party which are the subject of technical and organizational confidentiality measures and which are marked as confidential or which, by reason of the nature of the information or the circumstances in which it was supplied, are to be regarded as confidential |
| Contact Data             | Company name, address, invoicing address, VAT No. as well as authorised signatory including name, surname, e-mail address and job title   |
| Deliverables             | Any results obtained or produced in connection with the Project and the provision of Services, such as reports after the end of the Project.  |
| Disclosing Party         | Any Party disclosing Confidential Information   |
| Intellectual Property    | Any patents, designs, models, drawings, copyrights, software and database rights, trade marks, know-how, web domain names, company names and in general all rights of a same or similar nature, whether registered or unregistered anywhere in the world including all extensions, reversions, revivals and renewals thereof  |
| Platform                 | Transporeon Freight Procurement, i.e. cloud-based tendering platform operated by Service Provider for commercial customers (business to business)   |
| Receiving Party          | Any Party receiving Confidential Information  |
| Services                 | Consultancy services to be undertaken by or to be performed by the Service Provider as stipulated in Statement Of Work  |
| Shipper                  | Collective name for all shipper customers participating in the Project including Customer   |
| Statement Of Work        | An agreement referring to this Agreement, including its exhibits and additional agreements between Parties defining the detailed performance specifications and corresponding conditions  |
| Third Party              | Any person or entity other than Parties and their Affiliates  |

## Preamble

Customer uses logistics services provided by logistics service providers or Carriers to transport his goods. The increase in efficiency of the logistics processes of Customer is essential here. For this purpose, Service Provider organizes a collaboration project in which Service Provider will bundle full truckload freight flows of multiple Shippers with the purpose to run an RFQ within the Platform to obtain prices from different Carriers who have matching capabilities to the requested requirements (hereinafter "Purpose" or "Project"). The goal of the Project is to emphasize competition and to let a number of non-competing Shippers benefit from economies of scale as much as possible as well as to offer logistic service providers new additional business opportunities with new Shippers.

The purpose of the Agreement is to establish the terms and conditions pursuant to which the Service Provider agrees to perform the Services for the Customer and the terms and conditions under which the Parties will cooperate for fulfillment of the Project.

## 1. Contractual relationships and components

### 1.1. Contractual relationships

This Agreement constitutes the legal framework for the cooperation of Parties.

The contractual relationship between Customer and Service Provider is defined by the corresponding Statement Of Work, which

- (a) contains a detailed description of such Services and
- (b) sets out, together with this Agreement, the provisions of Services.

### 1.2. Contractual components and contradictions

This Agreement including its exhibits – even if not referred to literally for reasons of readability – and the corresponding Statements Of Work are valid side by side. They regulate the contractual relationship between Parties conclusively. In case of doubt or contradiction, the provisions of the respective Statement Of Work shall prevail over the provisions of this Agreement, insofar as a deviation from this Agreement is expressly agreed in Statement Of Work.

## 2. Provision of Services

### 2.1. General

Service Provider renders Services according to the contractually agreed provisions and in line with the state of the art at the time of conclusion of this Agreement. Service Provider agrees to keep the Customer informed of the execution of the Project, provide consulting to Customer and to issue recommendations for the proper performance of the Services. Legal or tax advice is not the subject of this agreement.

Service Provider will promptly and efficiently perform the Services as and when required with reasonable due care and skill as may be expected of a person or an organisation with the experience of Service Provider and in accordance with this Agreement and in particular with the provisions set out in Statement Of Work.

### 2.2. No freight contract

Service Provider shall not become a party to any agreement between Shipper and Carrier. Consequently, incorrect performance or non-performance of any contract concluded as a result of the Project execution does not have any impact on Parties' obligations under this Agreement.

### 2.3. Business purpose

Customer undertakes to use Services of Service Provider as well as Deliverables solely for its own business purposes in accordance with this Agreement and the respective Statement Of Work.

### 2.4. Deadlines

- (a) Parties may agree on any binding deadlines for Services in the corresponding Statement Of Work.
- (b) The deadlines shall be extended by the period of time during which Service Provider is prevented from providing Services due to circumstances beyond its control (e.g. force majeure) as well as a reasonable start-up time after elimination of this obstacle. After termination of an event of force majeure, Service Provider shall notify Customer of the expected new deadlines for Services without undue delay. The same applies to any period during which Customer does not fulfil its cooperation obligations or delays their fulfilment.

- (c) If mutually agreed deadlines have to be changed due to Customer's fault and such change results or may lead to delay in the execution of the Project, Service Provider reserves the right to discontinue performance of Services and to exclude Customer from Participation in the Project. Service Provider will inform Customer in a timely manner in this case.

