

Terms & Conditions - Bargelink GMBH

1 Applicability

1.1

These terms and conditions ("Terms") are applicable to the Registration Contract between Bargelink GmbH ("Bargelink"), a German public company with limited liability, having its registered seat in Germany at the Fischerstrasse 4A, 46509 Xanten, and the registrant ("Registrant"). They concern all legal relationships between Bargelink and its Registrants, as well as to the use of the Bargelink website ("the Website"). By accessing, browsing or visiting the Website you acknowledge that you have read, understood and agree to be bound by the Terms.

A Registrant is a natural person or a company (corporation) being represented by one or more natural persons. All natural persons who are allowed to represent the company on the Website are to be understood being included within the term "Registrants", when used in the Terms, the Marketplace Rules and the Security and Privacy Statement.

1.2

On the Website Bargelink offers a Marketplace for shippers, carriers and brokers/agents to trade transportation services related to the barging industry ("Marketplace"). By accepting the applicability of the Terms, the Registrant guarantees that she/he will fully comply with the Marketplace Rules.

1.3

By accepting the applicability of the Terms, the Registrant and/or visitor ("Visitor") of the Website confirms that she/he accepts the applicability of the Security and Privacy Statement. For information about the security and privacy policy of Bargelink, please check our Security and Privacy Statement.

2 Registration

2.1

By filling in and sending the registration form to Bargelink, the applicant makes an offer to conclude a Registration Contract with Bargelink. The Registration Contract becomes effective after Bargelink has confirmed the acceptance of the offer by the applicant to conclude the Registration Contract. Bargelink reserves the right to refuse to conclude a Registration Contract with any person or entity on the basis that this person or entity is not actively involved in the barging industry, this person or entity lacks a proper VAT identification number or if it seems reasonable to expect that this person or entity might harm the interest of Bargelink or one or more of its Registrants.

2.2

The applicant and/or the Registrant guarantees that the information provided through the Registration Contract and all other information provided to Bargelink and/or any Registrants, all related to the Website, is accurate and correct. With registration the registrant agrees, that the registrants company (in cases of natural persons, the registrant's name) is published in the list of registered users.

2.3

Bargelink reserves the right to alter the content of the Website, the Terms, the Marketplace Rules and the Security and Privacy Statement. Bargelink will notify the Registrant of any alteration of the Terms, the Marketplace Rules and the Security and Privacy Statement through email. If the Registrant has not made an objection in writing to the alteration of the Terms, the Marketplace Rules and the Security and Privacy Statement within 14 days after receiving the notification by Bargelink, the Registrant is considered to have accepted the applicability of these altered Terms, the Marketplace Rules and the Security and Privacy Statement. Bargelink is entitled to terminate the Registration Contract if the Registrant objects the alteration of the Terms, the Marketplace Rules and the Security and Privacy Statement.

2.4

The term of the Registration Contract is indefinite. The Registrant is entitled to terminate the Registration Contract at any time at one-month's notice, provided that the Registrant has fulfilled all of his obligations under the Registration Contract.

2.5

Bargelink is entitled to terminate the Registration Contract with immediate effect if:

- a. the Registrant misuses the Website or does not comply with any article of the Registration Contract, the Terms, the Marketplace Rules or Security and Privacy Statement;
- b. a petition for a suspension on payments or a bankruptcy petition has been filed against the Registrant;
- c. the Registrant has not participated in an Exchange for a period of three months.

2.6

Bargelink is fully entitled to transfer its rights under the Registration Contract to a third party or to have a third party perform its obligations under the Registration Contract. The Registrant is not allowed to transfer the Registration Contract or the rights and obligations under the Registration Contract to a third party without the prior written approval of Bargelink.

2.7

The Registrant is entitled to use the Marketplace or to participate in an Exchange only if he is legally able to make binding contracts under the applicable law. The first user registering for a company, is registered as a Company Administrator ("Superuser"). The Superuser can add new users ("Users") for using the Website, these Users are automatically registered as Registrants (of the company), or remove Registrants (of his company). The Superuser guarantees that he will only allow Users to participate in an Exchange that are entitled to represent the Registrant in an Exchange and who are able to make binding contracts under the applicable law.

2.8

The Registrant is responsible for keeping the passwords secret. Registrant is not allowed to supply these passwords to any third party. Registrant is responsible for all her/his acting on the Website and for paying all Fees connected with the use of the Marketplace, unless such use is imputable to Bargelink.

2.9

Registered users may take out a subscription for the modules [Barge-Scout], [Freight-Scout] and [Info-Scout] which will be charged with a monthly fee (see 5.3). A subscription will be activated by Bargelink and has a minimum duration of 3 months and start as from the first day of the following month. Subscriptions will be prolonged with the original subscription period (3, 6 or 12 month), if not terminated in time. Termination is possible with a notice period of 7 days before the end of the duration in written form or by E-Mail. Bargelink will confirm the activation and the end of a subscription by E-Mail. There is the possibility to make use of the filters, if at least a subscription for the module [Info-Scout] has been taken out.

3. Marketplace

3.1

The Marketplace is only open to Registrants. For details it please check the Marketplace Rules.

3.2

Bargelink will act to all its abilities to make sure the Marketplace functions appropriately. However, no warranty whatsoever can be given as to the proper functioning and availability of the Website and/or the Marketplace. Bargelink is not obliged to fulfil any of its obligations in cases of an Act of God, such as interruptions of the internet, flaming, spamming, hacking or a failure of the energy supply.

3.3

Bargelink reserves the right to terminate or to postpone an auction in case of an Act of God. Bargelink is entitled to declare an auction invalid in case of an Act of God or in case of any other irregularity.

