

## **Amendment to Terms and Conditions:**

### **Explanatory note to our IPP Terms and Conditions for the Temporary Grant of Use of Load Carriers for Payment.**

Dear Ladies and Gentlemen,

As already announced, we have amended our General Terms and Conditions and replaced the previous "Allgemeine Geschäftsbedingungen für sämtliche Lieferungen und Leistungen der IPP GmbH" with our new "IPP GmbH General Terms and Conditions for the Temporary Grant of Use of Load Carriers for Payment" as of March 2024 (hereinafter referred to as "New IPP GTC") (<https://www.ipp-pooling.com/de/allgemeine-geschaeftsbedingungen/>).

In the following paragraphs, we would like to explain our reasoning behind the introduction of the New IPP GTC and provide an overview of the main changes to the previous GTC.

#### 1. Reasons for the Amendments

In recent years, there have been numerous, sometimes major changes to the German Civil Code (BGB), the German Commercial Code (HGB) and other laws whose regulations are applicable to the business relationships between IPP and their business partners. Of particular note in this context are the Act on the Reform of Construction Contract Law, which came into effect on January 1, 2018, and the Directive of the European Parliament on certain aspects concerning contracts for the sale of goods and Directive on certain aspects concerning contracts for the supply of digital content and digital services, which were implemented into German law in 2021 and have been in force since January 1, 2022. These have brought about numerous new regulations, among others in the area of liability for material defects. The Trade Secrets Law (*GeschGehG*), which came into force in 2019, should also be mentioned. In addition, there have been a large number of court decisions (BGH and courts of lower instance) in the area of law of general terms and conditions, in particular on the legal rule regarding the inalienability of certain rights (*Inhaltskontrolle*, *Kernbereichslehre*).

Our previous GTCs were no longer able to reflect these developments and were therefore no longer "GTC law-compliant" from a certain point in time.

Our business model and the core elements of the exchange of services between IPP and our customers were also not adequately reflected in the previous GTCs. In particular, the manner in which Load Carriers are provided and their handling are just as fundamental to a smoothly functioning process as a clear understanding of the ownership of the Load Carriers and the Customer's obligations to cooperate in their use.

Finally, we felt there was an urgent need to clarify the language and content throughout, to explain routines and to give the GTC a more professional and clearer appearance overall.

With the introduction of the New IPP GTC, we aim to meet these requirements as much as possible. However, we do so in the knowledge that general terms and conditions cannot generally claim to be complete - and our New IPP GTC are no exception.

## 2. The Major Changes at a Glance

- Clarification of the Scope of Application

Section 1 of the New IPP GTC regulates the scope of the New IPP GTC and determines in which cases conditions deviating from or conflicting with our New IPP GTC apply. Paragraphs that are unclear (such as Section 1.5 of the old GTC) have been removed or replaced by Section 1 of the New IPP GTC.

- Conclusion and Handling of the Contract

The subject matter of a contract between IPP and the Customer and the basis for the handling of the business relationship are now governed by Sections 2 (Conclusion of the Contract) and 6 (Handling). Section 6 defines, among other things, the so-called "Delivery Points" at which Load Carriers are to be handed over and collected and regulates the maximum permissible loading and unloading times and the consequences of exceeding them. Section 2 defines how the quality descriptions relating to the Load Carriers are to be understood and regulates IPP's ownership and copyright protection regarding the product as well as operating information provided to the Customer.

- Ownership of the Load Carriers

In Section 3 of the New IPP GTC, it is made clear that the Load Carriers provided remain the property of IPP at all times. This ownership-possession relationship is the essential basis of IPP's business model, which consists of the temporary grant of use of Load Carriers for payment (hence the title of the New IPP GTC). Otherwise, IPP would not be able to fulfill their provision obligations to all customers. Accordingly, Section 3 also regulates the Customer's main obligations when handling the Load Carriers.

- Prices and Payment Terms

Section 4 regulates the prices for the grant of use of the Load Carriers and the terms of payment. In contrast to the previous GTC, there is no provision for an automatic price adjustment. In order to reduce our risk of non-payment, we reserve the right to make the provision of Load Carriers dependent on the prior provision of collateral security by the Customer in the case of a correspondingly poor credit rating. Furthermore, it is made clear that the Customer may only offset against legally established or undisputed claims of its own.

- Deadlines for the Transfer of Load Carriers; Delivery Delays

Section 5 regulates the deadlines for the Transfer of the Load Carriers and the consequences in the event of a delay in delivery. The previous GTC did not include such a provision.

- Obligations of the Customer to Cooperate

The Customer has certain obligations to cooperate, without the fulfillment of which an orderly business transaction is not possible. This includes, for example, proper management of stock, reporting

and information obligations, inventory and orderly bookkeeping. The details are now regulated in Section 7. The previous GTC contained practically no provisions on this topic.

- Force Majeure

The previous GTC did not contain a definition of the term "force majeure". However, such a definition appears necessary, as there is no generally applicable definition of "force majeure" in German law. Section 8 now defines precisely what the parties understand by "force majeure" and what (legal) consequences may result from it.

- Customer's Rights in the Event of Material Defects and Defects of Title

Apart from an unspecific reference to § 377 of the German Commercial Code (HGB), the previous GTC did not contain any provisions on the rights of the Customer in the event of material defects in the Load Carriers or in the event of an infringement of third-party property rights. Particularly in view of the legally unstructured regulation of defect rights in contracts of the type relevant here (grant of use of Load Carriers for payment), a more detailed regulation in the GTC appears to be absolutely necessary. Sections 9 and 10 comply with this.

- Liability for Damages, Statute of Limitations on Claims

The legal situation and the ongoing case law on the admissibility of limitations of liability in general terms and conditions made it necessary to revise this subject area. Sections 11 and 12 contain corresponding provisions for IPP's liability for damages and the limitation period for customer claims.

- Protection of Business Secrets

Section 13 regulates the protection of IPP's business secrets by the Customer in accordance with the Trade Secrets Law (GeschGehG) of 2019. The previous GTC did not contain any provisions in this regard.

- Contract Term, Termination

Section 14 stipulates that, unless otherwise agreed, the business relationship may be terminated by either party in writing without cause with a notice period of 3 months to the end of the month. Either party may terminate the contract at any time without notice for good cause (mandatory law), whereby Section 14.3 lists certain examples of good cause for which notice of termination without notice may be given. These include, for example, a breach of the Customer's payment or cooperation obligations or a significant deterioration in the financial circumstances of one of the parties.

If you have any further questions about our New IPP GTC, please do not hesitate to contact us.