## 2.5. Cooperation obligations of Customer

- (a) Customer shall promptly provide Service Provider with all information required to perform Services.
- (b) Customer shall support Service Provider in providing Services in a timely manner and free of charge to the extent necessary to provide Services. This includes particularly providing data, relevant staff and cooperating to the extent necessary to provide Services. In addition to the cooperation obligation expressly stated herein, the Customer shall provide assistance and cooperation necessary and generally customary for the contractual provision of Services by the Service Provider.
- (c) If Customer does not fulfil its cooperation obligations which are necessary for the provision of Services, Service Provider is entitled to discontinue performance of Services and exclude Customer from participation in the Project. Service Provider will inform Customer in a timely manner in this case.

## 2.6. Subconsultant

Service Provider is free to assign persons Service Provider deems necessary to provide the Services. Service Provider will take care that these assigned persons are sufficiently qualified to provide Services.

# 3. Fees and payment

## 3.1. Invoicing and Payment

Depending on Services that Customer receives, Customer will conclude a corresponding Statement Of Work. Customer shall pay to Service Provider the fees stipulated in the respective Statement Of Work via bank transfer, unless otherwise agreed in such Statement Of Work. Customer shall bear all costs connected with the payment including any bank fees or currency exchange losses.

The prices set out in the Statements Of Work do not include VAT (if applicable).

## 3.2. Delay of payment

- (a) If Customer does not pay the fees in time or full, Service Provider may charge dunning fees and default interest on the overdue amount at the rate according to applicable law.
- (b) Any further rights according to the applicable law arising from, in particular, default delay remain unaffected.

# 4. Deliverables and Rights of Use

- (a) Service Provider hereby grants to Customer a non-revocable, assignable, worldwide, royalty-free, non-exclusive rights to use Deliverables for Customer's internal business purposes, subject always to Customer's compliance with any provisions hereunder.
- (b) All Intellectual Property rights related to Deliverables shall remain the sole property of Service Provider. A commercialisation or imitation of Intellectual Property of Service Provider as well as the registration of industrial other intellectual property rights (particularly, trademarks, designs, patents or utility models) by Customer, its Affiliates or by Third Parties are prohibited.

# 5. Ownership and IP rights

- (a) All Intellectual Property rights acquired before Effective Date and belonging to Service Provider shall remain the sole property of Service Provider. Intellectual Property created, acquired or developed in connection with this Agreement and Statement Of Work shall remain solely with Service Provider.
- (b) Should Parties together develop Intellectual Property, the rights thereto will be agreed in a separate agreement.

# 6. Intellectual Property rights of Third Parties

- (a) If the contractual use of the Deliverables by the Customer infringes the Intellectual Property rights of Third Parties, Service Provider shall indemnify the Customer against any claims of Third Parties legally established by a court on the basis of existing Intellectual Property rights of Third Parties, provided that and insofar as the Deliverables are not based on specifications or data of the Customer.
- (b) Customer shall:
  - i. immediately inform the Service Provider in writing of any claims made,
  - ii. leave it to the Service Provider to decide whether to defend the claims; And

- iii. provide the Service Provider with all information and support that is reasonably necessary in defence of such a claim.
- (c) Service Provider shall be released from its obligation to indemnify if the Customer does not act in agreement with the Service Provider in the defence of such claims of Third Parties and the reduction of possible damages.

## 7. Term and termination

### 7.1. Term

The Agreement shall become effective after execution of the respective Statement of Work by both Parties and shall stay effective during the term of the respective Statement Of Work. Any statutory or contractually agreed rights and obligations of Parties which should reasonably survive the termination (i.e. confidentiality, fees and payment) shall remain unaffected.

### 7.2. Termination for good cause

- (a) Service Provider may terminate this Agreement and Statement Of Work for good cause with immediate effect in writing, if Customer breaches the obligations as stipulated in 13 (Compliance), 7 (Confidentiality) as well as "Rules of engagement" as set out in the Statement Of Work.
- (b) Any further rights of Parties to terminate this Agreement for good cause shall remain unaffected.
- (c) In case of termination for good cause, Service Provider reserves the right to exclude the Customer from the Project immediately.

## 8. Confidentiality

### 8.1. Disclosure restrictions

- (a) Receiving Party must not make any of Disclosing Party's Confidential Information available in any form, to any Third Party, natural person or legal entity other than Receiving Party's employees, Affiliates or agents with a need to know such Confidential Information. In this case, Receiving Party shall ensure that all such Receiving Party's employees, Affiliates or agents shall be bound by the confidentiality obligations offering no less than the same level of protection as stipulated in this Agreement.
- (b) Notwithstanding (a) above, Service Provider is authorized to disclose transport related information of the Customer to the participating Carriers, however exclusively for and to the extent required for execution of the Project.
- (c) Any unauthorised disclosure or use of Confidential Information by Receiving Party's employees, Affiliates, subcontractors or agents shall be deemed a breach of this Agreement by Receiving Party. In this case, Receiving Party shall be liable to Disclosing Party to the same extent as if Receiving Party committed such breach itself.