4 Liability and indemnity

4.1

All information contained on, distributed through or linked, downloaded or accessed from the Website is provided without any warranty of any kind. Some information on the Website comes from third parties. The responsibility for this information lies with the specific third party. Bargelink disclaims all express, implied and statutory warranties of any kind to any party including warranties as to the truth, accuracy, availability or completeness of the information provided on the Website and as to the quality, accuracy or fitness for a particular purpose. Bargelink shall under no circumstances be liable for any errors or omissions of the information on the Website.

4.2

Bargelink disclaims all express, implied and statutory warranties as to the quality of any products, services or other materials displayed, purchased as a result of an advertisement or any other information or offer on the Website.

4.3

Bargelink is not liable for any direct, indirect or consequential damages that result from the use of the Website and/or the Marketplace, unless such damage is the result of gross negligence or the intention of Bargelink.

4.4

Bargelink is not involved in any transactions between Registrants. In case of any dispute between Registrants or any dispute related to the Marketplace, Registrant(s) shall indemnify and hold Bargelink harmless from any claims, demands and damages of every kind and nature, arising out of or in any way connected with such disputes, unless such claim or damage is the result of gross negligence or the intention of Bargelink.

4.5

The total amount of damages to be paid by Bargelink shall in any event not exceed the total amount of Fees paid by Registrant within the last six months before the date of the occurring event.

5. Fees

5.1

Registration to Bargelink is free of charge. Bargelink reserves the right to request a registration fee in the future. The Registrant is responsible for paying his own costs incurred in visiting the website.

5.2

Actually there are three levels of usage at Bargelink:

1. After registration users are allowed to start auctions, participate in auctions and receive cargo- and barge offers via the modules [Barge-Scout] and [Freight-Scout]. These offers are displayed without details like barge name and communication details.
2. With an [Info-Scout]-subscription all details of the modules [Barge-Scout] and [Freight-Scout] are displayed and may be used passively. Additionally the system filters may be used.
3. With a subscription for the modules [Barge-Scout] or [Freight-Scout] these modules may be used actively to offer available barges and cargo.

For transport agreements or contracts, closed in succession of the use of these modules Bargelink doesn't charge any fees. Also the participation in an auction as a bidding party is free of charge.

5.3

Subscribers of the modules [Barge-Scout] and/or [Freight-Scout] will be charged a monthly fee, displayed in the internet site of Bargelink. Bargelink allows discounts for subscription periods of 6 respectively 12 months which are also displayed in the internet site.

5.4

Bargelink will charge a commission fee ("Fee") that applies to all successfully closed auctions. The Fee is 1.25% of the final quote price ("Final Quote Price") according to the binding contract between the Shipper and the Quoting Party as chosen by the Shipper ("Contract"). This Fee will be paid by the Shipper. The Final Quote Price is equal to the "total price for the transport" (see Request a Carrier" form) or is calculated by "price per unit multiplied by the volume of shipment". All prices and payments will be in the currency as chosen in the "Request a Carrier" form. The fee due by the shipper will be calculated in Euro.

5.5

Bargelink will invoice all fees due by a Registrant on a monthly or quarterly basis. All prices are exclusive of VAT, but VAT shall be added to all invoices where applicable. Payment of these invoices has to be made without delay after receipt. The Registrant is responsible to fulfil all obligations arising from a Contract.

5.6

The shipper who does not accept a Final Quote as prescribed in the Marketplace Rules, has to pay Bargelink a fee of 10% of the value of the freight (the average of all Final Quote Prices of all Valid Quotes). Bargelink will divide 75% of this fee equally between the Registrants that have placed Valid Quotes for this specific Exchange, within thirty days after reception of this fee.

5.7

After or during the participation in an Exchange, the Registrants are not allowed to enter into a contract with each other outside the Exchange with respect to the Quote or request of the specific Exchange, if at least one Valid Quote has been submitted. The Registrant not acting according to this, is liable to forfeit an immediately payable penalty not eligible for setting-off of 10 % of the value of the freight (the average of all Final Quote Prices of all Valid Quotes). Bargelink will divide 75 % of this amount equally between the Registrants that have placed Valid Quotes for the specific Exchange, within thirty days after reception of this fee.

6. Evidence

Registrant accepts the correctness of the administration of Bargelink for all aspects concerning the use of the Website and consequential obligations, unless the contrary is proved by the Registrant.

7. Intellectual Property

7.1

The copyright on the Website and all its content, including text, graphics and software, as well as the arrangement and compilation thereof, belongs to Bargelink. No part of the Website may be published, reproduced, made available or modified in any form by any means without the prior written consent of Bargelink. The Website may not be framed or linked to a (Internet)page other than the homepage of the Website without the prior written consent of Bargelink.

7.2

The Website contains several databases. It is not allowed to extract, copy or re-utilize substantial parts of the content of the Databases for commercial purposes.

7.3

The name Bargelink and the Bargelink logo are registered trademarks of Bargelink GmbH.

8. Applicable law

8.1

The Registration Contract, the Terms, the Marketplace Rules, the Security and Privacy Statement and all issues deriving thereof are governed by the laws of Germany. In case of any difference in understanding between this version of the Terms and the German version, the latter will prevail.

8.2

Any dispute arising out of or in connection with the Registration Contract, the Terms, the Marketplace Rules and the Security and Privacy Statement shall be submitted - in first instance - exclusively to the competent court in Rheinberg, Germany. Disputes between the Registrants are not governed by these Terms.

8.3

In the event that one or more articles of the Terms is null and void, the Registrant shall be bound by a similar article that corresponds to the maximum possible extent to the purpose of the article that is null and void.

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