



## **Addendum to the FedEx Express Terms and Conditions of Carriage for Europe, effective from September 15<sup>th</sup>, 2023**

Each contract of carriage made with FedEx Express Deutschland GmbH using services offered under the brand name "FedEx" for Shipments originating in or shipped within the Federal Republic of Germany incorporates the FedEx Express Terms and Conditions of Carriage for Europe (the "**European Conditions**") and additionally the stipulations in this Addendum to the European Conditions (the "**Addendum**"), thereby amending and supplementing the European Conditions as set forth hereinafter. However, for orders related to transportation services offered under the brand name „TNT" („**TNT Services**") placed with FedEx Express Deutschland GmbH the European Conditions and this Addendum shall not apply; for such orders the relevant terms and conditions of carriage for TNT Services shall apply.

Contracts of carriage for Shipments originating from outside the Federal Republic of Germany are subject to the terms and conditions of the FedEx affiliate, branch or independent contractor of FedEx located outside of Germany that accepted the Shipment for the performance of the FedEx Services. For those contracts, the Addendum will not apply.

If and to the extent the Addendum does not amend and supplement the stipulations of the European Conditions, the European Conditions remain in force and effect without changes.

If and to the extent the Addendum amends and supplements the European Conditions, such modifications and additions shall apply and prevail over the stipulations of the European Conditions.

Capitalized terms used but not defined in this Addendum have the meanings assigned to such terms in the European Conditions, as the case may be.

### **I. GENERALLY APPLICABLE CHANGES**

#### **1. BILLING (SECTION 6 OF THE EUROPEAN CONDITIONS)**

1.1 Section 6.1 of the European Conditions applies with the following wording:

6.1 Invoices for Transportation Charges and related Charges are in principle payable within 30 days of the invoice date. For services related to certain countries a different payment term may apply; details are available upon request. Invoices for duties, taxes and other related Charges are payable upon receipt. Notwithstanding, FedEx reserves the right to require payment of any Charges in advance. Offsetting is only permissible against FedEx with undisputed, disputed but ready for decision or legally established claims against FedEx. Rights of retention may only be asserted against FedEx on the basis of counterclaims arising from the same contract with FedEx.

1.2 Section 6.4 of the European Conditions applies with the following wording:

6.4 In the event of late payment, FedEx reserves the right to apply late payment interest and/or administrative costs according to Section 288 German Civil Code (*Bürgerliches Gesetzbuch*) and Section 353 German Commercial Code (*Handelsgesetzbuch*) as far as the latter is applicable.

#### **2. LIMITS OF LIABILITY (SECTION 20 OF THE EUROPEAN CONDITIONS)**

2.1 The following further sentence is added at the end of Section 20.1 of the European Conditions:

If the Air Waybill refers to the Warsaw Convention as the applicable Convention, such reference to the Warsaw Convention alone shall not have any legal effect.

2.2 Section 20.2 of the European Conditions applies with the following wording:

**20.2 Limits of Liability for Other Claims.** If not governed by Section 20.1 (Standard Limits of Liability for Transportation Services) of the European Conditions and without prejudice to Sec. 433 German Commercial Code (*Handelsgesetzbuch*), FedEx shall be liable for damages or reimbursement of futile expenses in connection with the provision of Ancillary Services for whatever legal reason only as follows:

- a. FedEx shall be liable without limitation for willful misconduct or gross negligence of FedEx' executive bodies, legal representatives, employees or other vicarious agents as well as on account of loss of life, physical injury or impairment of health, for damage claims pursuant to the German Law on Product Liability (*Produkthaftungsgesetz*) and also for a written guarantee given by FedEx.



- b. In case of slight negligence of FedEx's executive bodies, legal representatives, employees or other vicarious agents, the liability of FedEx is limited to the breach of a material obligation under the respective agreement with FedEx ("**Fundamental Obligation**"). A Fundamental Obligation is any contractual obligation that is essential for the proper fulfilment of the respective agreement and in which the contract partner can rely to be fulfilled. FedEx's liability in those cases is furthermore limited to the amount of the foreseeable damage, which at the time of entering into the respective agreement with FedEx is typical in those cases.