### 8.2. Reasonable care

Receiving Party will keep Confidential Information secret by using at least the same care and discretion that Receiving Party uses with respect to its own trade secrets and in no case less than reasonable care.

### 8.3. Exceptions of confidentiality

Confidential Information does not include information that

- (a) was known to Receiving Party prior to its disclosure by Disclosing Party,
- (b) has become generally available to the public (other than through Receiving Party),
- (c) is obtained by Receiving Party from a Third Party under no obligation of confidentiality to Disclosing Party.

### 8.4. Disclosure permissions

Receiving Party may disclose Confidential Information if such disclosure is required according to applicable laws or governmental regulations, provided that Receiving Party has previously notified Disclosing Party of the disclosure by e-mail in parallel with the written notice and has taken reasonable and lawful actions to avoid and minimise the extent of the disclosure.

### 8.5. Survival

The provisions of 8 (Confidentiality) shall survive the termination of this Agreement for a period of 5 years from the date of effective termination of this Agreement.

## 9. Data protection

### 9.1. Processing of personal data

Service Provider and Customer may process business contact data of each other's employees for the purposes of Project execution. Parties shall comply with any laws and regulations in any relevant jurisdiction relating to data protection or the use or processing of personal data.

Service Provider processes the full name, the position and the business contact details of Customer's employees and representatives for product information and customer relationship purposes according to Art. 6 Para. 1 (f) GDPR.

### 9.2. Anonymised use of transport-related data

When offering Services, Service Provider processes transport-related data (including but not limited to transports, routes, offers, transport documentation) for the purpose of providing Services. Furthermore, Service Provider uses these data in anonymised form for error correction as well as for the improvement of own or third-party products (including services), for the development of new products, for benchmarks as well as for advertising, scientific or statistical purposes.

## 10. Performance agreed

- (a) Service Provider does not guarantee any specific Project results and shall not become a contractual party to the contracts between Shippers and Carriers.
- (b) Service Provider is not responsible for the provision of any performance contractually agreed between Customer and Carriers.

### 10.2. Accuracy and correctness

- (a) Service Provider is not responsible for the accuracy and correctness of the data that Customer, other Shippers or Carriers provide to Service Provider for the purposes of the Project.
- (b) Service Provider is solely and exclusively responsible for the accurate calculation of the results based on the provided information and for the correct data transmission.

### 10.3. Reliability of other participants

Service Provider gives no warranty as to the reliability of other Shippers or Carriers involved in the Project.

## 11. Liability

### 11.1. General

- (a) The contractual and legal liability of Service Provider is limited to intent and gross negligence.
- (b) In the event of ordinary negligence, the liability of Service Provider shall be limited to the breach of material contractual obligations, i.e. contractual obligations fulfilment of which is essential for the proper performance of the contract and the compliance with which Customer regularly relies on and may rely on. The liability of Service Provider for indirect damages, such as in particular lost profit, is excluded. The liability of Service Provider is limited to the compensation of the contract-typical and foreseeable damage.
- (c) In the event of a claim by Service Provider, contributory negligence on the part of Customer must be taken into account appropriately, in particular in the event of late or insufficient cooperation. In addition, Service Provider points out that despite compliance with the care required in trade and the state of the art, operational errors in the Platform cannot be technically excluded.
- (d) The limitations of liability regulated in this Agreement shall also apply in favour of employees, workers, representatives, organs, person used to perform and other vicarious agents of Service Provider. Service Provider shall only be liable for vicarious agents who are not also performing agents if it is guilty of intent or gross negligence in the selection or monitoring of vicarious agents.

### 11.2. Recommendations

The information, advice and results provided by Service Provider under this Agreement shall be considered as recommended and non-binding suggestion. Service Provider shall not be responsible for the accuracy and correctness of such information as Service Provider relies on the information and data furnished by the Shippers and Carriers. Service Provider is solely and exclusively responsible for the accurate calculation of the results based on the provided information and for the correct data transmission.

### 11.3. Unlimited liability

The aforementioned limitations of liability shall not apply in the event of injury to life, limb or health. Liability based on mandatory, indispensable statutory provisions shall also remain unaffected.



## 12. Compliance

Both Parties are fully committed to fully comply with all applicable laws, regulations, ordinances, rules and standards, and shall commit their employees to the same extent. During the entire Project and in the documentation of results, Service Provider and Customer will strictly comply with any compliance rules applicable, in particular competition and anti-trust laws. It is expressly agreed that the Project is not intended to support any market arrangements between the Shippers nor to discuss, to agree or to facilitate on any allocation of markets, customers and logistic suppliers, products and services, pricing, the business strategy, market procedures, plans and activities.