2.3 Section 20.3 h. of the European Conditions does not apply.

### 3. LIABILITIES NOT ASSUMED (SECTION 21 OF THE EUROPEAN CONDITIONS)

The following additional Section 21.6 of the European Conditions applies:

21.6 An exclusion or limitation of liability by FedEx does not apply in case of willful misconduct and gross negligence of FedEx and its employees, agents or subcontractors unless the provisions of the Montreal Convention or Protocol No. 4 to the Warsaw Convention apply.

An exclusion or limitation of liability by FedEx does not apply in the case of fatal injury, personal injury or damage to health except as far as legally permitted by the provisions of the Montreal Convention, Protocol No. 4 to the Warsaw Convention or the German Air Traffic Law (*Luftverkehrsgesetz*).

## II. ADDITIONAL CHANGES APPLICABLE TO CONTRACTS WITH CONSUMERS

The following changes additionally apply only if FedEx's contract partner in the individual case is a consumer.

### 1. INSPECTIONS OF SHIPMENTS (SECTION 9 OF THE EUROPEAN CONDITIONS)

1.1 Section 9.1 of the European Conditions applies with the following wording:

9.1 FedEx may open and inspect any Shipment only in compliance with applicable laws and regulations such as the German Postal Code (*Postgesetz*).

1.2 Section 9.2, 2<sup>nd</sup> sentence of the European Conditions does not apply.

### 2. PROHIBITED ITEMS (SECTION 10 OF THE EUROPEAN CONDITIONS)

Section 10.3 of the European Conditions applies with the following wording:

10.3 FedEx reserves the right to reject Packages based upon these limitations or for reasons of security or safety. In accordance with statutory law, the Sender is liable for the damages and expenses resulting from the Sender's culpable commissioning of the transportation of Prohibited Items in breach of the contract. In accordance with statutory law, FedEx may charge an administrative fee as a financial compensation for Packages rejected and for the cost of returning goods, where applicable, to the Sender if such costs have been caused due to the Sender's fault. Further information is available upon request.

### 3. DELIVERY (SECTION 16 OF THE EUROPEAN CONDITIONS)

Section 16.10 b. of the European Conditions applies with the following wording:

b. The Sender acknowledges and agrees that the instructions from the Recipient may relate, but are not limited, to: (i) postponing the delivery time; (ii) delivering to a neighbor, doorman or receptionist; (iii) delivering to another address or another person, provided such other address is within the same country as stated on the Air Waybill; (iv) providing instructions as to where to leave the B2C Shipment without obtaining a signature for delivery; (v) leaving the B2C Shipment at a pick-up point (e.g. a retail location); or (vi) any combinations of the foregoing instructions. The Recipient will be promptly informed by FedEx about (a) the fact that the B2C Shipment was delivered and (b) the time of delivery.



#### **4. UNDELIVERABLE SHIPMENTS (SECTION 18 OF THE EUROPEAN CONDITIONS)**

4.1 Section 18.2 of the European Conditions applies with the following wording:

18.2 If a Shipment is undeliverable for any reason, FedEx shall attempt to notify the Sender to arrange for the return of the Shipment, without prejudice to any local regulatory constraints. If the Sender cannot be contacted within five Business Days or fails to give instructions within a reasonable period of time, FedEx may return the Shipment to the Sender; or place the Shipment in temporary storage, a general order warehouse or customs-bonded warehouse or dispose of the Shipment in accordance with statutory law. If a Shipment cannot be delivered, cleared through customs or returned, the Shipment may be transferred or disposed of by FedEx in accordance with statutory law. FedEx, in accordance with statutory law, is entitled to claim from the Sender costs, agreed Charges and fees incurred in returning, storing or disposing of an undeliverable Shipment; this shall not apply if the Shipment was undeliverable due to the fault of FedEx.

4.2 Section 18.3 of the European Conditions applies with the following wording:

18.3 Shipments that cannot be returned due to local regulatory constraints will either be placed in temporary storage, a general order warehouse or a customs-bonded warehouse or disposed of in accordance with local law. FedEx is entitled to claim from the Sender the costs incurred by FedEx in such placement or disposal in accordance with statutory law.

4.3 Section 18.4, 2<sup>nd</sup> sentence of the European Conditions does not apply.

#### **5. LIMITS OF LIABILITY (SECTION 20 OF THE EUROPEAN CONDITIONS)**

Section 20.3 g. of the European Conditions does not apply.

#### **6. LIABILITIES NOT ASSUMED (SECTION 21 OF THE EUROPEAN CONDITIONS)**

Section 21.1 and Section 21.3 of the European Conditions do not apply.

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