### 12.1. Anti-terror regulations and sanctions

- (a) Customer is obliged to take all suitable measures to ensure that compliance within its company with anti-terror regulations and other national and international embargo and trade control rules is warranted.
- (b) Customer hereby declares that its company and its employees are not named on the valid sanctions lists. Furthermore, Customer declares to comply with all anti-terror regulations and other national and international embargo and trade control rules.
- (c) Customer must also inform Service Provider immediately in writing or via e-mail in the event of any positive results discovered when reviewing the aforementioned sanctions lists in case this may affect the Project.

### 12.2. Anti-corruption

- (a) Customer undertakes to comply with all applicable anti-corruption regulations in connection with the execution of this Agreement.
- (b) Customer shall not provide, offer, promise or authorise the payment of any money, fee, commission, remuneration or any other valuable item to or for the benefit of any government official in order to influence an act or decision in violation of his or her lawful duty and applicable law for the purpose of obtaining or securing an improper advantage or creating a conflict of interest. Customer will inform Service Provider immediately in the event of knowledge or suspicion of corruption cases that are in relation to this Agreement or Project.

### 12.3. Bribery; fraud; market arrangements

During the Project, Customer shall refrain from any practices relating to corruption, bribery, fraud or illegal market arrangements and may not, either directly or indirectly, e.g. through intermediaries offer, promise, demand or accept any improper personal, financial or other advantage that has the ability

- (a) to influence decision-making or
- (b) to create a conflict of interest, deceive or
- (c) to mislead other customers, its directors, officers, employees, consultants or agents with the intent to deprive them of some legal right, or
- (d) to support any market arrangements between the Shippers.

## 13. Jurisdiction and governing law; dispute resolution

### 13.1. Jurisdiction; governing law

- (a) This Agreement and all Statements Of Work concluded hereunder shall be exclusively governed by and construed in accordance with the substantive laws of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (b) The place of jurisdiction for any legal disputes is Ulm, Germany.
- (c) Service Provider retains the right to sue Customer in their respective general place of jurisdiction.

### 13.2. Place of performance

The place of performance for delivery and payment of Services is Ulm, Germany.

### 13.3. Dispute resolution

- (a) Prior to initiating litigation, Parties shall make a good faith attempt to resolve their dispute through direct negotiation by referring the dispute to a competent person with authority to settle the dispute.
- (b) In the event of a dispute relating to this Agreement or any Statement Of Work, Party raising the matter in dispute will notify the other Party in a written notice describing in sufficient detail the nature of the dispute. Each Party will then appoint one or more representatives to resolve the dispute. These representatives will promptly meet and negotiate in good faith to reach a fair and

equitable settlement. At the end of 60 days, if no settlement has been reached, either Party may end discussions and declare an impasse.

#### **13.4. Outside EEA**

- (a) If Customer is located outside the European Economic Area, all disputes arising out of or in relation to this Agreement, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the arbitration Rules of the International Chamber of Commerce (ICC) in force on the date when the Notice of Arbitration is submitted in accordance with these rules, excluding the access to regular courts.
- (b) The arbitration court shall consist of three arbitrators.
- (c) The seat of the arbitration shall be in Berlin, Germany.
- (d) The language of the arbitral proceedings shall be English.

#### **14. Severability clause**

- (a) If any provision of this Agreement or any Statement Of Work should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions of this Agreement or Statement Of Work shall not be affected thereby.
- (b) Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent, time, place and scope.

#### **15. Assignment**

Customer is not entitled to assign any of the rights and obligations of this Agreement or any Statement Of Work without prior written approval by Service Provider.

#### **16. Declarations**

- (a) Customer shall make all legally relevant declarations in connection with this Agreement and any Statement Of Work in writing or via e-mail. Service Provider shall make such declarations in writing or to the e-mail address provided by Customer.
- (b) Customer will keep its Contact Data up to date and notify Service Provider of any changes without undue delay.

#### **17. Changes**

- (a) Service Provider may change this Agreement if this becomes necessary due to new technical developments, changes in the law, extensions to Services or other comparable compelling reasons. If a change disrupts the contractual balance between Parties substantially, such change will not come into force.
- (b) Service Provider will give Customer at least 45 days prior written notice (also via e-mail) before the changes enter into effect.
- (c) The changes are deemed approved by Customer if Customer does not object in writing or via e-mail or via Platform within four weeks after having received the notification from Service Provider. This consequence will be expressly pointed out in the notification. If Customer objects to the changes, both Parties may terminate this Agreement before such changes become effective.

#### **18. Entire agreement**

- (a) This Agreement and the respective Statements Of Work constitute the entire agreement between Parties and supersede all prior negotiations, declarations or agreements, either oral or written, related hereto.
- (b) Deviating general terms and conditions of the Parties shall not apply.